

SUPREME COURT OF ARIZONA

BRUSH & NIB STUDIO, LC, et al.,

Plaintiffs/ Appellants/
Cross-Appellees,

v.

CITY OF PHOENIX,

Defendant/ Appellee/
Cross-Appellant.

Arizona Supreme Court
No. CV-18-0176-PR

Court of Appeals
Division One
No. 1 CA-CV 16-0602

Maricopa County
Superior Court
No. CV2016-052251

**COMBINED RESPONSE TO PETITION FOR REVIEW,
CONDITIONAL CROSS-PETITION FOR REVIEW, AND APPENDIX**

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INTRODUCTION

One core undisputed fact shows why this case does not warrant review: If a same-sex couple asks Brush & Nib for custom wedding products, Brush & Nib will refuse service, regardless of the wording or design the couple wants. As the Panel noted, Brush & Nib will make a plain-vanilla wedding invitation listing “Pat and Pat” if that means “Patrick and Patricia,” but would refuse to make an identical one for “Patrick and Patrick.” Op. ¶ 29. That’s why this case is about commerce, not speech, art, or religious beliefs. That’s also why the Panel could not have lawfully reached any other result in this case. Under settled law, the government does not infringe the freedom of speech or religion by prohibiting public accommodations from refusing service based on a customer’s race, religion, sexual orientation, etc.

Moreover, this case is a poor vehicle for further review because Brush & Nib sued before any same-sex couple requested service. Consequently, even if one could imagine a more difficult hypothetical case, this case does not present those concerns. On top of that, the premature nature of this case means that Brush & Nib lacks standing and the lower courts should have dismissed on that basis.

BACKGROUND*

I. Background of this dispute.

Since 1964, Phoenix (like most jurisdictions) has prohibited public accommodations from discriminating on the basis of race, sex, and other characteristics. Phoenix City Code § 18-4(B). [[APP042-43.](#)] In 2013, Phoenix added sexual orientation to the list of protected characteristics. [[APP052-57.](#)]

Brush & Nib sells paper goods to the public, including custom wedding invitations and other wedding items, such as place cards, menus, and maps. Brush & Nib wants to refuse to make *all* custom items for same-sex weddings. [[APP069](#), ¶ 254.]

Brush & Nib sued Phoenix, alleging that § 18-4(B) violates its freedom of speech and religion by prohibiting its desired refusal. At the time, Brush & Nib had never been asked to make custom wedding goods for a same-sex wedding. [[APP211](#), lines 22-24.] Nor had Phoenix received any complaints about Brush & Nib or initiated any investigation into

* Selected record items cited are included in the Appendix attached to the end of this brief, cited by page numbers (e.g., APP001), which also match the PDF page numbers and function as clickable links. Court of Appeals record items are cited with “COA-” followed by the record number.

Brush & Nib's practices. [[APP213](#), line 25 to [APP214](#), line 9; [APP241](#), line 9 to [APP242](#), line 6.] The record contains no evidence that Phoenix has ever enforced § 18-4(B)(2) criminally, much less against a wedding vendor. [[APP240](#), line 18 to [APP243](#), line 8.]

The superior court ruled that Brush & Nib had standing to challenge § 18-4(B)(2), but ruled against Brush & Nib at the preliminary injunction stage and on summary judgment. The Panel affirmed.¹

II. The other wedding vendor challenges.

Wedding vendors across the country have challenged public accommodation laws in recent years (all represented by the same advocacy group as Brush & Nib, the Alliance Defending Freedom):

- **Wedding photography.** *Elane Photography, LLC v. Willock*, [309 P.3d 53](#) (N.M. 2013).
- **Wedding venue.** *Gifford v. McCarthy*, [137 A.D.3d 30](#) (N.Y. App. Div. 2016).
- **Wedding cake.** *Craig v. Masterpiece Cakeshop, Inc.*, [370 P.3d 272](#) (Colo. App. 2015), *rev'd on other grounds sub nom. Masterpiece Cakeshop, Ltd., v. Colo. Civil Rights Comm'n*, [138 S. Ct. 1719](#) (2018).

¹ The Panel severed and invalidated part of § 18-4(B)(3) for vagueness. Op. ¶¶ 43-45. Neither side challenges that ruling.

- **Wedding flowers.** *Washington v. Arlene's Flowers, Inc.*, [389 P.3d 543](#) (Wash. 2017), *cert. granted, judgment vacated*, [138 S. Ct. 2671](#) (2018).
- **Wedding videography.** *Telescope Media Grp. v. Lindsey*, [271 F. Supp. 3d 1090](#) (D. Minn. 2017).
- **Wedding website.** *303 Creative LLC v. Elenis*, No. 16-cv-02372, [2017 WL 4331065](#) (D. Colo. Sept. 1, 2017), *appeal dismissed*, -- F. App'x --, [2018 WL 3857080](#) (10th Cir. Aug. 14, 2018).

None of these cases adopted Brush & Nib's legal theory that wedding vendors have the right to refuse service for same-sex couples' weddings.

In *Masterpiece*, the Supreme Court ruled for the wedding vendor because of "impermissible hostility" toward religious beliefs, which unquestionably is not an issue here. [138 S. Ct. at 1729](#). Importantly, the seven-member majority did not rule that the baker had a right to refuse service. (Although Brush & Nib (at 2, 7, 10) repeatedly cites to Justice Thomas's concurring opinion in *Masterpiece*, only one other Justice joined that opinion.) The Court also vacated and remanded in *Arlene's Flowers* for reconsideration in light of *Masterpiece*, without addressing the merits.

ISSUES

1. Does Brush & Nib have a constitutional free-speech right to uniformly refuse all requests for custom goods for same-sex couples' weddings?
2. Does the Free Exercise of Religion Act give Brush & Nib the right to uniformly refuse all requests for custom goods for same-sex couples' weddings?

REASONS THE COURT SHOULD DENY REVIEW

- I. The Panel correctly held that Brush & Nib has no constitutional free-speech right to refuse service for same-sex couples' weddings.**
 - A. Because Brush & Nib seeks extraordinarily broad relief, this case does not raise the controversy the Petition presents.**

As a threshold matter, this case does not warrant review because the case the Petition describes is not the case the Court would hear. The Petition frames this case as a fundamental clash between free speech and religion on one hand and the City's goal of preventing discrimination on the other. But this case is actually far more mundane.

In fact, this case involves no actual controversy between a customer and a business, and thus differs from most of the other wedding-vendor cases identified above that warranted review by other courts. Here,

Brush & Nib raced to court before any same-sex couple came knocking. Consequently, Brush & Nib does not seek relief as applied to any particular request. Instead, it seeks extraordinarily broad relief in the form of a wholesale exemption from the City's public accommodation laws.

Brush & Nib explicitly intends to refuse to make *any* custom wedding products for *any* same-sex couple. [APP069, ¶ 254.] That includes mundane items like place cards, which typically have only *guests' names and table numbers*—not the names of the couple getting married or a hint of their sexual orientation. Brush & Nib made the place cards below, but will refuse to make literally the exact same products, with the same guest names, simply because of the sexual orientation of the couple getting married:





[[APP098-114.](#)] Brush & Nib’s case thus presents merely another example of business conduct subject to legitimate regulation under decades of settled law. (See [Reasons §§ I.B.1-I.B.2.](#))

Although the Petition emphasizes the creative aspects of Brush & Nib’s business, creative businesses have no across-the-board constitutional right to refuse service. For example, photographers unquestionably have expressive rights worth protecting, but a high school prom photographer cannot refuse to take pictures of Mexican couples. Nor can an atheist chef refuse to cook for Christians. Likewise, a wedding vendor like Brush & Nib cannot refuse to serve interracial or same-sex couples. Prohibiting discrimination does not necessarily implicate the freedom of speech, even when applied to businesses that make and sell creative works. Some

unusual facts and unusual applications of the law might present more difficult questions, but Brush & Nib's case presents none of them because Brush & Nib seeks an across-the-board exemption for all requests for same-sex couples' weddings, *regardless of message*.

Hoping to dodge that reality and make this case seem more controversial than it is, the Petition predicts dire consequences stemming from the Opinion. But these consequences exist only in Brush & Nib's imagination, not in reality. Brush & Nib, for example, claims (at 10) that the Panel opinion would force "a gay graphics designer to create the cover art for a book defending Morm[o]n opposition to same-sex marriage." Not so. Public accommodation laws do not prevent companies from refusing business based on *message*, and Brush & Nib offers no evidence that Phoenix has ever enforced its law in that way. Brush & Nib may, for example, refuse to make products with tacky themes or that advocate for the rights of transgender individuals. But any message in "Anne / Table Three" remains unchanged regardless of who is getting married:



[[APP099](#).] Because Brush & Nib willingly made that place card, it has no right to refuse the same product for a same-sex couple.

By contrast, granting Brush & Nib’s extraordinarily broad requested relief would send shockwaves throughout the country. Brush & Nib’s legal theory necessarily would permit all sorts of wedding vendors to refuse service for interracial weddings, and would enable myriad businesses to refuse service based on race, gender, and religion. Tellingly, no court has adopted Brush & Nib’s extreme legal theory, and nothing justifies a different rule in Arizona.²

² Although Brush & Nib asserted Arizona constitutional claims, it did “not explain how, in this case, [the] analysis under Arizona’s free speech clause would differ from” federal precedent. Op. ¶ 23. “Merely referring to the Arizona Constitution without developing an argument is insufficient. . . .” *State v. Jean*, [243 Ariz. 331, 342, ¶ 39](#) (2018).

B. The Panel correctly held that § 18-4(B)(2) regulates conduct, not speech.

1. Businesses that speak are not immune from regulation.

Brush & Nib's case also rests on the demonstrably false legal premise that Brush & Nib should be exempt from § 18-4(B) because its wedding invitations involve speech. But businesses may not "claim special protection from governmental regulations of general applicability simply by virtue of their First Amendment protected activities." *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 705 (1986). For example, tattooing is speech, but "generally applicable laws . . . may apply to tattooing businesses." *Coleman v. City of Mesa*, 230 Ariz. 352, 360, ¶ 31 (2012). Businesses that speak also engage in conduct (hiring/firing workers, selling goods and services, etc.); regulating this conduct does not regulate the business's speech.

Thus, courts have repeatedly upheld antidiscrimination laws against free-speech challenges, even involving traditionally-protected entities. For example:

- The First Amendment expressly protects the press, including advertisements, but newspapers have no constitutional right to print discriminatory employment advertisements. *Pittsburgh*

Press Co. v. Pittsburgh Comm'n on Human Relations, 413 U.S. 376, 384-88 (1973).

- Private schools have a First Amendment right to “promote the belief that racial segregation is desirable,” but those schools may not refuse to admit students on the basis of race. *Runion v. McCrary*, 427 U.S. 160, 176 (1976).
- Law firms are places of speech and association, but that does not license them to refuse partnership to women. *See Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984).

These cases show that prohibiting discrimination does not necessarily implicate the freedom of speech, even when applied to businesses that make and sell creative works. For this reason, the core legal premise of Brush & Nib’s argument is false.

2. Under existing law, § 18-4(B)(2) regulates conduct because it does not alter expressive content.

The key question in this case is not whether Brush & Nib engages in speech; it is whether § 18-4(B)(2) regulates conduct or speech. The Supreme Court all but answered that question in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 60 (2006), which held that requiring a law school to provide equal access to the military as it would for private employers “regulates conduct, not speech” and therefore does not violate the First Amendment.

Rumsfeld explained that if a law school will willingly announce the name, location, and time for law firm recruitment events, then the school has no constitutional right to refuse to make and distribute the same announcement for the U.S. Army (as shown below). See [id.](#) at 62.

If a law school will write:	Then it cannot refuse to write:
<p style="text-align: center;"><i>The Kirkland & Ellis recruiter will meet interested students in Room 123 at 11 a.m.</i></p>	<p style="text-align: center;"><i>The U.S. Army recruiter will meet interested students in Room 123 at 11 a.m.³</i></p>

Because the law in *Rumsfeld* merely required swapping a law firm’s name with a branch of the military—with surrounding text and logistical information that the law schools would willingly write for others—it did “not dictate the content of the speech at all.” [Id.](#)

The Panel correctly recognized this distinction between conduct and speech and held that *Rumsfeld* applies. Op. ¶ 24. As applied to Brush & Nib’s paper products, the ordinance does not require Brush & Nib to alter any expressive content. For some products, such as the place cards described above, the words are *literally identical*, and thus § 18-4(B)(2) does

³ This is a direct quotation from *Rumsfeld*, [547 U.S. at 62](#).

not compel any alteration at all. That fact alone is sufficient to deny review because it means that Brush & Nib is not entitled to its requested relief.

For other products, such as invitations, § 18-4(B)(2) would merely require substituting names and logistical details. For example, Brush & Nib willingly made the invitation on the left, below, for Natalie when she married Bryan (a man). If Natalie instead married Beth (a woman), then, like the law schools in *Rumsfeld*, Brush & Nib would have no right to refuse to make the otherwise identical invitation on the right:

Brush & Nib willingly wrote:	But will not write:
<p><i>Together with their parents</i></p> <p><i>Natalie</i> - and - <i>Bryan</i></p> <p><i>Invite you to share in the joy of their marriage</i></p> <p><i>The evening of Monday, the thirtieth of May</i> <i>Two Thousand Sixteen</i></p> <p><i>Belmond villa</i> <i>San Michele</i> <i>Fiesole, Italy</i></p> <p><i>Reception to follow</i></p>	<p><i>Together with their parents</i></p> <p><i>Natalie</i> - and - <i>Beth</i></p> <p><i>Invite you to share in the joy of their marriage</i></p> <p><i>The evening of Monday, the thirtieth of May</i> <i>Two Thousand Sixteen</i></p> <p><i>Belmond villa</i> <i>San Michele</i> <i>Fiesole, Italy</i></p> <p><i>Reception to follow</i></p>

[APP119.]

Brush & Nib, after all, has no objection to the logistical information or routine celebratory message from the family because it willingly wrote those same words for Natalie and Bryan. The Panel correctly observed that a wedding invitation “for a same-sex or opposite-sex wedding would likely be indistinguishable.” Op. ¶ 29. For constitutional free-speech purposes, changing the names, place, date, and time “is plainly incidental” to regulating conduct. *Rumsfeld*, [547 U.S. at 62](#). Following this precedent, altering the names and logistical information on an invitation Brush & Nib would otherwise willingly make does not alter the expressive content of the invitation and thus does not implicate the freedom of speech.

3. Brush & Nib’s arguments to the contrary do not support this Court’s review.

Brush & Nib contends that the Panel instead should have applied *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, [515 U.S. 557, 572](#) (1995). But the Panel correctly rejected the reliance on *Hurley*. Op. n.10. There, a gay, lesbian, and bisexual group wanted the right to march (banner and all) in a privately-organized parade. The Massachusetts courts deemed the parade a public accommodation and required it to accept the marchers. The Supreme Court found this “peculiar” application of a public

accommodation law impermissible because it would have “alter[ed] the expressive content of the[] parade.” [515 U.S. at 572-73](#). Here, as explained above, applying § 18-4(B)(2) to Brush & Nib would not require altering Brush & Nib’s expressive content, and therefore does not trigger *Hurley* or violate the constitutional freedom of speech.

In contending (at 11-12) that the Opinion and § 18-4(B) would “force speakers to alter the content of their desired message” in an unconstitutional manner, Brush & Nib points to having to write celebratory phrases such as encouraging people to “share in the joy of [a] marriage.” That example comes from the Natalie-and-Bryan invitation ([§ I.B.2](#), above). The underlying invitation confirms that the celebratory phrase expressly reflects the sentiments of “Natalie and Bryan” and “their parents,” not their calligrapher. [[APP119](#).]

More fundamentally, § 18-4(B) does not alter those celebratory phrases. Phoenix doesn’t tell Brush & Nib what to write. But if Brush & Nib will willingly write a particular celebratory phrase (from the couple and their parents), then it cannot refuse to scribe the same phrase merely because the couple happens to be Catholic, Asian, or gay. Nothing about wedding stationery suggests that the calligrapher endorses the couple or

the marriage, just as “[n]othing about recruiting suggests that law schools agree with any speech by recruiters.” *Rumsfeld*, 547 U.S. at 65.

Brush & Nib’s real objection is to the *underlying marriage*. In *Rumsfeld*, however, the law schools objected to the military’s policies, but that objection did not give them a free-speech right to refuse to write and distribute announcements on equal terms. *Rumsfeld*, 547 U.S. at 62. If Brush & Nib could refuse to make a plain-vanilla wedding invitation merely because it disagrees with the underlying marriage, then a sign-maker who happily makes custom “Happy Birthday” banners could likewise refuse to make one for a Christian child. That’s not the law, nor should it be.

Brush & Nib repeatedly refers (e.g., at 12) to “artwork celebrating same-sex weddings.” But a routine invitation (or place card) for a same-sex couple is not the same thing as artwork celebrating the concept of same-sex weddings. Brush & Nib has never received a request for an invitation that actually celebrated same-sex marriage (e.g., with marriage-equality words and symbols). If a request ever arrived, Brush & Nib could legitimately refuse without violating § 18-4(B)(2) because the refusal would be based on message. But because the refusal would not violate § 18-4(B)(2), there is no

constitutional problem. And to the extent any of this is uncertain, this case does not present anything close to this hypothetical.

4. Brush & Nib's theory has no workable limiting principle.

No court has adopted Brush & Nib's legal theory, and for good reason. Although Brush & Nib implies that its requested exemption is narrow, its proposed limiting principles don't work.

Brush & Nib attempts to limit its arguments to sexual orientation (not race or religion). But the logic of its theory would apply with equal force to a wedding vendor that objected to interracial marriage, Catholic weddings, etc.

Brush & Nib suggests that the wedding industry is unique. But Brush & Nib wants to refuse to make maps, menus, and place cards for same-sex couples, even though those products typically have no celebratory phrases, religious overtones, or even much "wedding"-specific content at all, as shown by Brush & Nib's past products below. [[APP069](#), ¶ 254.]





[[APP098-114.](#)] The requested exemption would apply to all “creative” businesses, such as sign-makers and restaurants.

Brush & Nib also insists (at 4) that its proposed exemption applies only to custom-made, not pre-made, products. But an exception for custom-made products relegates one group to second-class service. A

restaurant that gives personal service in the dining room only to white customers but still offers “take-out service for Negroes” nevertheless unlawfully discriminates on the basis of race. *Katzenbach v. McClung*, 379 U.S. 294, 296-97 (1964).

C. The Panel correctly upheld § 18-4(B)(3) because the government may prohibit businesses from publicly announcing illegal discrimination.

Section 18-4(B)(3) provides that a public accommodation may not publicly “state[] or impl[y] that any facility or service shall be refused or restricted because of” race, religion, sexual orientation, etc. Phoenix City Code § 18-4(B)(3). It is well-settled that if the government forbids discrimination, it may prohibit *announcing* an intent to discriminate.

As the Panel highlighted (Op. ¶ 30), the U.S. Supreme Court recognizes that the government may “require an employer to take down a sign reading ‘White Applicants Only’” without infringing the First Amendment. *Rumsfeld*, 547 U.S. at 62. Brush & Nib says (at 12) that the Panel “did not subject this restriction to any scrutiny.” But the relevant part of § 18-4(B)(3) does not trigger any scrutiny because “it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated,

evidenced, or carried out by means of language, either spoken, written, or printed.” *Id.* (citation omitted). That’s why the government may ban discriminatory employment advertisements or offers for “‘Narcotics for Sale’ and ‘Prostitutes Wanted,’” even though all such statements involve speech. *See Pittsburgh Press*, 413 U.S. at 388.

Moreover, as the Panel recognized, Brush & Nib has broad latitude to *advocate* for its beliefs about marriage. Op. ¶ 31. But that advocacy cannot state that Brush & Nib will *refuse service* to certain customers, just as a marijuana-legalization advocate has no free pass to offer to sell pot. Far from what Brush & Nib calls “a dangerous precedent” (at 12), this is settled law.

II. The Panel correctly held that § 18-4(B) does not violate the Free Exercise of Religion Act.

The Free Exercise of Religion Act (“FERA”) aims to balance religious liberty with the needs of civil government in a pluralistic society. Under FERA, the “[g]overnment may substantially burden a person’s exercise of religion” only if the burden is the “least restrictive means of furthering [a] compelling government interest.” A.R.S. § 41-1493.01(C). As the Panel held, the ordinance complies with FERA because it does not substantially

burden Brush & Nib's exercise of religion, and even if it did, it is the least restrictive means of furthering the compelling government interest of eliminating discrimination in the public marketplace. Op. ¶¶ 49-50.

A. The ordinance does not substantially burden religion.

Section 18-4(B) does not burden religion. After all, Brush & Nib's religion says nothing about making wedding invitations. And as the side-by-side examples above demonstrate, Brush & Nib has no inherent objection to the invitations or place cards themselves. Brush & Nib's real issue boils down to objecting to the *underlying wedding*. But its connection to the wedding is too remote for § 18-4(B) to substantially burden Brush & Nib's religion. See Frederick Mark Gedicks, "Substantial" Burdens: How Courts May (and Why They Must) Judge Burdens on Religion Under RFRA, [85 Geo. Wash. L. Rev. 94, 132, 137](#) (2017) (courts should "enlist common law tort principles," including proximate cause, to evaluate substantial burdens under the federal analogue to FERA); *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, [884 F.3d 560, 589](#) (6th Cir. 2018) ("Bare compliance" with antidiscrimination laws "does not amount to an endorsement of" another person's views or conduct.).

Otherwise FERA could be used to justify all sorts of discrimination. A Muslim could refuse to sell tables and chairs to a synagogue or a Jew could refuse to sell paint to a Lutheran church, based on the fear that these mundane products might be used in religious ceremonies not recognized by the seller's religion. But FERA guards against "substantial burdens" and expressly "is not triggered by trivial, technical or de minimis infractions." [A.R.S. § 41-1493.01\(E\)](#). Requiring a merchant to sell *its own products* despite objecting to how the *customer* will use the products imposes – at most – a remote, tangential burden, not a substantial one.

B. Any burden here is justified.

Moreover, even if § 18-4(B) imposed a substantial burden, it would comply with FERA because a public accommodations law is "[t]he least restrictive means of furthering [a] compelling government interest." [A.R.S. § 41-1493.01\(C\)\(2\)](#). Courts have repeatedly held that "public accommodations laws 'plainly serv[e] compelling state interests of the highest order,'" *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, [481 U.S. 537, 549](#) (1987) (citation omitted), and typically "abridge[] no more speech or associational freedom than is necessary to accomplish that purpose," *Roberts v. U.S. Jaycees*, [468 U.S. 609, 629](#) (1984). The Panel recognized that

“other jurisdictions have overwhelmingly concluded that the government has a compelling interest in eradicating discrimination.” Op. ¶ 50.

Brush & Nib does not contest these basic principles. Instead, it insists (at 15-16) that Phoenix has no legitimate interest in regulating its conduct because Brush & Nib supposedly discriminates solely based on “message,” not “status.” But “[c]ourts have consistently” rejected that distinction, Op. ¶ 20, for the same reason that “a tax on wearing yarmulkes is a tax on Jews.” *Bray v. Alexandria Women’s Health Clinic*, [506 U.S. 263, 270](#) (1993).

Moreover, Brush & Nib wants permission to refuse *any* request for *any* custom wedding products from *any* same-sex couple, regardless of message. If a same-sex couple walks in the door seeking custom wedding products, Brush & Nib wants to reject them before even asking what message the couple wants. That’s discrimination against the couple, not the message.

III. Other reasons to deny review.

As explained above, Brush & Nib seeks extremely broad relief. Brush & Nib doesn’t care what message (if any) the couple wants, whether the couple wants invitations or simple place cards, or whether the request

has religious overtones. It wants permission to refuse everything, and to announce its refusal to the public.

But even if some hypothetical requests could raise murky questions, the City can apply § 18-4(B) to Brush & Nib in a constitutional manner under myriad circumstances. The ordinance therefore has a broad “plainly legitimate sweep,” so Brush & Nib is not entitled to expansive relief. *Wash. State Grange v. Wash. State Repub. Party*, [552 U.S. 442, 449](#) (2008). Brush & Nib did not request more limited relief, nor could it in this posture.

For similar reasons, this case presents a poor vehicle for review of the constitutional questions Brush & Nib raises. As described below in the Cross-Petition, Brush & Nib sued before it had standing. But aside from presenting standing questions, the premature nature of this requires “speculat[ing] about ‘hypothetical’ or ‘imaginary’ cases,” and thus risks “unnecessary pronouncement on constitutional issues, [and] also . . . premature interpretations of statutes in areas where their constitutional application might be cloudy.” *Id.* at [459, 450](#). A “fundamental principle of judicial restraint” is that courts should not “anticipate a question of constitutional law in advance of the necessity of deciding it.” *Id.* at [450](#) (citations and quotation marks omitted).

CONDITIONAL CROSS-PETITION

For the above reasons, the Court should deny review. If, however, the Court grants review, it should also grant review of the Conditional Cross-Petition.

INTRODUCTION TO CROSS-PETITION

Brush & Nib lacks standing to challenge § 18-4(B)(2) because it has never refused service and may never have the opportunity to do so. Brush & Nib sued Phoenix before any same-sex couple had requested custom wedding products. That means that this pre-enforcement challenge has no facts in the record about what any particular same-sex couple's request looks like. By holding that Brush & Nib has standing, the Panel expanded Arizona's justiciability doctrine and created a conflict with federal cases.

On appeal, Phoenix did not (and does not) dispute standing as to Brush & Nib's desire to post a statement on its website (its challenge to § 18-4(B)(3)). [*See* COA-20 at 21.] Phoenix disputes standing only as to Brush & Nib's desire to refuse service (its § 18-4(B)(2) claim). [*See id.*]

CONDITIONAL CROSS-PETITION ISSUE

1. Does Brush & Nib have standing to challenge § 18-4(B)(2) when it merely intends to violate the law by refusing service but has not yet received a request that triggers its plan?

REASONS TO GRANT THE CROSS-PETITION

I. The Panel improperly relaxed Arizona’s justiciability requirements and created a conflict with federal cases.

When a party has standing to bring a pre-enforcement challenge to invalidate a law is an important question of statewide importance.⁴ This case in particular demonstrates the dangers of relaxing justiciability requirements. Permitting parties to race to the courthouse before anything has happened invites premature decisions and requires the parties to rely on speculation and hypotheticals rather than concrete facts. By finding that Brush & Nib has standing, the Panel relaxed Arizona’s normal standing requirements and created a conflict with federal standing principles.

⁴ “The parties agree that, in this case, the underlying concerns for standing and ripeness are the same. . . .” Op. ¶ 13. For convenience, Phoenix refers to standing only.

A. The Panel violated the principle that Arizona courts do not answer abstract, hypothetical questions or prematurely address legal questions before they arise.

Although Arizona's justiciability doctrine is not a constitutional requirement, Arizona courts nevertheless require standing "as a matter of sound jurisprudence." *Bennett v. Napolitano*, 206 Ariz. 520, 525, ¶¶ 19, 22 (2003). This Court recognizes that requiring a plaintiff to demonstrate standing serves important interests, "especially in actions in which constitutional relief is sought against the government." *Id.* at 524, ¶ 16. Relaxing the standing requirement "would inevitably open the door to multiple actions asserting all manner of claims against the government." *Id.*

Accordingly, Arizona courts "will not hear cases that seek declaratory judgments that are advisory or answer moot or abstract questions." *Thomas v. City of Phoenix*, 171 Ariz. 69, 74 (App. 1991) ("*City of Phoenix*"). Instead, "[d]eclaratory relief should be based on an existing state of facts, not facts that may or may not arise in the future." *Id.* In particular, standing requires "a distinct and palpable injury." *Sears v. Hull*, 192 Ariz. 65, 69, ¶ 16 (1998).

Without these protections, parties could ask courts to answer all sorts of abstract, hypothetical legal questions. Parties could bring constitutional challenges to laws based on speculative situations that may never arise. The standing doctrine guards against these possibilities.

By holding that Brush & Nib has standing, the Panel relaxed these principles. Brush & Nib asks for a blanket license to discriminate against same-sex couples seeking custom wedding products, but it sued before a same-sex couple ever made such a request. Consequently, the Court cannot evaluate the particular wording of a requested wedding invitation or the design of a wedding menu. As the Supreme Court observed in *Masterpiece*, “these details might make a difference.” [138 S. Ct. at 1723](#).

Without such details, Brush & Nib asks the Court to resolve what amount to “abstract questions,” and therefore issue a “declaratory judgment[] that is advisory.” *City of Phoenix*, [171 Ariz. at 74](#). Even if Brush & Nib could imagine a hypothetical application of § 18-4(B)(2) that presents difficult constitutional questions, its requested relief spans the entire range of custom wedding products. Under Arizona’s standing requirement, courts should wait until a real case, with real facts and a real

controversy, presents itself. This Court should rein in the Panel's expansive conception of standing.

B. The Panel's standing holding conflicts with several federal cases.

In addition to relaxing Arizona's standing principles, the Panel also created a conflict with several federal cases. Although Arizona courts are "not bound by federal jurisprudence on the matter of standing," this Court has "found federal case law instructive." *Bennett*, [206 Ariz. at 525](#), ¶ 22. Looking to federal cases makes particular sense when, as here, the federal cases align with Arizona's justiciability principles.

Three federal cases present circumstances strikingly similar to this case. All three involve businesses that wanted to refuse service to a particular set of individuals, but had not received a request from such an individual before the businesses asserted constitutional claims in court:

- In *Thomas v. Anchorage Equal Rights Comm'n*, [220 F.3d 1134, 1139](#) (9th Cir. 2000) (*en banc*), landlords wanted to refuse to rent apartments to unmarried couples.
- In *Temple v. Abercrombie*, [903 F. Supp. 2d 1024](#) (D. Haw. 2012), religious organizations and ministers wanted to refuse to rent their facilities for same-sex civil unions.
- In *303 Creative*, [2017 WL 4331065 at *5](#), a web designer wanted to refuse to make wedding websites for same-sex couples.

In these cases, the courts uniformly held that the plaintiffs lacked standing because no request had triggered their plan to refuse service. In *Thomas*, the *en banc* Ninth Circuit completely rejected the notion that a “pledge” to refuse service some day in the future will create standing. 220 F.3d at 1139. “Such ‘some day’ intentions—without specification of when the some day will be—do not support a finding of the actual or imminent injury that our cases require.” *Id.* (brackets, citations, and quotation marks omitted).

The Panel, however, credited a “some day” intention by relying on Brush & Nib’s “plan to violate Section 18-4(B) by refusing to create ‘custom-made’ announcements and invitations for same-sex weddings.” Op. ¶ 16.⁵ But an “expressed ‘intent’ to violate the law on some uncertain day in the future—if and when [a customer requests service]—can hardly qualify as a concrete plan.” *Thomas*, 220 F.3d at 1140.

Thomas and the other federal cases are completely consistent with Arizona’s standing principles. Like Arizona courts, *Thomas* recognized that

⁵ The Panel also identified Brush & Nib’s desire to post a statement on its website as a basis for standing. Op. ¶ 16. But that fact relates to the § 18-4(B)(3) challenge, for which Phoenix does not contest standing, not the (B)(2) challenge, for which standing is at issue.

the court's "role is [not] to issue advisory opinions nor to declare rights in hypothetical cases." *Id.* at 1138. It likewise recognized the importance of having a complete factual record before weighing in on constitutional issues: "A concrete factual situation is necessary to delineate the boundaries of what conduct the government may or may not regulate." *Id.* at 1141 (citation omitted). Resolving a case on a "thin and sketchy" record would involve deciding "constitutional questions in a vacuum," with obvious risks. *Id.* (citation omitted). These are the exact problems that Arizona courts recognized in *Bennett* and *City of Phoenix*.

Holding that *Brush & Nib* lacks standing in this case does not mean that the merits issues will go unresolved. It would merely mean that courts would wait for a live controversy to arise. Other contemporary wedding vendor cases (*Arlene's Flowers*, *Elane Photography*, *Masterpiece*, and *Gifford*) involved actual refusals to serve actual couples requesting actual services. Unlike *Brush & Nib*, those cases gave the courts concrete facts to evaluate and did not violate "the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law

broader than is required by the precise facts to which it is to be applied.”

Grange, 552 U.S. at 450 (quotation marks and citation omitted).

CROSS-PETITION CONCLUSION

For the above reasons, the Court should deny review. If, however, the Court grants review, it should also grant review of the Conditional Cross-Petition.

RESPECTFULLY SUBMITTED this 7th day of September, 2018.

OSBORN MALEDON, P.A.

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**APPENDIX
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* The appendix page number matches the electronic PDF page number. Counsel has added emphasis to selected pages in this appendix using yellow highlighting to assist the Court with its review of the record. Some record items included in the appendix contain only a limited excerpt. This appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

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** In the accompanying brief, some images from these exhibits were replaced with native electronic versions for readability.

Phoenix City Code § 18-4(B)

B. *Discrimination in public accommodations.*

1. Discrimination in places of public accommodation against any person because of race, color, religion, sex, national origin, marital status, sexual orientation, gender identity or expression, or disability is contrary to the policy of the City of Phoenix and shall be deemed unlawful.

2. No person shall, directly or indirectly, refuse, withhold from, or deny to any person, or aid in or incite such refusal, denial or withholding of, accommodations, advantages, facilities or privileges thereof because of race, color, religion, sex, national origin, marital status, sexual orientation, gender identity or expression, or disability nor shall distinction be made with respect to any person based on race, color, religion, sex, national origin, marital status, sexual orientation, gender identity or expression, or disability in connection with the price or quality of any item, goods or services offered by or at any place of public accommodation.

3. It is unlawful for any owner, operator, lessee, manager, agent or employee of any place of public accommodation to directly or indirectly display, circulate, publicize or mail any advertisement, notice or communication which states or implies that any facility or service shall be refused or restricted because of race, color, religion, sex, national origin, marital status, sexual orientation, gender identity or expression, or disability or that any person, because of race, color, religion, sex, national origin, marital status, sexual orientation, gender identity or expression, or disability would be unwelcome, objectionable, unacceptable, undesirable or not solicited.

4. *Exemptions.*

a. Notwithstanding any other provision of this chapter, the prohibitions concerning marital status, sexual orientation, or gender identity or expression shall not apply to bona fide

religious organizations. The provisions of this section prohibiting discrimination on the basis of marital status, sexual orientation, or gender identity or expression shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from taking any action which is calculated by the organization to promote the religious principles for which it is established or maintained.

b. Notwithstanding any other provisions of this chapter, the prohibitions concerning disability shall not require modifications:

- (1) That would create an undue burden or are otherwise not easily accomplished and able to be carried out without significant difficulty or expense;
- (2) That would fundamentally alter the nature of the goods or services provided by the public accommodation; or
- (3) That would pose a direct threat to the health or safety of others that cannot be mitigated by the appropriate modifications in the public accommodation's policies or procedures.

ORDINANCE NO. G- 587

AN ORDINANCE AMENDING THE CODE OF THE CITY OF PHOENIX, 1962, BY ADDING CHAPTER 23-A ENTITLED "HUMAN RELATIONS," CONTAINING ARTICLES I AND II AND SECTIONS 23-A-1 TO 23-A-8, INCLUSIVE; ESTABLISHING A PUBLIC ACCOMMODATIONS COMMITTEE; DECLARING ITS POWERS AND DUTIES; PROHIBITING DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION BECAUSE OF RACE, COLOR, CREED, NATIONAL ORIGIN, OR ANCESTRY; PROHIBITING THE FILING OF A FALSE GRIEVANCE; AND PRESCRIBING PENALTIES.

WHEREAS, discrimination in places of public accommodation due to race, color, creed, national origin, or ancestry has created and tends to create breaches of the peace within the City of Phoenix and has been and will continue to be detrimental to the general health, welfare, and safety of the City of Phoenix and its inhabitants;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the Phoenix City Code be, and the same hereby is, amended by adding thereto Chapter 23-A, Articles I and II, Sections 23-A-1 to 23-A-8, inclusive, to read as follows:

"CHAPTER 23-A

HUMAN RELATIONS

ARTICLE I. IN GENERAL

"Sec. 23-A-1. Declaration of Policy

"It is declared to be contrary to the policy of the City and unlawful to discriminate in places of public accommodation against any person because of race, color, creed, national origin, or ancestry.

"Sec. 23-A-2. Definitions

"In this Article, unless the context otherwise requires:

"1. 'Place of public accommodation' means all public places of entertainment, amusement, or recreation, all public places where food or beverages are sold for consumption on the premises, and all public places which are conducted for the lodging of transients or for the benefit, use, or accommodation of those seeking health or recreation and shall not include, nor shall this Article be deemed to apply to, any residential house, or residence in which rooms are rented, or any fraternal organization or any private

club or any place which is in its nature distinctly private.

"2. 'Person' means an individual, corporation, partnership, or any unincorporated association, and it includes the owner, lessee, operator, proprietor, manager, superintendent, agent, or employee of any place of public accommodation.

"Sec. 23-A-3. Public Accommodations Committee

"(a) There is hereby established a Public Accommodations Committee to be composed of five members of the Phoenix Commission on Human Relations. The members of the Committee shall be appointed by the Mayor and Council, and each member shall serve at the pleasure of the Mayor and Council until his successor is appointed.

"(b) One of the five members of the Public Accommodations Committee shall be designated Chairman by the Mayor and Council.

"(c) All communications authorized or required to be lodged with the Committee shall be furnished the Chairman or, in his absence, any one of the Committee members.

"(d) Any order or finding issued by the Committee may be over the signature of any one of the members.

"(e) A quorum of the Committee shall be necessary for the conducting of any vote. A quorum shall consist of three members of the Committee.

"(f) A majority of the full Committee shall be required on any vote taken for any proposed action to be effective.

"(g) Nothing herein shall prevent any member of the Committee from conducting an investigation of any matter before the Committee, the quorum limitations herein applying only to matters upon which a vote is being taken.

"(h) All findings or orders of the Committee shall be filed with the City Clerk and upon such filing shall be deemed public records of the City.

"Sec. 23-A-4. Public Accommodations Committee --
Procedures, Powers, and Enforcement

"(a) Any person claiming to be aggrieved by an alleged violation of this Article shall, in every instance, file with the City Clerk a grievance in writing and under oath, on such form as may be required by the Committee. The City Clerk shall forthwith transmit the grievance to the Committee.

"(b) The Committee shall receive, and, with assistance from the staff of the City and the Commission on Human Relations, investigate the grievance and file the results of its investigation and its findings in writing with the City Clerk no longer than thirty days after the grievance is filed with the City Clerk.

"(c) If the finding is made that an unlawful practice has been or is being committed, the Committee shall endeavor to eliminate the unlawful practice by conference, conciliation, and persuasion. If the Committee fails thereby to eliminate such unlawful practice, it shall issue an order to the violator within the aforesaid thirty-day period, to cease and desist from further violations of this Article and shall promptly mail a copy of such order to the violator.

"(d) If the Committee finds that no unlawful practice has been or is being committed, a copy of such finding shall be promptly mailed to the grievant. The grievant shall thereafter have the right to file a criminal complaint with the City Attorney for appropriate action.

"(e) If the Committee fails to file its findings with the City Clerk within thirty days after a grievance is filed with the City Clerk, the grievant shall thereafter have the right to file a criminal complaint with the City Attorney for appropriate action.

"(f) If, after a cease and desist order has been issued by the Committee against any person, another grievance is filed against that person, and if, upon investigation, the Committee finds that such person has committed a further violation of this Article, a criminal complaint may be filed with the City Attorney by the aggrieved person or by the Committee.

"(g) No criminal complaint for the enforcement of any provisions of this section may be filed unless and until such filing is specifically authorized by this Article.

"Sec. 23-A-5. Prohibition and Penalties

"(a) No person shall, directly or indirectly, refuse to, withhold from, or deny to any person, nor aid in or incite such refusal, withholding, or denial, any of the accommodations, advantages, facilities, or privileges thereof because of race, color, creed, national origin, or ancestry, nor shall any distinction be made with respect to any person based on race, color, creed, national origin, or ancestry in connection with the price or quality of any item, goods, or services offered by any place of public accommodation.

"(b) Upon conviction of each violation of any provision of this Article not otherwise provided for, the person so convicted shall be guilty of a misdemeanor and shall be punished by a fine of no less than \$25.00 and no more than \$300.00.

"Sec. 23-A-6. Exclusion

"Any person under the influence of alcohol or narcotics, or who is guilty of boisterous conduct, or who is of lewd or immoral character, or who violates any regulation of any place of public accommodation that applies to all persons, regardless of race, color, creed, national origin, or ancestry, may be excluded without penalty from any such place of public accommodation, and nothing in this Article shall be considered to limit the right of such exclusion.

"Sec. 23-A-7. Limitation of Action

"(a) Any grievance hereunder shall be filed within thirty days after the occurrence of the alleged violation of this Article. No grievance shall be received by the Committee, nor may any action be taken hereunder, unless it is properly lodged within said thirty-day period.

"(b) Any complaint hereunder shall be filed within sixty-one days after the occurrence of the alleged violation of this Chapter, and not afterward.

ARTICLE II. FALSE GRIEVANCES

"Sec. 23-A-8. Any person, who, without probable cause to believe the truth thereof, files a false grievance with the Public Accommodations Committee against any person or persons shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of no less than \$25.00 and no more than \$300.00."

SECTION 2. Severability

If any of the provisions of this Chapter are held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provisions, and to this end the provisions of this Chapter are declared to be severable.

PASSED by the Council of the City of Phoenix this 16 day of JUN, 1964.

APPROVED by the Mayor this 16 day of JUN, 1964.

Milton H. Eubank MAYOR

ATTEST:

Stanley Leroy Hubbell City Clerk

APPROVED AS TO FORM:

Merle L. Hanson City Attorney

REVIEWED BY:

Sam Wallace City Manager

-587

APP047

AN ORDINANCE AMENDING THE CODE OF THE CITY OF PHOENIX, 1969, BY AMENDING SECTIONS 18-1, 18-2, 18-4 AND 18-5(b) OF CHAPTER 18 TO PROHIBIT DISCRIMINATION AGAINST ANY PERSON BECAUSE OF SEX; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the Code of the City of Phoenix, 1969, be, and it is hereby, amended by amending Sections 18-1, 18-2, 18-4 and 18-5(b) of Chapter 18 as follows:

"Sec. 18-1. Declaration of policy.

"It is declared to be among the civil rights of the people of the City of Phoenix, Arizona, to be free from discrimination in housing, public accommodations and employment, and for it to be contrary to the policy of the City and unlawful to discriminate against any person because of sex, race, color, creed, national origin, or ancestry in places of public accommodation, employment or in housing."

"Sec. 18-2. Definitions.

"Discriminate or Discrimination--To make, directly or indirectly, any distinction with respect to any person or persons based on sex, race, color, religion or national origin."

"Sec. 18-4. Prohibited acts.

"It is hereby declared to be unlawful:

"(a) For any owner, operator, lessee, manager, agent or employee of any place of public accommodation to discriminate against any person, or directly or indirectly display, circulate, publicize or mail any advertisement, notice or communication which states or implies that any facility or service shall be refused or restricted because of sex, race, color, religion, ancestry or national origin, or that any person, because of sex, race, color, religion, ancestry or national origin would be unwelcome, objectionable, unacceptable, undesirable or not solicited.

For an employer, because of the sex, race, religious creed, color, national origin or ancestry of any individual, to fail or refuse to hire or employ any individual or to discharge from employment any individual, or to discriminate against any individual in compensation or in terms, conditions or privileges of employment.

"(c) For an employer because of sex, race, religious creed, color, national origin or ancestry of any person to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee.

"(d) For a labor organization, because of sex, race, religious creed, color, national origin, or ancestry of any person, to exclude, expel, limit, or restrict from its membership any such person, or to limit, segregate or classify its membership or refuse to refer for employment any individual in any way which would deprive or act to deprive any individual in any way of employment opportunities or would limit such employment opportunities or otherwise adversely affect his status as an employee, or as an applicant for employment or to discriminate in any manner against any employee.

"(e) For any employer or employment agency to print or circulate, or cause to be printed or circulated, any publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification or discrimination as to sex, race, color, religion, national origin, or ancestry, or expresses any intent to make any such limitation, specification, discrimination, or preference.

"(f) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed in a lawful manner any practices forbidden under this Chapter, or because he has filed a complaint, testified or assisted in any manner in an investigation or proceeding under this Chapter.

"(g) For any person to cause or attempt to cause an employer to discriminate against an individual in violation of this Chapter.

"(h) For any person, including but not limited to owners, lessees, agents, real estate brokers, real estate salesmen, trustees, mortgagees, financial institutions, title companies or insurance companies:

"(1) To discriminate against any person because of sex, race, color, religion, ancestry or national origin in the sale, lease, rental or other transfer of interest in housing.

"(2) To so discriminate in the extension of loans, credit, insurance, or other services relating to the transfer of interest in housing.

"(3) To print or circulate, or cause to be printed or circulated, any publication, or to use any form of application or to make any inquiry in connection with prospective sales, leases, rentals or other transfers of interest in housing, or the extension of credit, loans, insurance or other services relating to the transfer of interest in housing, which expresses directly or indirectly any limitation, specification, or discrimination as to sex, race, color, religion, ancestry or national origin, or expresses any intent to make any such limitation, specification or discrimination.

"(i) To refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent or lease any housing from or to a person because of his sex, race, color, religion, ancestry, national origin or place of birth.

"(j) To refuse to negotiate for the sale, purchase, exchange, rental or lease of any housing to a person because of his sex, race, color, religion, ancestry, national origin or place of birth.

"(k) To represent to a person that any housing is not available for inspection, sale, purchase, exchange, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing because of his sex, race, color, religion, ancestry, national origin or place of birth.

"(l) For any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this Chapter or to attempt to do so."

"Sec. 18-5. Exclusions.

"(b) Any person under the influence of alcohol or narcotics, or who is guilty of boisterous conduct, or who is of lewd or immoral character, or who violates any regulation of any place of public accommodation that applies to all persons, regardless of sex, race, color, creed, national origin or ancestry, may be excluded without penalty under this Article from any such place of public accommodation, and nothing in this Article shall be considered to limit the right of such exclusion."

SECTION 2. WHEREAS, the immediate operation of the provisions of this ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the Council, approval by the Mayor, and publication and posting as required by law and is hereby exempted from the referendum clause of the City Charter.

PASSED by the Council of the City of Phoenix this 5 day of October, 1971.

APPROVED by the Mayor this 5 day of October, 1971.


Vice MAYOR

ATTEST:

 City Clerk

APPROVED AS TO FORM:

 City Attorney

REVIEWED BY:

 City Manager

1121

ORDINANCE NO. G-5780

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE I TO INCLUDE DISABILITY, SEXUAL ORIENTATION, AND GENDER IDENTITY OR EXPRESSION AS PROTECTED CATEGORIES FOR EMPLOYMENT AND PUBLIC ACCOMMODATIONS; AMENDING CHAPTER 18, ARTICLE II TO INCLUDE GENDER IDENTITY OR EXPRESSION AS A PROTECTED CATEGORY FOR CITY EMPLOYMENT, AMENDING CHAPTER 18, ARTICLE III TO INCLUDE SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION AS PROTECTED CATEGORIES FOR FAIR HOUSING, AMENDING ARTICLE IV TO REQUIRE CONTRACTORS DOING BUSINESS WITH THE CITY WHO HAVE THIRTY-FIVE OR MORE EMPLOYEES NOT TO DISCRIMINATE ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION, AND AMENDING ARTICLE V TO REQUIRE CONTRACTORS DOING BUSINESS WITH THE CITY WHO HAVE THIRTY-FIVE OR MORE EMPLOYEES NOT TO DISCRIMINATE ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows.

SECTION 1. Article I. In General is amended to read

18-1 Declaration of policy.

It is declared to be among the civil rights of the people of the City of Phoenix, Arizona, to be free from discrimination in public accommodations and employment, and for it to be contrary to the policy of the City and unlawful to discriminate against any person because of race, color, religion, sex, national origin, age, genetic information, or marital status, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR

DISABILITY in places of public accommodation and employment and it is contrary to the policy of the City of Phoenix and is unlawful for employers doing business with the City of Phoenix that are vendors, suppliers or contractors and employ more than thirty-five persons to discriminate against any person because of sexual orientation OR GENDER IDENTITY OR EXPRESSION

18-2 Administrative provisions.

A Powers and duties of Phoenix Commission on Human Relations and Equal Opportunity Department.

1. There is created the Phoenix Commission on Human Relations. The Commission shall be composed of not less than nine nor more than 17 members appointed by the Mayor and City Council. Each member shall serve a term of three years with one-third of the terms expiring on June 30 of each year.

2. The Mayor and City Council shall appoint a Chairperson for the Commission. The Chairperson shall appoint a Vice-Chairperson. The Vice-Chairperson shall act as Chairperson in the absence or disability of the Chairperson, or in the event of a vacancy in that office.

3. A majority of the serving members shall constitute a quorum except that if the chairman appoints a committee of the Commission, a majority of the members of the committee shall constitute a quorum of the committee. The concurrence of a majority of the members when in session as a Commission shall constitute an act of the Commission.

4. All recommendations of the Commission shall be filed with the Equal Opportunity Department and upon such filing shall be deemed public records of the City.

5. The Phoenix Commission on Human Relations shall:

a. Make periodic surveys of the existence and effect of discrimination in the City of Phoenix because of race, color, religion, sex, national origin, marital status, ~~and~~ sexual orientation, AND GENDER IDENTITY OR EXPRESSION in public accommodations and employment.

b. Foster positive intergroup relations and the elimination of discrimination based on race, color, religion, sex, national origin, marital status, ~~and~~ sexual orientation, AND GENDER IDENTITY OR EXPRESSION.

c. Publish the results of such studies, investigations and research as, in its judgment, will tend to promote good will and the elimination of discrimination

health or recreation and all establishments offering their services, facilities or goods to or soliciting patronage from the members of the general public. Any dwelling, any private club or any place which is in its nature distinctly private is not a place of public accommodation.

REASONABLE ACCOMMODATION MEANS AN ACCOMMODATION WHICH DOES NOT: (1) UNDULY DISRUPT OR INTERFERE WITH THE EMPLOYER'S NORMAL OPERATIONS; (2) THREATEN THE HEALTH OR SAFETY OF THE DISABLED INDIVIDUAL OR OTHERS; (3) CONTRADICT THE BUSINESS NECESSITY OF THE EMPLOYER, (4) IMPOSE UNDUE HARDSHIP ON THE EMPLOYER BASED ON THE SIZE OF THE EMPLOYER'S BUSINESS, THE TYPE OF BUSINESS, FINANCIAL RESOURCES OF THE EMPLOYER AND THE ESTIMATED COST AND EXPENSE OF THE ACCOMMODATION.

Religion means all aspects of religious observance and practice as well as belief.

Respondent means the person accused of a violation in a complaint filed under this article.

~~Sex shall include, but is not limited to,~~ MEANS BIOLOGICAL OR ANATOMICAL SEX AS MALE OR FEMALES AS DESIGNATED AT BIRTH AND SHALL BE INTERPRETED BROADLY TO INCLUDE all distinctions based on gender, pregnancy, childbirth or related medical conditions.

~~Sexual orientation means actual or perceived human male or female heterosexual, homosexual or bisexual orientation. The sexual orientation described herein must be between consenting adults.~~ AN ENDURING PATTERN OF EMOTIONAL, ROMANTIC, OR SEXUAL ATTRACTIONS TO MEN, WOMEN, OR BOTH SEXES AS WELL AS THE GENDERS THAT ACCOMPANY THEM AND SHALL INCLUDE DISCRIMINATION BASED UPON THE IDENTIFICATION, PERCEPTION, OR STATUS OF AN INDIVIDUAL'S SAME-SEX, OPPOSITE-SEX, OR BISEXUAL ORIENTATION.

18-4 Prohibited acts.

A *Discrimination in employment.*

1. Nothing contained in this article shall be interpreted to require that the less qualified be preferred over the better qualified because of race, color, religion, sex, national origin, age, genetic information, marital status, or sexual orientation, GENDER IDENTITY OR EXPRESSION, OR DISABILITY.

2. It is an unlawful employment practice for an employer:

a. To fail or refuse to hire or to discharge or otherwise to discriminate against any individual with respect to compensation, terms, conditions or

IDENTITY OR EXPRESSION shall not apply to bona fide religious organizations. The provisions of this chapter prohibiting discrimination on the basis of marital status, or sexual orientation, OR GENDER IDENTITY OR EXPRESSION shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment which is calculated by the organization to promote the religious principles for which it is established or maintained.

B. Discrimination in public accommodations

1 Discrimination in places of public accommodation against any person because of race, color, religion, sex, national origin, or marital status, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR DISABILITY is contrary to the policy of the City of Phoenix and shall be deemed unlawful.

2. No person shall, directly or indirectly, refuse, withhold from, or deny to any person, or aid in or incite such refusal, denial or withholding of accommodations, advantages, facilities or privileges thereof because of race, color, religion, sex, national origin, or marital status, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR DISABILITY nor shall distinction be made with respect to any person based on race, color, religion, sex, national origin, or marital status, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR DISABILITY in connection with the price or quality of any item, goods or services offered by or at any place of public accommodation

3. It is unlawful for any owner, operator, lessee, manager, agent or employee of any place of public accommodation to directly or indirectly display, circulate, publicize or mail any advertisement, notice or communication which states or implies that any facility or service shall be refused or restricted because of race, color, religion, sex, national origin, or marital status, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR DISABILITY or that any person, because of race, color, religion, sex, national origin, or marital status, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR DISABILITY would be unwelcome, objectionable, unacceptable, undesirable or not solicited

4. Exemptions.

A Notwithstanding any other provision of this chapter, the prohibitions concerning marital status, SEXUAL ORIENTATION, OR GENDER IDENTITY OR EXPRESSION shall not apply to bona fide religious organizations. The provisions of this section prohibiting discrimination on the basis of marital status, SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or

educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from taking any action which is calculated by the organization to promote the religious principles for which it is established or maintained.

B NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CHAPTER, THE PROHIBITIONS CONCERNING DISABILITY SHALL NOT REQUIRE MODIFICATIONS:

- I. THAT WOULD CREATE AN UNDUE BURDEN OR ARE OTHERWISE NOT EASILY ACCOMPLISHED AND ABLE TO BE CARRIED OUT WITHOUT SIGNIFICANT DIFFICULTY OR EXPENSE,**
- II. THAT WOULD FUNDAMENTALLY ALTER THE NATURE OF THE GOODS OR SERVICES PROVIDED BY THE PUBLIC ACCOMMODATION; OR**
- III. THAT WOULD POSE A DIRECT THREAT TO THE HEALTH OR SAFETY OF OTHERS THAT CANNOT BE MITIGATED BY THE APPROPRIATE MODIFICATIONS IN THE PUBLIC ACCOMMODATION'S POLICIES OR PROCEDURES.**

18-5 Filing of complaint; initiation of action; notice to parties; findings; mediation or conciliation; subpoena power; conciliation agreements; jurisdiction.

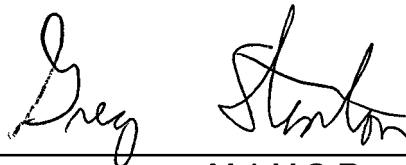
A. *Filing of complaint.* Any person claiming to be aggrieved by an alleged violation of this article shall file a complaint with the Equal Opportunity Department within one hundred eighty days after the occurrence of the alleged unlawful discriminatory practice. A complaint is deemed filed upon receipt by the Equal Opportunity Department from or on behalf of a person claiming to be aggrieved or, if filed by a member of the Equal Opportunity Department, when executed by such member upon oath or affirmation. A complaint shall be filed upon oath or affirmation and shall contain such information, including the date, place and circumstances of the alleged unlawful practice, and be in such form as the Equal Opportunity Department requires. ~~During such hours as the office of the Equal Opportunity Department is not open, a person claiming to be aggrieved by violation of this article may report such complaint to the Phoenix Police Department or its members and the Phoenix Police Department shall forward a report of such complaint to the Phoenix Equal Opportunity Department.~~

B *Initiation of action.* The Equal Opportunity Department may initiate action under this chapter when it believes a violation has occurred

C *Notice to parties.* Whenever a complaint is filed by or on behalf of a person claiming to be aggrieved or by a member of the Equal Opportunity Department, referred to as the complainant, alleging that a person has engaged in a practice unlawful by this


18-24—18-99 Reserved.

PASSED by the Council of the City of Phoenix this 26th day of February,
2013.



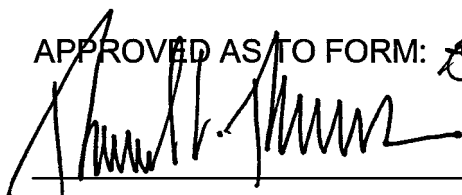
MAYOR

ATTEST:

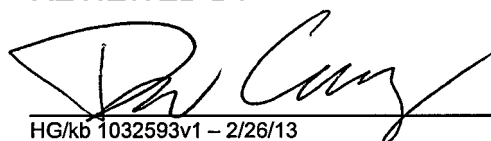
 City Clerk



APPROVED AS TO FORM: 

 Acting City Attorney

REVIEWED BY

 City Manager

HG/kb 1032593v1 - 2/26/13



Electronic Index of Record
MAR Case # CV2016-052251

FILED
01-02-2018 @ 10:49AM
MICHAEL K. JEANES, CLERK
By *[Signature]*
Y. Black, Deputy

No.	Document Name	Filed Date
1.	(PART 1 OF 2) VERIFIED COMPLAINT	May. 12, 2016
2.	(PART 2 OF 2) VERIFIED COMPLAINT	May. 12, 2016
3.	CERTIFICATE OF COMPULSORY ARBITRATION	May. 12, 2016
4.	CIVIL COVER SHEET-NEW FILING ONLY	May. 12, 2016
5.	PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT	May. 12, 2016
6.	NOTICE OF APPEARANCE	May. 19, 2016
7.	CREDIT MEMO	May. 19, 2016
8.	PLAINTIFFS' NOTICE OF JUDGE CHANGE	May. 20, 2016
9.	CERTIFICATE OF SERVICE	May. 23, 2016
10.	SUMMONS	May. 23, 2016
11.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF FILING FIRST AMENDED VERIFIED COMPLAINT AND INCORPORATION BY REFERENCE	May. 24, 2016
12.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF FILING FIRST AMENDED VERIFIED COMPLAINT AND INCORPORATION BY REFERENCE	May. 24, 2016
13.	FIRST AMENDED VERIFIED COMPLAINT	May. 24, 2016
14.	(PART 1 OF 4) PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL DECLARATION SUPPORTING THEIR MOTION FOR PRELIMINARY INJUNCTION	May. 24, 2016
15.	(PART 2 OF 4) PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL DECLARATION SUPPORTING THEIR MOTION FOR PRELIMINARY INJUNCTION	May. 24, 2016
16.	(PART 3 OF 4) PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL DECLARATION SUPPORTING THEIR MOTION FOR PRELIMINARY INJUNCTION	May. 24, 2016
17.	(PART 4 OF 4) PLAINTIFFS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL DECLARATION SUPPORTING THEIR MOTION FOR PRELIMINARY INJUNCTION	May. 24, 2016
18.	DEFENDANT'S NOTICE OF CHANGE OF JUDGE	May. 25, 2016
19.	ME: CASE REASSIGNED [05/26/2016]	May. 27, 2016



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No.	Document Name	Filed Date
20.	ME: CASE REASSIGNED [05/27/2016]	May. 31, 2016
21.	MOTION TO DISMISS	May. 31, 2016
22.	MOTION FOR EXTENSION OF TIME AND FOR SCHEDULING CONFERENCE	May. 31, 2016
23.	ME: CASE REASSIGNED [06/03/2016]	Jun. 6, 2016
24.	PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR EXTENSION OF TIME AND FOR A SCHEDULING CONFERENCE	Jun. 8, 2016
25.	ME: HEARING SET [06/09/2016]	Jun. 10, 2016
26.	PLAINTIFFS' RESPONSE TO DEFENDANT'S RULE 8 MOTION TO DISMISS	Jun. 13, 2016
27.	DEFENDANT'S REPLY IN SUPPORT OF ITS RULE 8 MOTION TO DISMISS	Jun. 17, 2016
28.	ME: HEARING RESET [06/21/2016]	Jun. 22, 2016
29.	SUPPLEMENTAL DECLARATION OF JOANNA DUKA IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION	Jun. 29, 2016
30.	(PART 1 OF 2) SECOND AMENDED VERIFIED COMPLAINT	Jul. 1, 2016
31.	(PART 2 OF 2) SECOND AMENDED VERIFIED COMPLAINT	Jul. 1, 2016
32.	(PART 1 OF 4) PLAINTIFFS' MOTION TO CONVERT PRELIMINARY INJUNCTION HEARING INTO ORAL ARGUMENT ONLY WITHOUT WITNESS TESTIMONY	Jul. 19, 2016
33.	(PART 2 OF 4) PLAINTIFFS' MOTION TO CONVERT PRELIMINARY INJUNCTION HEARING INTO ORAL ARGUMENT ONLY WITHOUT WITNESS TESTIMONY	Jul. 19, 2016
34.	(PART 3 OF 4) PLAINTIFFS' MOTION TO CONVERT PRELIMINARY INJUNCTION HEARING INTO ORAL ARGUMENT ONLY WITHOUT WITNESS TESTIMONY	Jul. 19, 2016
35.	(PART 4 OF 4) PLAINTIFFS' MOTION TO CONVERT PRELIMINARY INJUNCTION HEARING INTO ORAL ARGUMENT ONLY WITHOUT WITNESS TESTIMONY	Jul. 19, 2016
36.	SECOND SUPPLEMENTAL DECLARATION OF JOANNA DUKA IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION	Jul. 21, 2016



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No.	Document Name	Filed Date
37.	DECLARATION OF KENNETH W. SCHUTT, JR., IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION	Jul. 21, 2016
38.	NOTICE OF FILING OF DECLARATIONS OF MS. DUKA, MS. KOSHI, AND MR. SCHUTT IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION	Jul. 21, 2016
39.	DECLARATION OF BREANNA KOSHI IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION	Jul. 21, 2016
40.	DEFENDANT'S MOTION TO DISMISS UNDER RULE 12(B)(1)	Jul. 25, 2016
41.	(PART 1 OF 4) PLAINTIFFS' MOTION TO EXCLUDE DAVID TWIGGER FROM TESTIFYING AT PRELIMINARY INJUNCTION HEARING	Jul. 25, 2016
42.	(PART 2 OF 4) PLAINTIFFS' MOTION TO EXCLUDE DAVID TWIGGER FROM TESTIFYING AT PRELIMINARY INJUNCTION HEARING	Jul. 25, 2016
43.	(PART 3 OF 4) PLAINTIFFS' MOTION TO EXCLUDE DAVID TWIGGER FROM TESTIFYING AT PRELIMINARY INJUNCTION HEARING	Jul. 25, 2016
44.	(PART 4 OF 4) PLAINTIFFS' MOTION TO EXCLUDE DAVID TWIGGER FROM TESTIFYING AT PRELIMINARY INJUNCTION HEARING	Jul. 25, 2016
45.	(PART 1 OF 2) DEFENDANT'S NOTICE OF ERRATA	Jul. 25, 2016
46.	(PART 2 OF 2) DEFENDANT'S NOTICE OF ERRATA	Jul. 25, 2016
47.	DEFENDANT'S BENCH BRIEF RE PRELIMINARY INJUNCTION	Jul. 27, 2016
48.	PLAINTIFFS' MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND IN RESPONSE TO DEFENDANT'S BENCH BRIEF BY AUGUST 15, 2016	Aug. 2, 2016
49.	ME: MATTER UNDER ADVISEMENT [07/28/2016]	Aug. 3, 2016
50.	STIPULATION TO AMEND MINUTE ENTRY RE PRELIMINARY INJUNCTION HEARING	Aug. 5, 2016
51.	DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION	Aug. 8, 2016
52.	(PART 1 OF 2) MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE	Aug. 15, 2016



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No.	Document Name	Filed Date
53.	(PART 2 OF 2) MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE	Aug. 15, 2016
54.	PLAINTIFFS' REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND IN RESPONSE TO DEFENDANT'S BENCH BRIEF	Aug. 15, 2016
55.	(PART 1 OF 3) PLAINTIFFS' RESPONSE TO DEFENDANT'S RULE 12(B)(1) MOTION TO DISMISS	Aug. 15, 2016
56.	(PART 2 OF 3) PLAINTIFFS' RESPONSE TO DEFENDANT'S RULE 12(B)(1) MOTION TO DISMISS	Aug. 15, 2016
57.	(PART 3 OF 3) PLAINTIFFS' RESPONSE TO DEFENDANT'S RULE 12(B)(1) MOTION TO DISMISS	Aug. 15, 2016
58.	ORDER RE STIPULATION TO AMEND MINUTE ENTRY RE PRELIMINARY INJUNCTION HEARING	Aug. 18, 2016
59.	CREDIT MEMO	Aug. 18, 2016
60.	PLAINTIFFS' RESPONSE IN OPPOSITION TO THE ACLU'S MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE	Aug. 19, 2016
61.	REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE	Aug. 23, 2016
62.	DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS UNDER RULE 12(B)(1)	Aug. 29, 2016
63.	ME: NUNC PRO TUNC ORDER [09/16/2016]	Sep. 19, 2016
64.	ME: UNDER ADVISEMENT RULING [09/16/2016]	Sep. 19, 2016
65.	ME: ORDER ENTERED BY COURT [09/16/2016]	Sep. 19, 2016
66.	NOTICE OF APPEAL FROM ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION	Sep. 20, 2016
67.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF ORDERING, RECEIVING, AND FILING TRANSCRIPT OF PROCEEDINGS FOR USE ON APPEAL	Sep. 29, 2016
68.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF ORDERING, RECEIVING, AND FILING TRANSCRIPT OF PROCEEDINGS FOR USE ON APPEAL	Sep. 29, 2016
69.	PLAINTIFFS' MOTION TO STAY PROCEEDINGS PENDING APPEAL OF DENIAL OF MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT	Oct. 7, 2016



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No.	Document Name	Filed Date
70.	VERIFIED ANSWER TO PLAINTIFFS' SECOND AMENDED VERIFIES COMPLAINT	Oct. 11, 2016
71.	DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION TO STAY PROCEEDINGS PENDING APPEAL - AND - MOTION TO SET CASE FOR BENCH TRIAL	Oct. 17, 2016
Record amended on Tuesday, November 1, 2016 @ 2:45 PM		
72.	COURT OF APPEALS RECEIPT	Oct. 21, 2016
73.	ELECTRONIC INDEX OF RECORD	Oct. 21, 2016
74.	JOINT MOTION TO EXTEND DEADLINES FOR PLAINTIFFS TO FILE REPLY IN SUPPORT OF MOTION TO STAY PENDING APPEAL AND TO FILE OPPOSITION TO MOTION TO SET BENCH TRIAL	Oct. 24, 2016
75.	COURT OF APPEALS LETTER DATED 10/26/2016	Oct. 26, 2016
76.	EXHIBIT WORKSHEET H.D. 07/28/2016	Oct. 31, 2016
Record amended on Tuesday, January 10, 2017 @ 4:01 PM		
77.	ME: ORDER ENTERED BY COURT [11/01/2016]	Nov. 2, 2016
78.	PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING APPEAL - AND - OPPOSITION TO DEFENDANT'S MOTION TO SET CASE FOR BENCH TRIAL	Nov. 8, 2016
79.	REPLY IN SUPPORT OF MOTION TO SET CASE FOR BENCH TRIAL	Nov. 21, 2016
80.	COURT OF APPEALS EATON FRUIT ORDER	Nov. 21, 2016
81.	ME: MATTER UNDER ADVISEMENT [11/22/2016]	Nov. 23, 2016
82.	(PART 1 OF 2) PLAINTIFFS' UNOPPOSED MOTION FOR THE COURT TO SIGN ITS PRIOR PRELIMINARY INJUNCTION ORDER	Nov. 28, 2016
83.	(PART 2 OF 2) PLAINTIFFS' UNOPPOSED MOTION FOR THE COURT TO SIGN ITS PRIOR PRELIMINARY INJUNCTION ORDER	Nov. 28, 2016
84.	ORDER GRANTING JOINT MOTION TO EXTEND DEADLINES FOR PLAINTIFFS TO FILE REPLY IN SUPPORT OF MOTION TO STAY PENDING APPEAL AND TO FILE OPPOSITION TO MOTION TO SET BENCH TRIAL	Nov. 30, 2016
85.	JOINT REPORT	Dec. 20, 2016
86.	ME: SCHEDULING CONFERENCE SET [12/22/2016]	Dec. 23, 2016



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No.	Document Name	Filed Date
Record amended on Wednesday, January 11, 2017 @ 3:00 PM		
87.	ME: ORDER SIGNED [01/05/2017]	Jan. 6, 2017
Record amended on Friday, August 4, 2017 @ 8:48 AM		
88.	COURT OF APPEALS RECEIPT	Jan. 18, 2017
89.	AMENDED ELECTRONIC INDEX OF RECORD	Jan. 18, 2017
90.	ME: HEARING RESET [01/19/2017]	Jan. 20, 2017
91.	NOTICE OF SUBSTITUTION OF COUNSEL WITHIN FIRM	Jan. 20, 2017
92.	DEFENDANT'S LEGAL MEMORANDUM RE DISCRETION TO PROCEED IMMEDIATELY TO TRIAL	Feb. 2, 2017
93.	(PART 1 OF 2) JOINT STIPULATION RE THE EVIDENCE/RECORD THE COURT WILL REPLY ON FOR PURPOSES OF TRIAL	Feb. 2, 2017
94.	(PART 2 OF 2) JOINT STIPULATION RE THE EVIDENCE/RECORD THE COURT WILL REPLY ON FOR PURPOSES OF TRIAL	Feb. 2, 2017
95.	PLAINTIFFS' MEMORANDUM EXPLAINING WHY THE COURT SHOULD ALLOW PLAINTIFFS TO SEEK SUMMARY JUDGMENT	Feb. 2, 2017
96.	ME: ORDER ENTERED BY COURT [02/08/2017]	Feb. 10, 2017
97.	JOINT MOTION TO MODIFY BRIEFING SCHEDULE AND PAGE LIMITS FOR SUMMARY JUDGMENT MOTIONS	Mar. 14, 2017
98.	ORDER GRANTING JOINT MOTION TO MODIFY BRIEFING SCHEDULE AND PAGE LIMITS FOR SUMMARY JUDGMENT MOTIONS	Mar. 31, 2017
99.	ME: ORDER SIGNED [03/31/2017]	Apr. 5, 2017
100.	PLAINTIFFS' STATEMENT OF FACTS SUPPORTING SUMMARY JUDGMENT	Apr. 13, 2017
101.	(PART 1 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
102.	(PART 2 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
103.	(PART 3 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
104.	(PART 4 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017



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No.	Document Name	Filed Date
Record amended on Friday, August 4, 2017 @ 8:48 AM		
105.	(PART 5 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
106.	(PART 6 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
107.	(PART 7 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
108.	(PART 8 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
109.	(PART 9 OF 9) PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT	Apr. 13, 2017
110.	CITY OF PHOENIX MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION	May. 15, 2017
111.	(PART 1 OF 2) CITY OF PHOENIX'S (1) STATEMENT OF FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION AND (2) RESPONSE TO PLAINTIFFS' STATEMENT OF FACTS	May. 15, 2017
112.	(PART 2 OF 2) CITY OF PHOENIX'S (1) STATEMENT OF FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION AND (2) RESPONSE TO PLAINTIFFS' STATEMENT OF FACTS	May. 15, 2017
113.	ME: ORAL ARGUMENT SET [05/30/2017]	Jun. 2, 2017
114.	PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	Jun. 14, 2017
115.	PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGEMENT	Jun. 14, 2017
116.	(PART 1 OF 2) CITY OF PHOENIX REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION	Jul. 5, 2017
117.	(PART 2 OF 2) CITY OF PHOENIX REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION	Jul. 5, 2017
118.	COURT OF APPEALS MEMORANDUM	Aug. 2, 2017



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No.	Document Name	Filed Date
Record amended on Thursday, December 28, 2017 @ 8:11 AM		
119.	COURT OF APPEALS RECEIPT	Aug. 11, 2017
120.	AMENDED ELECTRONIC INDEX OF RECORD	Aug. 11, 2017
121.	ME: MATTER UNDER ADVISEMENT [08/25/2017]	Aug. 29, 2017
122.	(PART 1 OF 2) NOTICE OF SUPPLEMENTAL AUTHORITY	Oct. 2, 2017
123.	(PART 2 OF 2) NOTICE OF SUPPLEMENTAL AUTHORITY	Oct. 2, 2017
124.	PLAINTIFFS' RESPONSE TO DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY	Oct. 4, 2017
125.	NOTICE OF AN IMPENDING TIME LIMIT	Oct. 20, 2017
126.	ME: UNDER ADVISEMENT RULING [10/24/2017]	Oct. 25, 2017
127.	NOTICE OF LODGING PROPOSED FORM OF JUDGMENT	Nov. 6, 2017
128.	(PART 1 OF 2) DEFENDANT'S STATEMENT OF TAXABLE COSTS	Nov. 6, 2017
129.	(PART 2 OF 2) DEFENDANT'S STATEMENT OF TAXABLE COSTS	Nov. 6, 2017
130.	PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF TAXABLE COSTS	Nov. 13, 2017
131.	PLAINTIFFS' NOTICE OF APPEAL FROM ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Nov. 21, 2017
132.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF ORDERING, RECEIVING, AND FILING TRANSCRIPT OF SUMMARY JUDGMENT PROCEEDINGS FOR USE ON APPEAL	Nov. 21, 2017
133.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF ORDERING, RECEIVING, AND FILING TRANSCRIPT OF SUMMARY JUDGMENT PROCEEDINGS FOR USE ON APPEAL	Nov. 21, 2017
134.	PLAINTIFFS' NOTICE OF APPEAL FROM ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Nov. 21, 2017
135.	FINAL JUDGMENT	Dec. 19, 2017
136.	ME: RULING [12/19/2017]	Dec. 20, 2017
137.	ME: JUDGMENT SIGNED [12/19/2017]	Dec. 22, 2017



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APPEAL COUNT: 1

RE: CASE: 1 CA-CV 16-0602

DUE DATE: 10/19/2016

CAPTION: BRUSH AND NIB STUDIO, ET AL. VS CITY OF PHOENIX

EXHIBIT(S): HD 07/28/2016 LIST # 1 2 3 4 5 6 7 9 10 11 12 13 15 16 18
19 21 22 24 25 31 32 33 34 51 IN A MANILA ENVELOPE

LOCATION ONLY: NONE

SEALED DOCUMENT: NONE

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

COMPILED BY: blacky on December 28, 2017; [2.5-17026.63]
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CERTIFICATION: I, MICHAEL K. JEANES, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

The bracketed [date] following the minute entry title is the date of the minute entry.

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15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
16 **IN AND FOR THE COUNTY OF MARICOPA**

17 BRUSH & NIB STUDIO, LC, a limited liability
18 company; BREANNA KOSKI; and JOANNA
DUKA,

19 Plaintiffs,

20 v.

21 CITY OF PHOENIX,

22 Defendant.
23
24
25
26
27

Case No. CV2016-052251

**Second Supplemental Declaration of
Joanna Duka in Support of Plaintiffs'
Motion for Preliminary Injunction**

1 I, Joanna Duka, declare as follows:

2 1. I am over the age of eighteen and competent to testify, and I make this declaration based on
3 my personal knowledge.

4 2. I am one of the owners of Brush & Nib Studio, LC. Brush & Nib Studio is a for-profit
5 limited liability company organized under Arizona law and has its principal place of business located
6 within Phoenix city limits.

7 3. Breanna Koski is the other owner of Brush & Nib.

8 4. Currently, we are the only owners of Brush & Nib Studio, and we are the only people who
9 work at Brush & Nib Studio.

10 My religious journey

11 5. On December 7, 1996, in an upstairs room of my grandmother's Sacramento area home, I
12 asked my mother how I could accept Jesus into my heart. I was three years old.

13 6. My mother smiled, talked to me about my question, and then led me to my father who
14 read from the Bible and explained to me the significance of trusting and following Jesus.

15 7. My father was used to explaining the Gospel's significance in accessible terms. He had
16 worked as a youth minister and eventually became a senior pastor.

17 8. After my father's explanation, I knelt down alongside my parents, prayed, and began my
18 life-long journey of following Jesus.

19 9. This spiritual journey overlapped a physical journey. From Sacramento, my parents and I
20 traveled south to other California cities as my father served as a youth minister or a lead pastor for
21 various churches.

22 10. But I did not simply recite prayers and show up Sunday mornings. I immersed myself in
23 the churches my father served, participating in Sunday School, helping with neighborhood outreaches,
24 and singing before the congregation during offertories.

25 11. Eventually, my family and I moved to Phoenix in 2002 when my father accepted a lead
26 pastor position at a Phoenix church.

27 12. I joined, attended, and participated in this church until August 2014 when I decided to

weddings, I participate in, celebrate, and promote those wedding ceremonies and the marriages celebrated at those ceremonies.

253. As a Christian artist, when I create custom wedding save-the-dates, wedding invitations, wedding invitation suites, wedding programs, wedding vows, marriage certificates, wedding place cards, wedding escort cards, wedding menus, wedding maps, and other custom works for weddings, I convey celebratory, affirming, and promotional messages about those marriages and wedding ceremonies.

254. For this reason, I cannot create custom wedding save-the-dates, wedding invitations, wedding invitation suites, wedding programs, wedding vows, marriage certificates, wedding place cards, wedding escort cards, wedding menus, wedding maps, or any other custom works for any wedding ceremony not between one man and one woman (like a same-sex wedding ceremony). To do so would violate my religious beliefs, promote activities contrary to my religious beliefs, and express messages contradicting my religious beliefs.

255. Likewise, I cannot create custom business logos, signs, business cards, or any other custom work for organizations that promote sexual activity outside of one-man/one-woman marriage (like same-sex marriage). To do so would violate my religious beliefs, promote activities contrary to my religious beliefs, and express messages contradicting my religious beliefs.

256. While I believe that all forms of sexual activity and sexual unions outside of one-man/one-woman marriage violate God's will, I also believe that God created everyone in His image.

257. I therefore believe everyone deserves to be treated with dignity and respect regardless of their race, religion, age, sex, sexual orientation, or political beliefs.

258. I believe Jesus commanded Christians to love their neighbors no matter who they are, what they believe, or what they do.

259. To love Brush & Nib's customers, I believe I must be upfront and honest with those customers and respectful toward those customers and their time.

260. For these reasons, I would violate my religious duty to love my neighbor if I lied to customers about what Brush & Nib could create or if I let customers falsely assume that Brush & Nib will create art when I cannot do so.

Declaration

I, Joanna Duka, declare under penalty of perjury that I have read the above declaration and that the above declaration is true and correct.

Signed on the 21st day of July 2016.

Joanna E. Duka

Joanna Duka

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

BRUSH & NIB STUDIO, LC, a limited)
liability company; BREANNA KOSKI;)
and JOANNA DUKA,)
)
Plaintiffs,) Case No.
) CV2016-052251
- vs -)
)
CITY OF PHOENIX,)
)
Defendant.)
)
_____)

VIDEOTAPED DEPOSITION OF BREANNA K. KOSKI

Phoenix, Arizona

July 13, 2016

2:59 p.m.

Reported by:

Deborah Cleary, RPR/CR

Certified Reporter

Certification No. 50663

I N D E X

WITNESS	PAGE
BREANNA K. KOSKI	
Examination by Mr. Campbell	5

** ** *

EXHIBITS MARKED

EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	AZCC Web Page	7
Exhibit 2	Articles of Organization	7
Exhibit 3	Google Search Results	12
Exhibit 4	Website Pages	13
Exhibit 5	Website Pages	14
Exhibit 6	Verified Complaint Caption	19
Exhibit 7	E-mail, 5/20/16	21

1 THE VIDEOTAPED DEPOSITION OF BREANNA K. KOSKI was
2 taken on July 13, 2016, commencing at 2:59 p.m. at the law
3 offices of Osborn Maledon, P.A., 2929 N. Central Avenue,
4 21st Floor, Phoenix, Arizona, before Deborah Cleary, RPR,
5 CR, a Certified Reporter in the State of Arizona.

6
7 * * *

8
9 A P P E A R A N C E S

10 Representing the Plaintiffs:

11 ALLIANCE DEFENDING FREEDOM

By: Jonathan Scruggs, Esq.

12 By: Samuel D. Green, Esq.

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17 Representing the Defendant City of Phoenix:

18 OSBORN MALEDON, P.A.

By: Colin F. Campbell, Esq.

19 By: Hayleigh S. Crawford, Esq.

2929 North Central Avenue

20 Suite 2100

Phoenix, Arizona 85012-2793

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22 hcrawford@omlaw.com

23
24 Also present: Philip Walberer, certified videographer
25 Ms. Joanna Duka

1 right?

2 **A. Yes.**

3 Q. Do you remember if you made any money?

4 **A. I don't rem -- I don't remember exactly.**

5 Q. You don't know whether you made money or not?

6 **A. Well, I think we didn't make a profit or lose**
7 **money.**

8 Q. You think you --

9 **A. I think it was --**

10 Q. You think you broke even?

11 **A. Around there, yeah.**

12 Q. And how are you doing this year in 2016?

13 **A. I don't know exactly. We've gotten more business**
14 **this year though.**

15 **Q. Okay. Now to your knowledge, has any complaints**
16 **ever been filed against your company with the City of**
17 **Phoenix or any other city?**

18 **A. No.**

19 **Q. To your knowledge, has the City of Phoenix ever**
20 **initiated an investigation against your company as to**
21 **whether or not you discriminate?**

22 **A. No.**

23 **Q. To your knowledge, is there any pending complaint**
24 **against your company about any religious statements it's**
25 **ever made?**

1 **A. No.**

2 Q. Now do you remember when your company and you
3 filed this lawsuit?

4 **A. May of this year.**

5 MR. CAMPBELL: Let's go ahead and mark this
6 as, what, 5?

7 THE COURT REPORTER: Exhibit 6.

8 MR. CAMPBELL: What number is it?

9 THE COURT REPORTER: I think we're on 6.

10 MR. CAMPBELL: 6. Okay.

11 (Deposition Exhibit 6 was marked
12 for identification.)

13 BY MR. CAMPBELL:

14 Q. Exhibit Number 6 is a copy of the first page of
15 the Complaint. And you'll see it's got a file stamp
16 number of May 12th, 2016. Do you see that?

17 **A. Yes.**

18 Q. Prior to May 12th, 2016, have you ever denied --
19 did your company ever deny selling a product to a same-sex
20 couple?

21 **A. No.**

22 Q. Prior to May 12th, 2016, when you filed the
23 lawsuit, to your knowledge, had a same-sex couple ever
24 tried to buy product from your company?

25 **A. No.**

1 Q. After the lawsuit was filed, did you get e-mails
2 from same-sex couples expressing displeasure with your
3 company?

4 A. Yes.

5 Q. And that was a result of the advertisement of
6 your lawsuit; correct?

7 MR. SCRUGGS: Objection. Calls for
8 speculation.

9 To the extent you can answer.

10 A. Can you repeat the question, please?

11 BY MR. CAMPBELL:

12 Q. What prompted you receiving e-mails? And I've
13 read some of them. Some of them are quite ugly. What --
14 what do you attribute those e-mails coming to you?

15 MR. SCRUGGS: Objection. I think it still
16 calls for speculation.

17 MR. CAMPBELL: I'll withdraw.

18 BY MR. CAMPBELL:

19 Q. Prior to May 12th when you filed the lawsuit, you
20 had never received any hate mail or anything like that;
21 correct?

22 A. No, we had not.

23 Q. All right. After May 12th, after you filed this
24 lawsuit, you did start receiving -- I'll characterize it
25 as hate e-mails; correct?

1 **A. Yes.**

2 MR. CAMPBELL: Let's mark this as 7.

3 (Deposition Exhibit 7 was marked
4 for identification.)

5 BY MR. CAMPBELL:

6 Q. Now Exhibit Number 7 has been a document that's
7 been produced to us from your attorneys.

8 MR. CAMPBELL: This is the document, I
9 believe, we have agreed to keep confidential?

10 MR. SCRUGGS: Yes, we've agreed to keep it
11 confidential until we have a ruling from the Court.

12 And just to let you know, Colin, if we go
13 into names, we might have to put the deposition under
14 seal. Just want to alert you to that.

15 MR. CAMPBELL: That's fine. If we introduce
16 it in court, we'll see what the Court does.

17 MR. SCRUGGS: For sure.

18 BY MR. CAMPBELL:

19 Q. Now Exhibit Number 7 is apparently something
20 filled out by someone. I take it this is on a form that
21 you have on your website?

22 **A. Yes.**

23 Q. All right. And you invite members of the public
24 to fill out this form if they want services from you?

25 **A. Yes.**

1 Q. And from what I understand, this is the only form
2 that's ever been filled out by a same-sex couple asking
3 for your product.

4 A. Yes.

5 Q. All right. You've never -- a same-sex couple has
6 never asked from (sic) a wedding invitation from you other
7 than this Exhibit Number 7; true?

8 A. Yes.

9 Q. And this particular form was filled out after you
10 filed the lawsuit; correct?

11 A. Yes.

12 Q. And at the same time you received this, you were
13 also receiving hate mail; correct?

14 A. We were receiving e-mails, yeah.

15 Q. All right. E-mails expressing dissatisfaction
16 with what you had stated in the lawsuit; true?

17 A. Yes.

18 Q. Now do you know, when you got this form, Exhibit
19 Number 7, did you do anything?

20 A. As far as what?

21 Q. Anything. You got the form. What did you do?

22 A. Nothing, yeah. So, no.

23 Q. Did you contact them?

24 A. No.

25 Q. Did you -- you didn't contact them and say: "We

1 won't sell you any product"?

2 **A. No.**

3 **Q. Did you contact them to find out if this was even**
4 **a real inquiry?**

5 **A. No.**

6 **Q. Do you even know that the names on this form**
7 **represent real people?**

8 **A. Not for sure, no.**

9 Q. To your knowledge, has any complaint been filed
10 as a result of this exhibit, Exhibit Number 7, against
11 you?

12 **A. No.**

13 Q. Now with respect to your products, you do more
14 than wedding invitations; right?

15 **A. Yes.**

16 Q. You do business cards?

17 **A. Yes.**

18 Q. And as I understand it, you wouldn't discriminate
19 against anyone coming to you wanting a business card,
20 would you?

21 MR. SCRUGGS: Objection. Vague. I don't
22 follow that.

23 BY MR. CAMPBELL:

24 Q. Would you -- if someone wanted to come to you and
25 purchase a product, is there some reason you wouldn't sell

1 MR. SCRUGGS: Objection. Calls for
2 speculation. Please try to answer the question.

3 A. Again, it depends on the message. If it's
4 celebrating the marriage, then we wouldn't create.

5 BY MR. CAMPBELL:

6 Q. Let me switch subjects with you. There's many
7 religious sites on the internet. You would agree with
8 that?

9 A. Yes.

10 Q. Have you ever created a website which you've used
11 to state and articulate your religious beliefs?

12 A. I don't believe so.

13 Q. All right. No one has ever prevented you from
14 creating a website where you can state and articulate your
15 religious beliefs; true?

16 MR. SCRUGGS: Objection. Calls for
17 speculation.

18 A. Nobody has, no.

19 BY MR. CAMPBELL:

20 Q. Other than your business website, have you
21 created any website to articulate your religious belief
22 that same sex marriage is contrary to the law of God?

23 A. No.

24 Q. Has anyone ever filed a complaint against you for
25 anything you've said on your website --

1 MR. SCRUGGS: Objection. Calls for --

2 BY MR. CAMPBELL:

3 Q. -- your business website?

4 MR. SCRUGGS: It calls for speculation.

5 **A. No one has filed a complaint.**

6 BY MR. CAMPBELL:

7 **Q. Are you aware of any investigation into your**
8 **business because of anything you have said on your**
9 **business website?**

10 **A. No.**

11 MR. CAMPBELL: Let's take a five-minute
12 break.

13 THE VIDEOGRAPHER: We are off the record.
14 The time on the video monitor is 4:00 o'clock.

15 (A recess ensued from 4:00 p.m.
16 until 4:09 p.m.)

17 THE VIDEOGRAPHER: We are on the record. The
18 time on the video monitor is 4:09. This ends the
19 deposition of Breanna Koski. The time is 4:09.

20
21 (Videotaped Deposition concluded at 4:09
22 p.m.)
23

24

BREANNA K. KOSKI

25

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings
4 were taken before me; that the witness before testifying
5 was duly sworn by me to testify to the whole truth; that
6 the foregoing pages are a full, true, and accurate record
7 of the proceedings all done to the best of my skill and
8 ability; that the proceedings were taken down by me in
9 shorthand and thereafter reduced to print under my
10 direction.

11 I CERTIFY that I am in no way related to any
12 of the parties hereto nor am I in any way interested in
13 the outcome hereof.

14 [X] Review and signature was requested.

15 [] Review and signature was waived.

16 [] Review and signature was not required.

17 I CERTIFY that I have complied with the
18 ethical obligations set forth in ACJA 7-206(F)(3) and
19 ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix,
20 Arizona, this 15th day of July, 2016.

21 

22 _____
23 Deborah Cleary, RPR, CR
24 Certified Reporter
25 Arizona CR No. 50663



26 I CERTIFY that Coash & Coash, Inc., has
27 complied with the ethical obligations set forth in
28 ACJA 7-206 (J)(1)(g)(1) through (6).

29 

30 _____
31 COASH & COASH, INC.
32 Registered Reporting Firm
33 Arizona RRF No. R1036

EXHIBIT 2

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14
15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
16 **IN AND FOR THE COUNTY OF MARICOPA**

17 BRUSH & NIB STUDIO, LC, a limited liability
company; BREANNA KOSKI; and JOANNA
18 DUKA,
19 Plaintiffs,

20 v.
21

22 CITY OF PHOENIX,
23

24 Defendant.
25
26
27

Case No. CV2016-052251

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S SECOND SET OF
REQUESTS FOR PRODUCTION**

(Assigned to the Honorable Karen Mullins)

1 **TO: PLAINTIFFS BRUSH & NIB STUDIO, LC, BREANNA KOSKI, JOANNA DUKA, AND**
2 **THEIR ATTORNEYS**

3 Pursuant to Rule 34, Arizona Rules of Civil Procedure, and the Court's minute entry dated June
4 21, 2016, you are hereby requested to answer in writing by July 8, 2016.

5 **INSTRUCTIONS FOR USE**

6 1. Wherever the singular form of a word is used in these requests for production, it is
7 intended to and does apply as well to the plural form of the word. Whenever the plural form of a word
8 is used, it is intended to and does apply as well to the singular form of the word unless otherwise
9 specified.

10 2. Each request for production is continuing. If, after answering the requests herein, you
11 obtain or become aware of further information responsive to the requests, or if such information renders
12 your response(s) incomplete or inaccurate, you are required to supplement with such additional
13 information or documents.

14 3. If you assert that any of the requests for production are ambiguous or unclear in any way,
15 please notify the Defendant's counsel so that the item(s) may be properly clarified prior to the
16 preparation of the written response(s).

17 4. If any document called for was formerly in your possession, custody, or control and has
18 been destroyed, discarded, or otherwise disposed of, furnish a list setting forth, as to each document or
19 part thereof, the following information: (a) the nature of the document (e.g., letter, memorandum,
20 email); (b) the name, address, occupation, title, and business affiliation of each person who prepared,
21 received, viewed, and has or had possession, custody, or control of the document; (c) the date of the
22 document; (d) a description of the subject matter of the document; (e) the date of destruction or other
23 disposition; (f) a statement of the reasons for destruction or other disposition; (g) the name, address,
24 occupation, title, and business affiliation of each person who authorized destruction or other disposition;
25 (h) the name, address, occupation, title, and business affiliation of each person who destroyed or
26 disposed of the document; and (i) the paragraphs) and/or subparagraphs) of this request which call for
27 the production of the document.

5. Except as otherwise noted, this request for production covers all documents in your possession, custody, or control, including any documents in your constructive possession whereby you have the right to compel production of documents from a third party.

6. Electronically stored information must be produced in its original native format including its accompanying metadata.

DEFINITIONS

For the purposes of these requests for production, the following terms and references have been abbreviated and defined as follows:

1. The terms “You” and “Your” means Plaintiffs Brush & Nib Studio, LC, Breanna Koski, Joanna Duka, and any persons acting on their behalf.

2. “Brush and Nib” means Brush & Nib Studio, LC, its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of its employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time since May 21, 2015.

3. The terms “document” or “documents” mean every writing, recording or photograph as those terms are defined in Rule 1001, Ariz. R. Evid., and as the terms “documents or electronically stored information” are used in Rule 34, Ariz. R. Civ. P., including without limitation, writings, emails, drawings, drafts, text messages, social media posts, social media messages, schematics, engineering drawings, plans, blueprints, graphs, charts, photographs, sound recordings, video recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The terms “document” and “documents” include a copy when the original is not in your possession, custody or control and every copy of the document where such copy is not an identical duplicate of the original, including, but not limited to, altered, amended or supplemented originals. The terms “document” and “documents” also includes electronic data, as defined below.

4. “Electronic data” means the original (or identical duplicate when the original is not available) and any non-identical copies (whether non-identical because of attached comments, hidden

1 text, annotations, marks, transmission information, or alteration of any kind) of information of any kind
2 stored in electronic, magnetic, optical, magneto-optical or digital form. Electronic data includes, but is
3 not limited to, originals and all copies of email; activity listings of email receipts and/or transmittals;
4 voicemail; audio or video recordings of any kind; computer programs; programming notes or
5 instructions; output resulting from the use of any software program, including word processing
6 documents, image files, presentation files, spreadsheets, database files, charts, graphs and outlines;
7 operating systems, source codes, PDF files, batch files, ASCII files, and all miscellaneous electronic
8 files and/or file fragments, regardless of the media on which they are stored and regardless of whether
9 the data resides in an active file or file fragment. Electronic data further includes without limitation any
10 and all information stored in hard disks, floppy disks, CD-ROM disks, and computer chips. Electronic
11 data also includes the file, folder tabs, containers or labels appended to any storage device containing
12 electronic data.

13 5. The terms “regarding,” “concerning,” and “relating” mean relating to, reflecting,
14 concerning, constituting, comprising, containing, setting forth, showing, disclosing, describing,
15 explaining, summarizing, mentioning, and/or pertaining to.

16 6. Each document request shall be read to be inclusive rather than exclusive. Accordingly,
17 the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to
18 bring within the scope of the document request all documents or tangible objects that otherwise might be
19 construed to be outside of its scope.

20 7. “Including” means “including without limitation” and “all” includes “any” and vice
21 versa. The past tense includes the present tense and the present tense includes the past tense. The
22 singular form of any word includes the plural form and the plural form includes the singular form.

23 8. The terms “all” and “each” shall be construed as all and each, as necessary to bring
24 within the scope of the request all information that might otherwise be construed to be outside of its
25 scope.

1 9. “Communication” means the transmittal of information (in the form of facts, ideas,
2 inquiries, or otherwise), whether orally or in writing, or by any other means or medium, whether
3 tangible, hard copy, printed, electronic, or text messages.

4 **REQUESTS FOR PRODUCTION**

5 **REQUEST FOR PRODUCTION NO. 1:**

6 All communications and other documents reflecting or relating to requests to You for goods or
7 services for a same-sex wedding, including, but not limited to, the request referenced in ¶ 485 of the
8 First Amended Verified Complaint.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

10 Plaintiffs object to this request because it seeks documents protected from disclosure by the
11 attorney client privilege, such as confidential emails and other documents sent between Plaintiffs and
12 their attorneys for the purpose of obtaining legal advice about requests Plaintiffs received for goods or
13 services for same-sex wedding ceremonies. Plaintiffs also object to this request because it seeks
14 documents protected from disclosure by the attorney work product doctrine, such as confidential emails
15 and other communications that reflect their attorney’s mental impressions about legal strategy for
16 responding to requests for goods and services for same-sex weddings.

17 Plaintiffs also object to this request because it seeks documents protected from disclosure by the
18 anti-marital fact privilege (A.R.S. § 12–2231) and the marital communications privilege (A.R.S. § 12–
19 2232), such as confidential emails and text messages sent between Plaintiff Breanna Koski and her
20 husband about requests Plaintiffs received for goods or services for same-sex wedding ceremonies.

21 Plaintiffs also object to this request because it violates the identified requestor’s right to privacy
22 by requesting Plaintiffs to disclose personal information not intended for disclosure to the public.
23 Plaintiffs do not wish to violate those privacy rights and interests by revealing the requestor’s sexual
24 orientation when the requestor has the right to choose when, how, and to whom she reveals her sexual
25 orientation. *See, e.g., SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 486-87 (9th Cir. 2014)
26 (“For some individuals, being forced to announce their sexuality risks intruding into the intimate process
27 of self-discovery that is ‘coming out,’ a process that can be at once affirming and emotionally fraught.

Equally important, coming out for many gays and lesbians is a life-defining moment of celebrating one's dignity and identity. Deciding when, and how, and to whom one comes out is a vital part of this process..."); *Doe v. Megless*, 654 F.3d 404, 408 (3d Cir. 2011) ("Examples of areas where courts have allowed pseudonyms include cases involving 'abortion, birth control, transexuality, mental illness, welfare rights of illegitimate children, AIDS, and homosexuality.'"); *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 n. 4 (3d Cir. 2000) ("While we have not previously confronted whether forced disclosure of one's sexual orientation would be protected by the right to privacy, we agree with other courts concluding that such information is intrinsically private."); *Heilman v. Chernis*, No. 2:11-CV-0042 JAM EFB, 2012 WL 5187732, at *5 (E.D. Cal. Oct. 18, 2012) ("Here, defendant's privacy objection [to an interrogatory] is well-taken because information regarding one's sexual orientation is intrinsically private.").

Plaintiffs also object to this request because it seeks "a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way." Ariz. R. Civ. P. 26(c). Plaintiffs object to disclosing the identity or personal information of its customers or potential customers because doing so will discourage current and future customers from using Brush & Nib Studio, and public disclosure of that information will allow competitors to gain information giving them an advantage over Brush & Nib and thereby harm Brush & Nib's business. *See Fryer v. Brown*, No. C04-5481 FDB, 2005 WL 1677940, at *7 (W.D. Wash. July 15, 2005) (granting protective order restricting dissemination of information requested in discovery because "Plaintiff is concerned that disclosing customer information would violate customer privacy rights" and "breach Plaintiff's confidentiality with his customers").

Plaintiffs also object to this request because it seeks personal information regarding the personal contact information of Plaintiffs, including their home addresses, personal telephone numbers, and personal e-mail addresses. Revealing this information violates their privacy and jeopardizes their safety and peace and quiet.

Plaintiffs also object to this request as overbroad, unduly burdensome, and seeking information not relevant for the preliminary injunction motion and not calculated to lead to the discovery of

1 admissible evidence at the preliminary injunction motion hearing because this request seeks documents
2 in native format including its accompanying metadata. Plaintiffs have not shown a “particularized need”
3 for any metadata in this case. *See U.S. ex rel. Carter v. Bridgepoint Educ., Inc.*, 305 F.R.D. 225, 246
4 (S.D. Cal. 2015) (“Additionally, courts have required the requesting party to show ‘a particularized need
5 for the metadata,’ not simply a generalized view as to its importance.”). Moreover, it is unduly
6 burdensome for Plaintiffs to produce documents in native format because most of the documents
7 produced contain redactions and these redactions make native production unduly burdensome if not
8 impossible. This burden is particularly high for production of text messages because, after researching,
9 Plaintiffs counsel could find no way to produce these text messages in native format in an expedited
10 time frame in a way that allows Plaintiffs’ counsel to review these text messages for relevancy and
11 privilege. *See Gallagher v. Anthony*, No. 16-CV-00284, 2016 WL 2997599, at *1 (N.D. Ohio May 24,
12 2016) (rejecting “request for expedited production of text messages, cell phone records, and metadata”
13 because that request “would be unduly burdensome to produce.”).

14 Subject to and without waiving said objections, Plaintiffs have attached a non-privileged
15 document (bates number 001) that is responsive to this request in pdf format. This documents is redacted
16 to protect the interests stated above.

17 **REQUEST FOR PRODUCTION NO. 2:**

18 All documents reflecting your sales of custom, wedding-related works since May 21, 2015,
19 including data showing the dates, quantity, pricing, and nature of those sales.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

21 Plaintiffs object to this request because it seeks documents protected from disclosure by the
22 attorney client privilege, such as confidential emails and other documents sent between Plaintiffs and
23 their attorneys for the purpose of obtaining legal advice about custom, wedding-related works. Plaintiffs
24 also object to this request because it seeks documents protected from disclosure by the attorney work
25 product doctrine, such as confidential emails and other communications that reflect their attorney’s
26 mental impressions about legal strategy in connection to Plaintiffs’ custom, wedding-related works.

From: Squarespace <customer care@squarespace.info>
To: "info@brushandnibstudio.com"
Subject: Form Submission - Weddings
Date Sent: Friday, May 20, 2016 10:46:22 PM
Attachments:

Your Title: Miss

Your Name: Redacted

Your Fiancée/Fiancé's Title: Miss

Your Fiancée/Fiancé's Name: Redacted

Email Address: Redacted

Wedding Date: 10/5/2016

How many guests are you inviting?: 200

Services of Interest: Save the Dates

Tell us more about the big day!:

How did you hear about us?: Facebook

(Sent via Brush & Nib Studio | Hand-Painting + Hand-Lettered Calligraphy | Wedding Invitations, Paper, Cards, Signs and Decor <<http://www.brushandnib.com>>)

From: Squarespace <customer care@squarespace.info>
To: "info@brushandnibstudio.com"
Subject: Form Submission - Weddings
Date Sent: Saturday, May 14, 2016 4:14:21 AM
Attachments:

Your Title: Mr.

Your Name: Redacted

Your Fiancée/Fiancé's Title: Mr.

Your Fiancée/Fiancé's Name: Redacted

Email Address: Redacted

Wedding Date: 6/1/2017

How many guests are you inviting?: 500

Services of Interest: Announcements, Envelope Calligraphy, Invitations, Marriage Certificate, Menus, Monograms, Place Cards/Escort Cards, Save the Dates, Signs/Decor, Vows, Wedding Maps, Other

Tell us more about the big day!: You are so pathetic. Congrats on getting free pub for your pathetic cause. Shame on you!

How did you hear about us?: Shame on you!

(Sent via Brush & Nib Studio | Hand-Painting + Hand-Lettered Calligraphy | Wedding Invitations, Paper, Cards, Signs and Decor <<http://www.brushandnib.com>>)

From: Squarespace <customer care@squarespace.info>
To: "info@brushandnibstudio.com"
Subject: Form Submission - Weddings
Date Sent: Saturday, May 14, 2016 4:21:12 AM
Attachments:

Your Title: Mr.

Your Name: Redacted

Your Fiancée/Fiancé's Title: Mr.

Your Fiancée/Fiancé's Name: Redacted

Email Address: Redacted

Wedding Date: 1/2/2023

How many guests are you inviting?: Lots of gay people.

Services of Interest: Announcements

Tell us more about the big day!: I used to be a conservative nutjob, too, but it's not like terminal cancer, there are cures. Like, get out and meet more gay people. Think harder about what the bible really says, and ask if your own father would send you to an eternal fiery pit for not doing what he asked you to do. You might find that God is a huge asshole and that your pastor is wrong about a lot of stuff (and just might be gay himself).

How did you hear about us?: An article announcing how the two of you are currently big ole bigots.

(Sent via Brush & Nib Studio | Hand-Painting + Hand-Lettered Calligraphy | Wedding Invitations, Paper, Cards, Signs and Decor <<http://www.brushandnib.com>>)

From: Squarespace <customer@care@squarespace.info>
To: "info@brushandnibstudio.com"
Subject: Form Submission - Weddings
Date Sent: Friday, May 20, 2016 3:03:10 PM
Attachments:

Your Title: Mr.

Your Name: Redacted

Your Fiancée/Fiancé's Title: Mr.

Your Fiancée/Fiancé's Name: Redacted

Email Address: Redacted

Wedding Date: //

How many guests are you inviting?: 2

Services of Interest: Other

Tell us more about the big day!: You two are despicable, bigots. I hope your business goes down -
assholes!

How did you hear about us?: internet

(Sent via Brush & Nib Studio | Hand-Painting + Hand-Lettered Calligraphy | Wedding Invitations,
Paper, Cards, Signs and Decor <<http://www.brushandnib.com>>)

From: Squarespace <customer@care@squarespace.info>
To: "info@brushandnibstudio.com"
Subject: Form Submission - Weddings
Date Sent: Friday, May 20, 2016 4:47:05 PM
Attachments:

Your Title: Mr.

Your Name: Redacted

Your Fiancée/Fiancé's Title: Mr.

Your Fiancée/Fiancé's Name: Redacted

Email Address: Redacted

Wedding Date: 6/6/2016

How many guests are you inviting?: the world

Services of Interest: Announcements, Marriage Certificate

Tell us more about the big day!: My big day will be when ugly sinners who completely and purposely use words of love and guidance for hateful, ugly, un Christ or God like purposes.

How did you hear about us?: From your hatred, fear and ugliness

(Sent via Brush & Nib Studio | Hand-Painting + Hand-Lettered Calligraphy | Wedding Invitations, Paper, Cards, Signs and Decor <<http://www.brushandnib.com>>)

From: Squarespace <customer@care@squarespace.info>
To: "info@brushandnibstudio.com"
Subject: Form Submission - Weddings
Date Sent: Sunday, June 05, 2016 3:26:04 AM
Attachments:

Your Title: Mr.

Your Name: Redacted

Your Fiancée/Fiancé's Title: Mr.

Your Fiancée/Fiancé's Name: Redacted

Email Address: Redacted

Wedding Date: 9/10/2016

How many guests are you inviting?: 422

Services of Interest: Announcements, Envelope Calligraphy, Invitations, Place Cards/Escort Cards, Vows

Tell us more about the big day!: The church is all reserved, and the primary colors are red and blue, and those happen to be our favorite colors! I will be wearing white (since I am a virgin) and Redacted will be wearing blue, since he's decidedly not. I mean, it bothers me a little that he's been with 100's of men but I love him so much and am willing to overlook that... besides, his cock is ENORMOUS. Hope I can take it, God willing.

How did you hear about us?: We were having a three-way with a priest and he mentioned the great work you do. It was kind of funny because just as he said that Redacted blew a ginat load iin the priest's ass and the look on his face was fucking hilarious! I would have laughed to if I wasn't about to bukkake in Redacted face. It was QUITE a night. So anyway, can we stop by to get a quote?

(Sent via Brush & Nib Studio | Hand-Painting + Hand-Lettered Calligraphy | Wedding Invitations, Paper, Cards, Signs and Decor <<http://www.brushandnib.com>>)

EXHIBIT 4

OUR PAPERS

Browse our portfolio of Hand-Painted and Hand-Lettered Calligraphy, Wedding Invitations, Save the Dates, Birth Announcements, Cards and More.









Thank you for stopping by Brush & Nib Studio! We specialize in creating custom hand-painted and hand-lettered Wedding Invitations, Invitation Suites, Envelopes, Save the Dates, Programs, Menus, Table Numbers, Place Cards, Wedding Decor, and more. We also love creating for life's important moments with Event Invitations, Party Invitations, Shower Invitations, Birth Announcements, Cards, Decor, and more. We love working with beautiful papers and offer a wide selection of printing options from fine flat printing and foils to embossing, letterpress and thermography. The possibilities are truly endless. To see our beautiful hand-painted and hand-lettered wedding designs, [click here](#). To view custom designs for special occasions, browse our gallery [here](#). You can also check out our most recent work on Instagram [@brushandnib](#). To chat with us about your upcoming wedding, event or milestone, [click here](#) or drop us a note at info@brushandnibstudio.com - Breanna + Joanna

Brush & Nib Studio specializes in hand-painting, hand-lettering, and calligraphy for weddings, events, special occasions, business, home decor, and everyday moments. We offer custom and pre-made save-the-dates, wedding invitations, wedding invitation suites, wedding programs, vows, marriage certificates, place cards, escort cards, table numbers, menus, wood signs, glass signs, chalkboard signs, reception decor, party invitations, dinner invitations, birth announcements, graduation announcements, prints, custom cards, stationery, business cards, logos, letterheads, and more. Designs feature watercolor and acrylic art, leaves, florals, color washes, landscapes, classic calligraphy, modern calligraphy, and brush lettering. Fine papers, flat printing, letterpress, foiling, and thermography available.

©2016 BRUSH & NIB STUDIO LC



EXHIBIT 5



brushandnib

Follow

Brush & Nib Studio ART by breanna // CALLIGRAPHY by joanna // weddings + occasions + decor + branding // pinterest @brushandnib brushandnibstudio.com

105 posts

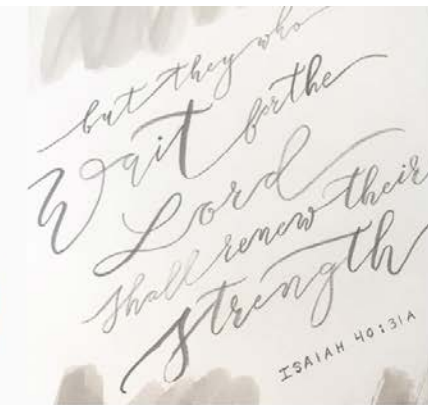
575 followers

201 following











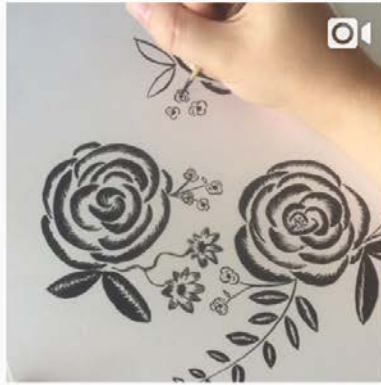












EXHIBIT 9

TOGETHER WITH THEIR FAMILIES

Kathryn
AND
Joseph

REQUEST THE PLEASURE OF YOUR COMPANY

AT THE Celebration OF THEIR Marriage

ON SUNDAY, THE THIRTY-FIRST OF JULY

TWO THOUSAND SIXTEEN

HOSPITALITY AT HALF-PAST SIX IN THE EVENING

CEREMONY AT SEVEN O'CLOCK

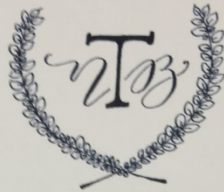
Lands End

SAYVILLE, NEW YORK

Dinner and Dancing to follow

BRUSH & NIB STUDIO
brushandnib.com

EXHIBIT 10



TOGETHER WITH THEIR PARENTS

Natalie
and
Bryan

INVITE YOU TO SHARE IN THE JOY OF THEIR MARRIAGE
THE EVENING OF MONDAY, THE THIRTIETH OF MAY
TWO THOUSAND SIXTEEN

Belmond villa
San Michele

FIESOLE, ITALY

RECEPTION TO FOLLOW

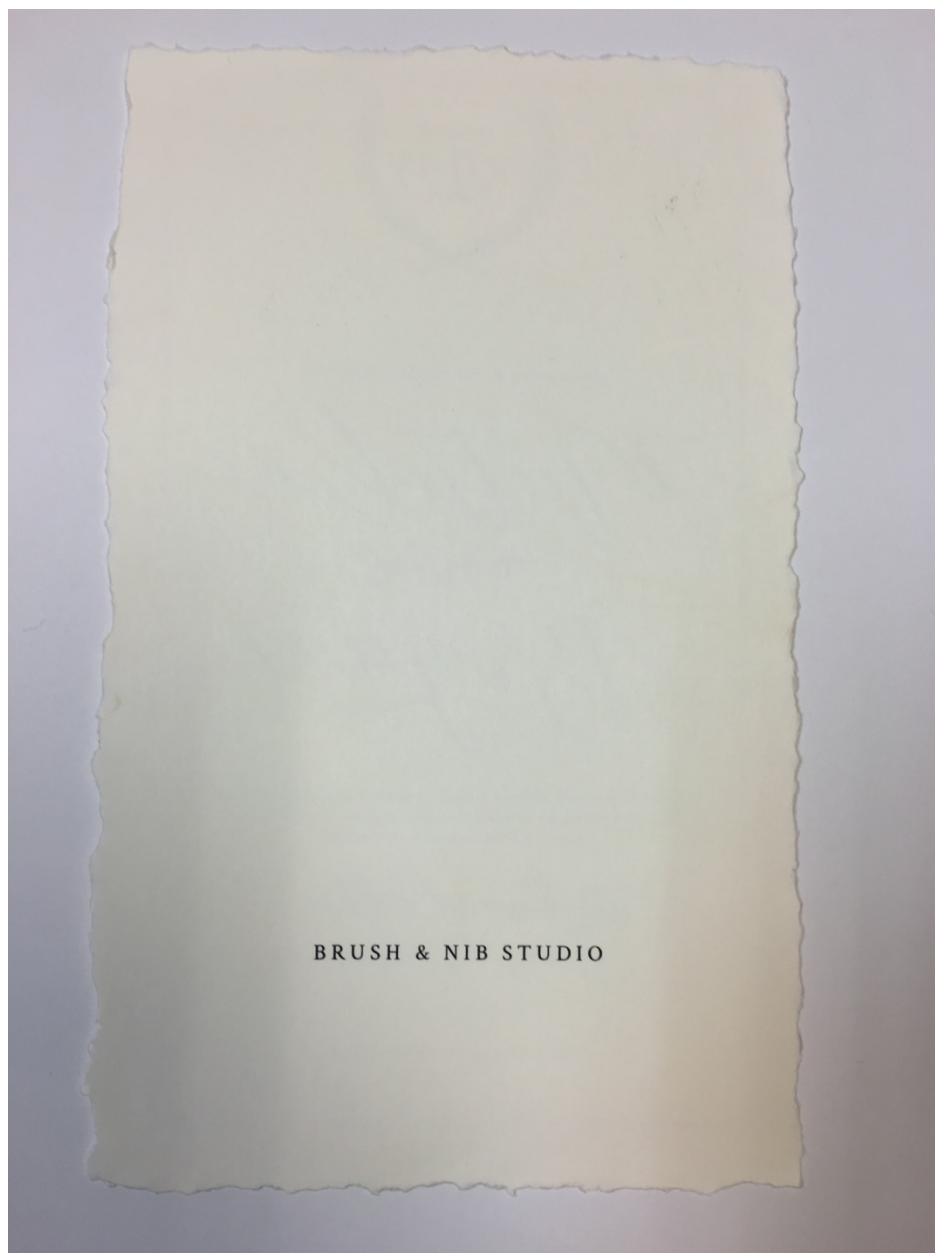


EXHIBIT 12



EXHIBIT 15

OPERATING AGREEMENT FOR MEMBER-MANAGED

BRUSH & NIB STUDIO, LC

INTRODUCTION

The undersigned are all of the Members of Brush & Nib Studio, LC, a Limited Company formed under the laws of the State of Arizona. The undersigned hereby adopt the following Operating Agreement pursuant to the LLC laws of the State of Arizona, and do hereby certify and agree as follows:

ARTICLE I – NAME

1.1 Name of Business: The name of the Company is Brush & Nib Studio, LC. The business of the Company may be conducted under such trade or fictitious names as the Members may determine.

ARTICLE II. – OFFICES AND REGISTERED AGENT

2.1 Principal Office: The principal office of the Company is located at [REDACTED]. The Company may have other offices, inside or outside the State of Arizona as the Members may designate.

2.2 Registered Office & Statutory Agent: The registered office of the Company in the State of Arizona is located at [REDACTED]. The registered agent of the Company for service of process at that address is Joanna E. Duka.

ARTICLE III. – BUSINESS PURPOSE

3.1 Business Purpose: The purpose of the Company is to engage in any lawful business that may be engaged in by a Limited Company organized under the LLC laws of the State of Arizona.

3.2 Additional Purpose: Brush & Nib Studio, LC is a for-profit limited liability company that specializes in hand-painting, hand-lettering, and calligraphy for weddings, events, special occasions, businesses, home decor, and everyday moments. Brush & Nib Studio, LC is owned solely by Christian artists who operate this entity as an extension of and in accordance with their artistic and religious beliefs.

3.3 Brush & Nib Studio, LC affirms the following Core Beliefs:

- a) As Christians, the owners believe that God created and redeemed the world through His Son, Jesus Christ. Because God created and redeemed them and called them to be His disciples, the owners believe that they must seek to glorify God through their thoughts, words, actions, interactions, business, imaginations, talents, creativity, and artwork.
- b) As Christian entrepreneurs, the owners believe that Jesus Christ has authority over their entire lives, and that Jesus requires them to live their entire lives – vocations included – in an authentic manner consistent with the doctrines of their faith. The owners therefore seek to authentically operate Brush & Nib Studio, LC in accordance with their faith and strive to make all business decisions consistent with biblical principles.
- c) As Christian artists, the owners believe that God enables their art and their artistic process and equips them to create. The owners believe that God created humanity to

reflect Him and that they reflect God – the ultimate creator and artist – when they create art. The owners also believe that all beauty, goodness, and truth reflects God, who is the ultimate source of and standard for all beauty, goodness, and truth; that God has given them the artistic talents to depict beauty, goodness, and truth; and that God has inspired and called them to use their artistic talents to create visual art that reflects the beauty, goodness, and truth that comes only from Him. The owners therefore seek to create art that echoes God’s beauty, goodness, and truth.

d) Based on the above beliefs, Brush & Nib Studio, LC (“Brush & Nib”) affirms the following core values:

- I. Vision: Brush & Nib’s vision is of the perfect and true beauty that comes only from God.
- II. Purpose: Brush & Nib’s purpose is to create authentic artwork that echoes God’s perfect and true beauty.
- III. Process: Brush & Nib’s process is to carefully use their hearts, hands, and imaginations to create art that echoes God’s perfect and true beauty.
- IV. Message: Brush & Nib’s message is that the beauty around us reflects a perfect and true beauty worthy of praise.
- V. Faith: Brush & Nib’s faith is that its owners have been called and equipped to create beautiful artwork that echoes perfect and true beauty.
- VI. Hope: Brush & Nib’s hope is that people would see its actions and artwork and contemplate the meaning and source of God’s perfect and true beauty.
- VII. Love: Brush & Nib’s love is to use its owners’ time, imaginations, and talents to create beautiful artwork that points people to the perfect and true beauty that is God.

e) Based on the above values, Brush & Nib affirms the following goals and procedures:

- I. Brush & Nib seeks to act in an authentic way and to create authentic, beautiful artwork. Therefore, Brush & Nib seeks to act and to create artwork consistent with its owners’ artistic and religious beliefs.
- II. Brush & Nib seeks to fulfill Jesus’ command to love our neighbors as ourselves and to do unto others as we would have done unto us. Therefore, Brush & Nib seeks to serve its customers with love, excellence, and honesty. Brush & Nib also seeks to be transparent with the public about its beliefs, process, and artwork.
- III. Brush & Nib seeks to have its actions, artistic process, artwork, and promotional platforms bear witness to its owners’ faith and to Christ’s lordship over its owners’ lives. Therefore, through its art, actions, artistic process, and platforms, Brush & Nib seeks to communicate messages that reflect and promote its owners’ beliefs about art, God, beauty, truth, and goodness. Specifically, Brush & Nib seeks to communicate that the beauty around us reflects a true and perfect beauty worthy of praise. Brush & Nib is unwilling to use its artistic process and platforms in ways that contradict its beliefs and message, and Brush & Nib is unwilling to create art that contradicts its beliefs and message.
- IV. For these reasons, Brush & Nib reserves the right to deny any request for action or artwork that violates its artistic and religious beliefs. For example, Brush & Nib will decline any request to create custom artwork that communicates ideas or messages, or promotes events, services, products, or organizations that contradict biblical truth, demean others, endorse racism, incite violence, or promote any

marriage besides marriage between one man and one woman, such as same-sex marriage. This list is non-exhaustive.

- f) The owners of Brush & Nib will prioritize and adhere to the above artistic and religious principles, beliefs, values, goals, and procedures regardless of the impact on profit.

ARTICLE IV. – MEMBERS

4.1 Members: The names of each initial Member, their capital contributions, and percentage interests are as follows:

Name	Capital Contribution (total of \$100.00)	Percent Interest
Joanna E. Duka	\$50.00	50%
Breanna K. Koski	\$50.00	50%

4.2 Additional Members: Additional Members may be admitted upon the consent of all Members.

4.3 Withdrawing: A Member may withdraw from the Company upon three months written notice to each remaining Member.

ARTICLE V. – MEMBERS' CAPITAL ACCOUNTS

5.1 Capital Accounts: The Company will maintain a separate capital account for each Member. Each Member's capital account will reflect the Member's capital contributions and increases for the Member's share of any net income or gain of the Company. Each Member's capital account will also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Company.

- a) Each Member's capital account will be increased by: 1) the amount of money or the fair market value of property contributed by the Member to the Company (net of any liabilities secured by such contributed property that the Company is considered to assume or take subject to); 2) the amount of any Company liabilities assumed by the Member; and 3) allocations to the Member of profit, income, or gain.
- b) Each Member's capital account will be decreased by: 1) the amount of money and the fair market value of property distributed to the Member by the Company (net of any liabilities secured by such contributed property that the Company is considered to assume or take subject to); and 2) allocations to the Member of losses, deductions, and expenses.
- c) In the event of a permitted sale or exchange of an interest in the Company, the capital account of the transferor will become the capital account of the transferee.
- d) The manner in which capital accounts are to be maintained pursuant to this Operating Agreement is intended to comply with the requirements of the Internal Revenue Code Sec. 704(b) and the regulations thereunder. It is the specific intent of the Members that all adjustments as may be required pursuant to Sec. 704(b), and any restrictions thereunder, be made, so as to cause the allocations prescribed hereunder to be respected for tax purposes.

5.2 Fiscal Year: The fiscal year of the Company will be a calendar year. The books and records of the Company will be maintained in accordance with generally accepted accounting principles and Sec. 704(b) of the Internal Revenue Code and the regulations thereunder.

ARTICLE VI. – ALLOCATIONS AND DISTRIBUTIONS

6.1 Allocations and Distributions: All items of Company income, gain, loss, deduction, credit, or the like will be allocated among the Members in accordance with their respective percentage interests.

6.2 Distributions of Cash or Assets: Distributions of cash or other assets may be made to the Members from time to time. All distributions will be made to the Members in accordance with their respective percentage interests.

ARTICLE VII. – ASSIGNMENT OF MEMBERSHIP INTERESTS

7.1 Assignment of Membership Interests: A Member may assign his or her membership interest in the Company in whole or in part. The assignment of a membership interest does not in and of itself entitle the assignee to become a Member. The assignee is only entitled to receive, to the extent assigned, the distributions the assigning Member would otherwise be entitled to, and the assignee will only become an assignee of a membership interest and not a substitute Member.

7.2 Substitute Members: An assignee of a membership interest will be admitted as a substitute Member and will be entitled to all the rights and powers of the assignee only if the other Members unanimously consent. If admitted, the substitute Member has, to the extent assigned, all of the rights and powers, and is subject to all of the restrictions and liabilities of a Member.

ARTICLE VIII. – VOTING; MEMBERS MEETINGS

8.1 Voting: Except to the extent provided to the contrary in this Operating Agreement, all Members will be entitled to vote on any matter submitted to a vote of the Members.

- a) Unless a greater vote is required by the LLC laws of the State of Arizona, the Articles of Organization, or this Operating Agreement, the affirmative vote or consent of a majority in interest of the Members present at meeting at which a quorum is present will be the act of the Members.
- b) The consent of all Members will be required to approve the following: 1) the dissolution of the Company; 2) the merger of the Company; 3) the conversion of the Company; 4) the authorization or ratification of acts that would otherwise violate the duty of loyalty; 5) an amendment to the Articles of Organization; 6) the sale, exchange, lease, or other transfer of all or substantially all of the assets of the Company other than in the ordinary course of business; 7) the compromise of an obligation to make a contribution; 8) the making of interim distributions; 9) the admission of a new Member; 10) the use of the Company's property to redeem an interest subject to a charging order; and 11) an amendment to the Operating Agreement.

8.2 Annual Meetings of Members: Annual meetings of Members may be held at such time and at such place as the Members designate. Special meetings of Members may be called at the request of any Member.

8.3 Notice of Meetings: The Company will deliver notice stating the date, time, place, and purposes of any meeting to each Member entitled to vote at the meeting. Notice will be given not less than 2 nor more than 30 days before the date of that meeting.

8.4 Quorum: A majority in interest, represented in person or by proxy, will constitute a quorum for the transaction of business at a meeting of Members. By default, if there are two (2) Members, both Members are required for a quorum.

8.5 Unanimous Written Consent: Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting, if consents in writing, setting forth the action taken, are signed by all Members entitled to vote at the meeting.

8.6 Voting by Proxy: A Member may appoint a proxy to vote or otherwise act for the Member by signing an appointment instrument either personally or by the Member's attorney-in-fact.

8.7 Meeting Participation: A Member may participate in a meeting by means of telephone conference or similar equipment.

ARTICLE IX. – MANAGEMENT OF THE COMPANY

9.1 Management: The Company will be managed by all of its Members.

- a) Subject to the delegation of rights and powers provided for herein, the Members will have the sole right to manage the business of the Company and will have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of the Company.
- b) The Members may appoint a President, Treasurer, Secretary, or such other Officers as they may deem necessary or appropriate.
- c) The Members may appoint, employ, or otherwise contract with other persons or entities for the transaction of business of the Company or the performance of services for or on behalf of the Company as they may deem necessary or appropriate. The Members may delegate to any Officer of the Company or to any other person or entity such authority to act on behalf of the Company as they may deem appropriate.
- d) Any Member, Officer, or other person specifically authorized by the Members may execute any contract or other agreement or document on behalf of the Company and may execute and file on behalf of the Company with the secretary of state any document required or permitted to be filed under the LLC laws of the State of Arizona.

ARTICLE X. – STANDARD OF CONDUCT; INDEMNIFICATION

10.1 Conduct: A Member owes the Company and its other members a duty of loyalty and a duty of care. The duty of loyalty is limited to: 1) accounting to the Company and holding as trustee for it, any property, profit, or benefit derived by the Member in the conduct or winding up of the Company's business; 2) refraining from dealing with the Company as or on behalf of a party having an interest adverse to the Company; and 3) refraining from competing with the Company. The duty of care is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. A Member will discharge his or her duties consistently with the obligation of good faith and fair dealing.

10.2 Indemnification: Except as otherwise provided in this Article, the Company will indemnify any Member and may indemnify any employee or agent of the Company who was or is a party or is threatened to be made a party to any action, suit or proceeding, other than an action by or in the right of the Company, by reason of the fact that such person is or was a Member, employee or agent of the Company against expenses, including attorney's fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding, if the person met the standard of conduct set forth above in this Article.

- a) To the extent that a Member, employee, or agent of the Company has been successful on the merits or otherwise in defense of an action, suit, or proceeding, such person will be indemnified against actual and reasonable expenses, including attorney's fees, incurred by such person in connection with the action, suit, or proceeding and any action, suit or proceeding brought to enforce the mandatory indemnification provided herein. Any indemnification permitted under this Article, unless ordered by a court, will be made by the Company only as authorized in the specific case upon a determination that the indemnification is proper under the circumstances because the person to be indemnified has met the applicable standard of conduct. That determination will be made by a majority vote of the Members who are not parties or threatened to be made parties to the action, suit, or proceeding.
- b) No indemnification will be provided to any Member, employee, or agent of the Company for or in connection with the receipt of a financial benefit to which such person is not entitled, voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act, or a knowing violation of law.

ARTICLE XI. – DURATION; DISSOLUTION

11.1 Duration: The Company will continue in existence until dissolved pursuant to the LLC laws of the State of Arizona.

11.2 Dissolution: The Company will be dissolved and have its affairs wound up and terminated upon the determination of all of the Members to dissolve the company, or upon the occurrence of any other event causing a dissolution of the Company pursuant to the LLC laws of the State of Arizona.

11.3 Winding Up: Upon dissolution, the Company will cease carrying on its business and affairs and will commence the winding up of the Company's business and affairs and complete the winding up as soon as practicable. Upon the winding up of the Company, the assets of the Company will be distributed first to creditors to the extent permitted by law in satisfaction of the Company's debts, liabilities, and obligations, and second to Members and former Members in satisfaction of liabilities for distributions and in accordance with their percentage interests.

ARTICLE XII. – MISCELLANEOUS PROVISIONS

12.1 Entire Agreement: This Operating Agreement embodies the entire agreement and understanding among the Members with respect to the subject matter within. This Operating Agreement supersedes any and all other agreements, either oral or written, among the Members with respect to the subject matter within.

12.2 Severance: Every provision of this Operating Agreement is intended to be severable. The invalidity or illegality of any particular provision of this Operating Agreement will not affect the

other provisions, and this Operating Agreement will be construed in all respects as if such invalid or illegal provisions were omitted.

12.3 Amendments and Revocations: This Operating Agreement may be amended or revoked at any time by the written consent of all of the Members.

12.4 State Law: This Operating Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Arizona.

THE UNDERSIGNED, being all of the Members of Brush & Nib Studio, LC evidence their adoption and ratification of the foregoing Operating Agreement of the LC.

Dated: 04/28/16

Joanna E. Duka
Member, Joanna E. Duka

Breanna K. Koski
Member, Breanna K. Koski

From: Squarespace <customer care@squarespace.info>
To: "info@brushandnibstudio.com"
Subject: Form Submission - Weddings
Date Sent: Friday, May 20, 2016 10:46:22 PM
Attachments:

Your Title: Miss

Your Name: Megan Seidell

Your Fiancée/Fiancé's Title: Miss

Your Fiancée/Fiancé's Name: Susan Quincy

Email Address: megan.seidell@gmail.com

Wedding Date: 10/5/2016

How many guests are you inviting?: 200

Services of Interest: Save the Dates

Tell us more about the big day!:

How did you hear about us?: Facebook

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

BRUSH & NIB STUDIO L.C., et al.,)	
)	
Plaintiffs,)	
)	CASE NO. CV2016-052251
vs.)	
)	
CITY OF PHOENIX,)	
)	
Defendant.)	
<hr/>		

Phoenix, Arizona
July 28, 2016
1:35 p.m.

BEFORE THE HONORABLE KAREN A. MULLINS
SUPERIOR COURT JUDGE

TRANSCRIPT: EVIDENTIARY HEARING ON PLAINTIFFS'
MOTION FOR PRLIMINARY INJUNCTION

Transcript prepared by:
VERBATIM REPORTING & TRANSCRIPTION, LLC

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I N D E X

WITNESSES

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>PLAINTIFFS' WITNESSES:</u>				

Joanna Duka	17	75	--	--
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DEFENDANT'S WITNESSES:

Donald Logan	105	--	--	--
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EXHIBITS

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DEFENDANT'S EXHIBITS:

None

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Counsel, can you state your appearances.
Plaintiffs.

MR. CAMPBELL: Your Honor, Colin Campbell, Eric Fraser, and Hayleigh Crawford, for the City.

MR. CAMPBELL: Fraser, Eric Fraser.

MR. CAMPBELL: And Hayleigh Crawford.

Okay. This is the time set for an evidentiary hearing on the Plaintiffs' request for a preliminary injunction. Let me just go over what I have that's been filed so far. So first I know there's an amended complaint. It's actually the second amended complaint.

I have on file for today the Plaintiffs' -- sorry, I have my papers out of order -- Plaintiffs' motion for a preliminary injunction and memorandum in support. I also have the Defendant's bench brief regarding the preliminary

1 injunction.

2 I have Plaintiffs' motion to convert preliminary
3 injunction hearing into oral argument only without witness
4 testimony. I don't believe the time has run on that to
5 respond. And I also have Plaintiffs' motion to exclude David
6 Twigger (ph throughout) from testifying at preliminary
7 injunction hearing. And I know that the time to respond to
8 that has not run.

9 So, Mr. Campbell, I don't think you all have filed
10 anything in response; is that correct?

11 MR. CAMPBELL: That's correct, Your Honor.

12 THE COURT: And what is your position regarding
13 these motions in terms of the timing of them procedurally?

14 MR. CAMPBELL: Well, Judge with respect to the
15 motion to convert, and in reading the transcripts in the case,
16 my impression is the Court has already ruled and was going to
17 do a mini trial and hear witnesses. So I sort of viewed it
18 as, at least on their part, a motion to reconsider.

19 If they're trying to prevent us from presenting
20 witnesses, we do have witnesses we want to present in the
21 preliminary injunction hearing. If they want to present their
22 case by way of affidavit only, I -- you know, that would --
23 the Court would have to change it's mind that it wanted to
24 hear witnesses. But we take no position on how they present
25 their case.

1 THE COURT: All right. Mr. Skruggs.

2 MR. SKRUGGS: Yes, Your Honor. The parties -- I'm
3 not sure -- we also filed a supplemental declaration in
4 support of.

5 THE COURT: Yes, I have all the declarations.

6 MR. SKRUGGS: Okay. I just wanted to make sure.
7 Your Honor, our position is that after we received their
8 discovery responses where the City of Phoenix essentially
9 admitted that (indiscernible) accommodation does what our
10 clients want to do which is post their statement and to
11 decline the waiting request they once declined, then it
12 violates the law.

13 In light of that, Your Honor, and the fact the City
14 has not put forth any single dispute of fact, we just feel
15 that the Court would be better served to just hear a legal
16 argument, that it would be a better use of all our time,
17 because there are some complex legal arguments that are
18 involved.

19 And given the fact there's no disputes of fact that
20 we know of that have been specified, we would just ask that we
21 do legal argument that it would be more useful. So that's our
22 position on that motion.

23 THE COURT: All right. And -- and we'll get to the
24 other one in a minute. Here's my problem. You filed a motion
25 to covert it into oral argument without witness testimony

1 because you said the facts are undisputed, but you never told
2 me what the facts were. You do in a couple of paragraphs cite
3 to a couple of paragraphs in your complaint, but I don't have
4 a list of what you think are the material facts.

5 I have the allegations in your complaint. I have
6 various declarations where there's a lot of facts that are put
7 forth. I -- there's been nothing procedurally that would
8 require them to go through the declarations and to either
9 admit or deny whether or not the facts stated in the
10 declarations are true or not.

11 So I'm at a loss as to what facts you think are,
12 quote, not in dispute and what facts I'm supposed to be
13 relying upon. Now, if what you're wanting to do is to put
14 forth your case by declaration, the problem I have with that
15 is that I think they have the right to cross examine your
16 witnesses, but I think that's kind of moot at this point
17 because, Mr. Campbell, I think you said -- and you -- you
18 stated that you would be calling them as witnesses potentially
19 the two Plaintiffs.

20 MR. CAMPBELL: Well, Your Honor, if they don't call
21 one of their Plaintiffs, we certainly will.

22 THE COURT: Yeah. So if -- if you, I guess, want to
23 present your initial case by declaration, I guess you can do
24 that, but then they can call your clients --

25 MR. SKRUGGS: Well --

1 THE COURT: -- and cross examine them.

2 MR. SKRUGGS: Okay, Your Honor. In light of that
3 decision, we will -- we will put on our witnesses.

4 THE COURT: Yeah. I mean you can't put in the
5 declaration and prevent them from questioning those witnesses.

6 MR. SKRUGGS: Well, Your Honor, we will -- we will
7 put on our witnesses.

8 THE COURT: Okay. And then the issue of David
9 Twigger. Mr. Campbell, what is Mr. Twigger going to say?

10 MR. CAMPBELL: Your Honor, just by way of a proffer,
11 Mr. Twigger is a wedding designer. He's in the business of
12 doing weddings, so he's very familiar with the wedding
13 business. He knows all the different vendors that are in the
14 wedding planning business -- planning business, florists, cake
15 bakers, setup designers. There's a whole lot of people that
16 are involved in weddings.

17 In his business, they do all sorts of weddings.
18 They do what are called fusion weddings with, you know, you
19 have people from different religions, Indian religion, maybe
20 someone Catholic on the other side.

21 But he will testify that in the business, no one in
22 the business -- and he certainly in his business did not
23 believe that by providing services for pay that they're
24 endorsing any message with respect to the clients, and that
25 the client is the one that's expressing what they want at

1 their wedding. What the vendors do is simply try and bring
2 that vision into the wedding. So that's basically what he's
3 going to testify to, Your Honor.

4 MR. SKRUGGS: Two points, Your Honor. First, as we
5 identified in our motion, this was past the time where they --
6 we could do a deposition. We sent our interrogatories on June
7 20th to the other side, and they ident -- they did not
8 identify Mr. Twigger. And then two days after the deadline
9 that you set for the depositions, they identified Mr. Twigger.

10 So we're not able to effectively depose or even
11 essentially know about. Now I know the other side -- the
12 other -- or acknowledge the other side offered to allow us to
13 do that deposition, but that was just a mere few days before
14 trial and -- or before this hearing, excuse me -- so that
15 essentially would hinder us from preparing for this hearing.

16 And -- and similar, your Honor, at your original
17 status conference that we had you said that if the City -- you
18 pre -- prevented us from calling the mayor, but you said that
19 if the City were going to call the mayor, that we would be
20 allowed to depose him.

21 It's really the same principle. Whoever they call
22 we should have been able to depose at that timeline so to give
23 us time to prepare for this hearing, rather than to put on us
24 last minute. So really all we're asking for, Your Honor, is
25 an equal playing field.

1 Regarding the -- the testimony that was just
2 offered, Your Honor, I -- I think that might even be a legal
3 question in terms of who -- who this -- who the expression
4 speaks for. I'm not even sure Mr. Twigger could ad -- really
5 speak for that because that is a determination for the Court.

6 So we view -- and the last point, Your Honor, is
7 they've given no explanation for why it's late. They've had
8 our complaint for a long time as well as our motion so we just
9 simply think it's not fair to spring this on us at the last
10 minute. Thank you, your Honor.

11 MR. CAMPBELL: Just briefly in reply, Your Honor, we
12 deposed the Plaintiffs on July 13th, so this has been a fast
13 moving preparation for preliminary injunction. You know, we
14 don't have scheduling orders like we do for a normal trial.

15 After deposing the Plaintiffs, given what their
16 rather unique views of how business is conducted in the
17 wedding industry, we thought it would be useful to have
18 someone in the industry who could testify about what actually
19 happens in the business and with respect to vendors.

20 So to be truthful, we didn't talk to Mr. Twigger
21 until last Wednesday. We engaged him on Friday; we notified
22 the other side. They know he was available for deposition on
23 Monday and Tuesday if they wanted to take his deposition.
24 They chose not to and instead they moved to exclude him.

25 Given the limited nature of the -- the hearing,

1 since it is a mini-trial, and given the limited nature of his
2 testimony, we'd ask the Court to allow it.

3 THE COURT: All right. I'm not going to allow him
4 for two reasons. There's some notion of fairness here, but I
5 didn't set a deadline for disclosing witnesses. I think we
6 talked, and it's not in my minute entry, about who you
7 anticipated you were going to call as witnesses. So I had
8 just a handful of people.

9 If I anticipated you were going to be adding two, I
10 might probably would have put a deadline in there and then it
11 would have been clear. I do think the Defense has offered the
12 Plaintiff the opportunity to take the deposition and it did
13 happen quickly, but I still think in terms of fairness, I'm --
14 I would exclude him for that reason, that I think it's a
15 little unfair to add him at the last moment.

16 But more important than that, and my second reason
17 which is independent and separate from the first, is that I
18 don't think what he has to say is relevant. It doesn't matter
19 what the industry practices under the ordinance and the case
20 law that's at stake here. So industry practice doesn't come
21 into play.

22 And his personal opinion as to who's expressing what
23 I think is frankly irrelevant. So what I'll let you do, Mr.
24 Campbell, and -- and I guess I'm going to reserve the right to
25 change my mind if after all the witnesses get up and off and I

1 think somehow it does become important. Is he here?

2 MR. CAMPBELL: Yes, Your Honor. And --

3 THE COURT: He's here.

4 MR. CAMPBELL: -- and he has not problem staying
5 here if the --

6 THE COURT: Okay.

7 MR. CAMPBELL: -- Court were to reconsider.

8 THE COURT: Yeah. I don't think I'm going to recon
9 -- I'm -- I don't think I'm going to change my mind, but I
10 might. So, Mr. Campbell, is there something else you want to
11 put in -- on the record in terms of an offer of proof?

12 MR. CAMPBELL: No, Your Honor. I think what I
13 stated was a sufficient proffer.

14 And on another subject though, we had filed a Rule
15 12(b)(1) motion, and the Court hadn't mentioned that. And I
16 just want to make sure the Court has --

17 THE COURT: That is pending, and it was just filed I
18 think yesterday or --

19 MR. CAMPBELL: Yes.

20 THE COURT: -- the day before.

21 MR. CAMPBELL: Yes, yes.

22 THE COURT: So it is pending, and it hasn't been
23 briefed, so I'm going to go forward with this hearing. I do
24 want to make clear that this is a preliminary injunction
25 hearing. I'm not -- I don't think anyone's asked me to -- but

1 I'm not accelerating it with trial on the merits. It's
2 preliminary injunction only.

3 So I have read everything that's been filed. I have
4 read all the applicable constitutional provisions, statute,
5 tort provisions, and the ordinances. I have read all the
6 declarations. I've read all the exhibits that's been attached
7 to everything that has been filed so far, including the two
8 motions that we just addressed.

9 So we're ready to begin. I don't think you need to
10 make an opening statement because I have read any --
11 everything, but if you feel compelled to do so, please make it
12 short.

13 MR. CAMPBELL: Judge, one question. Because we do
14 have limited time, is the time split between the two sides?

15 THE COURT: The time is split. So we have three
16 hours, so it's split an hour and a half. And that -- that
17 includes any cross examination, so if you use your whole hour
18 and a half, you won't have the chance to cross examine the
19 Defendant's witnesses.

20 MR. SKRUGGS: Your Honor, in light of that, we --
21 we're not going to do an opening. We'd rather go right into
22 testimony.

23 THE COURT: Okay.

24 MR. SKRUGGS: The first witness we'd like to call,
25 Your Honor, is Joanna Duka.

1 THE COURT: All right. And are we excluding
2 witnesses?

3 MR. CAMPBELL: We're --

4 MR. SKRUGGS: Yes, Your Honor, I think we would like
5 to exclude the -- even though he's not a witness.

6 MR. CAMPBELL: Okay. Well, we have Mr. Twigger and
7 we also have Mr. Don Logan from the City of Phoenix. So is
8 there a witness room, Judge or --

9 THE COURT: No, there's a jury room. Can we let
10 them be in the jury room?

11 THE CLERK: Sure, it's up to you.

12 THE COURT: I don't --

13 MR. SKRUGGS: Can I just to clarify, Your Honor?

14 THE COURT: That's the --

15 MR. SKRUGGS: Since both of our clients are
16 parties --

17 THE COURT: Well, they don't have to leave the room
18 because --

19 MR. SKRUGGS: Yes.

20 THE COURT: -- they're parties.

21 MR. SKRUGGS: Yes, Your Honor. I just wanted to
22 clarify it for them.

23 MR. CAMPBELL: Well, actually, Your Honor, in terms
24 of a client representative, Mr. Logan would be our client --

25 THE COURT: And he would not have to leave. It

1 would just be Mr. Twigger if he might testify, he would have
2 to leave.

3 (Counsel confer)

4 THE COURT: Is -- is the cafeteria closed?

5 MR. CAMPBELL: Yes, Your Honor, there's no
6 cafeteria.

7 THE COURT: Gosh. We've only been in this building
8 two days, so where do people go, Tyler, do they just wander
9 the halls? There's not even a bench out in the hall, is
10 there?

11 THE CLERK: There's not. There's not.

12 MR. CAMPBELL: Your Honor, I'm going to -- I'm going
13 to get his cell number so he could just maybe go to a
14 Starbucks downtown and I could call him.

15 THE COURT: That's a good idea. And it's -- this is
16 something we need to resolve, Tyler, in this building.

17 MR. SKRUGGS: And, Your Honor, maybe while they're
18 doing that, I don't want to -- and just kind of save time, we
19 have prepared copies for the bench for you, Your Honor, of our
20 exhibits.

21 THE COURT: Okay.

22 MR. SKRUGGS: And I just want to note that some of
23 these are actually originals, so I'm going to -- because I
24 have no idea --

25 THE COURT: Then I'll give it back to you because I

1 always --

2 MR. SKRUGGS: Well, --

3 THE COURT: -- give them back anyway because I have

4 the -- the marked exhibits.

5 MR. SKRUGGS: Well, Your Honor, if it is all right,

6 I'd like to actually submit those as the actual --

7 THE COURT: I believe they're already marked.

8 THE CLERK: I've already marked them.

9 MR. SKRUGGS: Okay. Then we might have to exchange

10 some --

11 THE COURT: Probably not unless it's really

12 important.

13 THE CLERK: I've already marked all these.

14 MR. SKRUGGS: Then that's fine, Your Honor.

15 MR. CAMPBELL: Your Honor, may I hand up our copies

16 as well?

17 THE COURT: Sure.

18 MR. CAMPBELL: Thank you.

19 THE COURT: And let me just get my computer up and

20 running. Please -- please work.

21 MR. SKRUGGS: Your Honor, may the witness come up?

22 THE COURT: Yeah, you need to come forward to the

23 clerk and be sworn in right up here.

24 MS. DUKA: What do I do now?

25 THE COURT: Just --

1 MR. SKRUGGS: Go -- kind of go in front of her.
2 THE COURT: -- find your way through the furniture.
3 THE CLERK: Can you raise your right hand, please.
4 Can you state your name for the record?
5 MS. DUKA: Joanna Eileen Duka.
6 (Oath administered)
7 THE WITNESS: Yes, I do.
8 THE CLERK: Thank you.
9 THE COURT: All right. Now you have to go around
10 here, around that half wall and then back up here and be
11 seated. Tell her it's not -- Counsel, I need a minute.
12 MR. SKRUGGS: Yes, Your Honor. I'm just getting
13 prepared.
14 THE COURT: I mean I love doing this.
15 (Pause - whispered conversation)
16 THE COURT: All right. I'm ready. Go ahead,
17 Counsel.
18 JOANNA EILEEN DUKA
19 called as a witness on behalf of the Plaintiffs, having been
20 duly sworn, testified as follows on:
21 DIRECT EXAMINATION
22 BY MR. SKRUGGS:
23 Q All right. Ms. Duka, good morning.
24 A Good morning.
25 Q How are you this morning?

1 A I'm doing well.

2 Q Good. Will you state your full name for the record?

3 A Yes. Joanna Eileen Duka.

4 Q And how old are you, Ms. Duka?

5 A 22.

6 Q In what city do you currently live?

7 A Phoenix, Arizona.

8 Q And for whom do you currently work?

9 A Brush & Nib Studio and Pregnancy Resource Clinic of

10 Arizona.

11 Q Have you ever been ordained as a minister?

12 A No, I have not.

13 Q Have you ever worked as a minister at a church?

14 A No.

15 Q So let's talk a little bit about Brush & Nib Studio.

16 What exactly is Brush & Nib Studio?

17 A We are a hand-painting, hand-lettering and

18 calligraphy studio. And we create custom and pre-made pieces

19 of artwork for special events, occasions, weddings.

20 Q And what's your role at Brush & Nib?

21 A I am co-owner and calligrapher, hand letterer.

22 Q And in what parts of this business are you

23 personally involved?

24 A I'm involved in all parts of the business,

25 financial, organizational, communication with clients and

1 creation of the artwork.

2 Q And who else works at Brush & Nib?

3 A Breanna Koski.

4 Q Does anyone else?

5 A No.

6 Q What is Brush & Nib's corporate form?

7 A We are a limited liability company.

8 Q Now I'd like to hand you an exhibit.

9 MR. SKRUGGS: Your Honor, may I approach the --

10 THE COURT: Yes, you may.

11 BY MR. SKRUGGS:

12 Q Now I've handed you what is marked as Exhibit 1. Do
13 you recognize what this document is?

14 A Yes, I do.

15 Q And what is it?

16 A It's our articles of organization.

17 Q And let me point to you to page 2 there more toward
18 the bottom. And if we could back up, you said it's yours,
19 your article of incorporation. Would you just kind of specify
20 who was the your there?

21 A Yes. This is the articles of organization for Brush
22 & Nib Studio.

23 Q Okay. And on page 2 kind of toward the bottom, is
24 that your signature?

25 A Yes, it is.

1 MR. SKRUGGS: Your Honor, I'd like to admit that as
2 an exhibit.

3 THE COURT: Any objection?

4 MR. CAMPBELL: None, Your Honor.

5 THE COURT: Exhibit 1 is admitted.

6 (Plaintiffs' Exhibit 1 admitted)

7 BY MR. SKRUGGS:

8 Q So how is Brush & Nib funded, Ms. Duka?

9 A We are funded by work from clients and customers.

10 Q Okay. Any other way?

11 A At the beginning of our business we did both invest
12 a small amount of our personal money, but no other way, no.

13 Q Okay. Is Brush & Nib affiliated with a church in
14 any way?

15 A No, we are not.

16 Q And who manages Brush & Nib?

17 A Myself and Breanna Koski.

18 Q Does anyone else?

19 A No.

20 Q Okay. Where is Brush & Nib's physical stores?

21 A We have one location, a home studio in Phoenix.

22 Q And is that -- do -- do clients come in to that
23 location?

24 A No, they do not.

25 Q Okay. And so what happens at that location?

1 A That's the location where we create our artwork and
2 run our business.

3 Q And -- and remind me what city is that in again?

4 A In Phoenix.

5 Q Okay. How did you come to own Brush & Nib Studio?

6 A So in the fall of 2014 I started planning to start
7 this business. It was something that had been a dream of mine
8 for a long time. So I began planning. I had left my job that
9 I was at at that time. At the beginning of 2015 I began
10 working with Breanna Koski. We officially formed the business
11 in May.

12 Q How did you meet Breanna -- or excuse me -- how did
13 you meet Ms. Koski?

14 A We met at our church's college and career small
15 group.

16 Q Did anyone besides you and Ms. Koski -- did anyone
17 help start your business?

18 A No, we received some advice from others, but we
19 started it solely.

20 Q Who -- who did you receive advice from?

21 A From different friends and family members.

22 Q Okay. What experience did you have starting a
23 business before starting Brush & Nib?

24 A Very little. I had a small piano studio prior to
25 that, but nothing else.

1 Q Who picked the name for your business?

2 A I came up with it to begin with. And we both agreed
3 that we loved it and decided on it together.

4 Q And when you say we both, who's the we?

5 A Breanna Koski and myself.

6 Q Thank you. And -- and why did you pick that name?

7 A Because we felt that it reflected the artistic
8 nature of our business and both of our contributions to it.
9 We have the painting and hand-lettering so the brush and the
10 nib. And our -- our business is artistically based so those
11 are the tools that we use, and then it's an art studio. So we
12 felt like all together that really described what we are as a
13 business.

14 Q And what exactly is a nib?

15 A A nib is a pen tip that's inserted into a holder.
16 It may be pointed or angled with a flat end, and it's dipped
17 into an ink. The ink collects in an air pocket. And then on
18 upward strokes you have a thinner line and then on downward
19 strokes, the prongs of the nib expand and more ink is let out
20 for a thicker line.

21 Q In what city does Brush & Nib operate?

22 A Phoenix.

23 Q Okay. And remind me -- I think you might have
24 mentioned this -- but when exactly did Brush & Nib formally
25 begin to do business in Phoenix?

1 A May of 2015.

2 Q Has Brush & Nib ever stopped doing business?

3 A No, we have not.

4 Q Why -- why did you want to start Brush & Nib?

5 A It's something that's been a dream for a long time
6 of mine, and I felt like God gave me the opportunity to do
7 that. Calligraphy is a skill that I feel that he have me, and
8 it was something I was just excited to do because of my love
9 for calligraphy and then my love for creating things of
10 beauty. And so yeah, that's why I -- why I wanted to start
11 it.

12 MR. SKRUGGS: Your Honor, may I approach the witness
13 with another --

14 THE COURT: You may.

15 MR. SKRUGGS: -- exhibit?

16 (Pause)

17 MR. SKRUGGS: There you go.

18 THE WITNESS: Thank you.

19 BY MR. SKRUGGS:

20 Q All right. Ms. Duka, I've handed you what's marked
21 as Exhibit 2. Do you recognize this document?

22 A Yes, I do.

23 Q And what is it?

24 A It's the homepage of our website for Brush & Nib.

25 MR. SKRUGGS: I move that this be admitted, Your

1 Honor.

2 THE COURT: Any objection?

3 MR. CAMPBELL: None, Your Honor.

4 THE COURT: Exhibit 2 is admitted.

5 (Plaintiffs' Exhibit 2 admitted)

6 BY MR. SKRUGGS:

7 Q All right. Ms. Duka, who started -- you had
8 mentioned the website, the aforementioned website. Who
9 started this website?

10 A Breanna Koski and myself.

11 Q And when did you start it?

12 A In April of 2015.

13 Q Who controls what goes on this website?

14 A Breanna Koski and myself.

15 Q All right. And I'm going to point you to the
16 statement at the bottom there. I'm going to test your reading
17 skills because the -- the text is somewhat small. But can --
18 can you decipher what the text says?

19 A Yes, I can.

20 Q Okay. Well, I'm going to point you to the first
21 sentence that says Brush & Nib Studio specializes in hand-
22 painting, hand-lettering, and calligraphy for weddings,
23 events, special occasions, business, home decor, and every day
24 moments.

25 Do you -- do you see that?

1 A Yes, I do.

2 Q Who does the -- and is that -- who wrote that?

3 A I did.

4 Q Is that an accurate statement?

5 A Yes, it is.

6 Q Who does the hand-painting for Brush & Nib?

7 A Breanna Koski.

8 Q Who does the hand-lettering?

9 A Primarily my -- I do.

10 Q Who does the calligraphy?

11 A I do.

12 Q What exactly is calligraphy?

13 A Calligraphy is the art of writing decorative

14 letters. Calligraphy is typically based in very traditional

15 letter forms and features a series of letters that have

16 consistent connections and kind of a set laid out alphabet

17 style.

18 Q What's the difference between hand-lettering and

19 calligraphy?

20 A Hand-lettering is much more free. It's not as based

21 in particular traditions. It's more created for a particular

22 piece instead of necessarily being a pre--set alphabet of

23 letters and it's more artistically formed to that particular

24 piece that it's going to be appearing on.

25 Q And where exactly did you learn to do these?

1 A I am self-taught.

2 Q Okay. And when did you begin to teach yourself?

3 A I began practicing hand lettering as a kid and then
4 more officially calligraphy in my early teens.

5 Q Okay. I'll point you back to the statement there
6 that we were talking about and it lists some various I think
7 events. I think the first one in the list there is weddings.
8 Do you -- do you see that?

9 A Yes.

10 Q Why -- why did you put weddings first?

11 A Weddings is the event that we most enjoy creating
12 for, and it's also the primary event that we create for for
13 custom pieces.

14 Q And let me point you to the second sentence there
15 where it says we offer custom and pre-made save the dates,
16 wedding invitations, wedding invitation suites, and it kind of
17 goes on. Do you see that?

18 A Yes.

19 Q What is the difference between Brush & Nib's custom
20 artwork and its pre-made artwork?

21 A Custom artwork is made particularly for our client
22 and their event. We create it with their event in mind and
23 using the vision and the inspiration of their event as the raw
24 materials for our work. And pre-made items are not created
25 with a particular client or event in mind.

1 Q So in that statement it does -- it does I think as
2 you noted mention some wedding-related -- works that are
3 related to a wedding, like a wedding invitation.

4 A Yes.

5 Q For those wedding-related works, which ones does
6 Brush & Nib make custom?

7 A All wedding-related works.

8 Q But which one does Brush -- of those wedding-related
9 works, which one does Brush & Nib make pre-made?

10 A We only have one pre-made item.

11 Q Okay. And -- and what is that item?

12 A It's a pair of wooden blocks in our Etsy shop.

13 Q Okay. Besides that wooden blocks, which one of
14 these items does Brush & Nib -- wedding-related works does
15 Brush & Nib do pre-made?

16 A None.

17 Q And why is that?

18 A Because the nature of artistic creations for a
19 wedding is very personal and very custom.

20 Q Got it. Does Brush and -- does Brush & Nib offer to
21 sell the works listed in this statement to the general public?

22 A Yes.

23 MR. SKRUGGS: Your Honor, I'd like to approach again
24 with another.

25 THE COURT: Sure.

1 BY MR. SKRUGGS:

2 Q I've handed you what's marked as Exhibit 3. Do you
3 recognize this document?

4 A Yes, I do.

5 Q And what is it?

6 A It's the pricing page for Brush & Nib's website.

7 MR. SKRUGGS: Your Honor, I move that this would be
8 admitted.

9 THE COURT: Any objection?

10 MR. CAMPBELL: None, Your Honor.

11 THE COURT: Exhibit 3 is admitted.

12 (Plaintiffs' Exhibit 3 admitted)

13 BY MR. SKRUGGS:

14 Q So what is the purpose of this pricing page?

15 A The purpose of the pricing page is just to give our
16 clients or potential clients or anyone who comes to our
17 website a general idea of what they can expect to pay for that
18 work.

19 Q Now on the left column there it says -- and I'm
20 pointing it to you -- it says invitations suites starting at
21 \$900. Do you see that?

22 A Yes, I do.

23 Q What is that with an invitation suite?

24 A An invitation suite includes the wedding invitation
25 and then an RSV -- RSVP or reply card, an additional

1 informational card, and an outer and reply card envelope.

2 Q Who sets the prices listed on this page?

3 A I do with Breanna Koski.

4 Q And how do you determine that?

5 A We consider a number of factors. We look at how
6 much time and effort is involved in the creation of the
7 design. We look at the cost of the particular paper to be
8 used and any printing to be done. And then we also look at
9 similar work in the market and what high-end wedding
10 invitations are being priced at.

11 Q Does Brush & Nib offer any ministerial services to
12 the public?

13 A No, we do not.

14 Q Okay. We've seen a little bit about what Brush &
15 Nib does. Let's talk more about I think the website. Why --
16 why did you create the website for Brush & Nib?

17 A We created the website because we wanted to share
18 our work with others. We wanted people to see the pieces and
19 the artwork that we create, and we felt like it's a reflection
20 of us and our business. We get to share who we are. We feel
21 like it's really beautiful, and we love that we had full
22 control in putting it together and how it was going to look
23 and --

24 MR. SKRUGGS: Your Honor, may I approach with our
25 exhibit?

1 THE COURT: You may. You don't need to ask,
2 Counsel.

3 MR. SKRUGGS: Thank you, Your Honor.

4 BY MR. SKRUGGS:

5 Q And I apologize. I think our copies are not as
6 attractive as the original website. All right. Ms. Duka,
7 I've handed you what's marked as Exhibit 4. Do you recognize
8 this document?

9 A Yes, I do.

10 Q And what is it?

11 A This is the art papers page of the Brush & Nib
12 website.

13 MR. SKRUGGS: I'd move that this would be admitted,
14 Your Honor.

15 THE COURT: Any objection?

16 MR. CAMPBELL: None, Your Honor.

17 THE COURT: 4 is admitted.

18 (Plaintiffs' Exhibit 4 admitted)

19 BY MR. SKRUGGS:

20 Q Who created this webpage?

21 A Breanna Koski and I.

22 Q Okay. And what exactly is displayed on this
23 webpage?

24 A Different examples of art pieces and invitations
25 that we have created.

1 Q And why did you want to put that on the website?

2 A Because we want people to see our art. We think
3 it's beautiful, and we want to share that with others.

4 Q Actually before we talk about this, let me go back
5 to Exhibit 4, the art papers page.

6 A Yes.

7 Q So who created the items that are depicted in this
8 picture?

9 A I did with Breanna Koski.

10 Q Okay. So back to Exhibit 5. Do you recognize what
11 this document is?

12 A Yes, I do.

13 Q And what is it?

14 A This is the Instagram profile for Brush & Nib.

15 MR. SKRUGGS: I would move that this document be --
16 exhibit --

17 THE COURT: Any --

18 MR. SKRUGGS: -- admitted, Your Honor.

19 THE COURT: Any objection?

20 MR. CAMPBELL: None, Your Honor.

21 THE COURT: 5's admitted.

22 (Plaintiffs' Exhibit 5 admitted)

23 BY MR. SKRUGGS:

24 Q So who opened this Instagram account, Ms. Duka?

25 A Breanna Koski and I.

1 Q And when did you open it?

2 A I believe April of 2015.

3 Q And sorry, Joanna, when did you open your -- when
4 did you start the website?

5 A Also April of 2015.

6 Q So back to the Instagram page or account. Why did
7 you decide to open this account?

8 A We feel like Instagram is a great platform for us.
9 Social media is such a big way to connect with the general
10 public. And Instagram is the perfect platform because it's
11 image-based and our work is art so it needs to be seen. And
12 Instagram was a great fit.

13 Q Now as you flip through the pages in your Instagram
14 account there, what are those pictures of exactly?

15 A Artwork that Breanna and I created.

16 Q Okay.

17 (Pause)

18 BY MR. SKRUGGS:

19 Q I've handed you what is marked Exhibit. Do you
20 recognize what this document is?

21 A Yes.

22 Q And what is it?

23 A This is an Instagram post from Brush & Nib.

24 MR. SKRUGGS: I move this document be admitted, Your
25 Honor.

1 THE COURT: Any objection?

2 MR. CAMPBELL: No, Your Honor.

3 THE COURT: Exhibit 6 is admitted.

4 (Plaintiffs' Exhibit 6 admitted)

5 BY MR. SKRUGGS:

6 Q So what exactly is that picture on the left of?

7 A This is a picture of a piece that we created with a
8 scripture verse and some abstract color -- painted color
9 washes.

10 Q And what exactly does the text say on that print?

11 A It says that they who wait for the Lord shall renew
12 their strength, Isaiah 40:31.

13 Q And who created that?

14 A Breanna Koski and I.

15 Q And let me point you to the text on the right
16 beginning with a word of hope and encouragement for your
17 Tuesday; do you see that?

18 A Yes, I do.

19 Q And who wrote that?

20 A I did.

21 Q What does the word of hope and encouragement you're
22 referring to?

23 A I'm referring to Isaiah 40:31 on the -- the art
24 piece.

25 Q And why did you want to convey that message on your

1 Instagram account?

2 A This is a scripture that we both love, and it gives
3 us a lot of strength and encouragement. And we wanted to
4 share that with others. There's a lot of discouragement and
5 hopelessness in the world, and we wanted to bring hope.

6 Q How typical is this post compared to your other
7 Instagram posts?

8 A Fairly typical.

9 Q Okay. Besides this website and Instagram accounts,
10 does Brush & Nib have Internet presence anywhere else?

11 A Yes. We have different social media platforms. We
12 use Facebook, Twitter, and Pinterest. We have accounts with
13 The Knot, WeddingWire, Wedding Vibe, and Yelp.

14 Q Of all these media platforms, which -- which is the
15 most important?

16 A For social media, definitely Instagram.

17 Q And -- and why is that?

18 A Because of the visual image-based nature of that
19 platform.

20 Q Okay. Let's focus a bit now on how Brush & Nib
21 creates its artwork. Could you just take us generally through
22 that process.

23 A Yeah, definitely. So a potential client contacts us
24 and says, for example, I'm getting married on this date and I
25 have seen your work. I love it. We'd like you to create a

1 wedding invitation suite for us.

2 We receive that request. If they've given us enough
3 information that we feel like we can create that and that we
4 have enough information to quote them, then from there we will
5 send them a quote. If not, then we will ask them some more
6 questions and then we send them our questionnaire just so that
7 we can get more information about what they're looking for and
8 about their event.

9 At that --

10 Q Let me -- let me hand you a -- now marks -- I handed
11 you what's marked as Exhibit -- Exhibit 7. Do you recognize
12 what this document is?

13 A Yes, I do.

14 Q And what is it?

15 A This is our client contract.

16 MR. SKRUGGS: I move that this would be admitted,
17 Your Honor.

18 THE COURT: Any objection?

19 MR. CAMPBELL: No objection, Your Honor.

20 THE COURT: 7 is admitted.

21 (Plaintiffs' Exhibit 7 admitted)

22 BY MR. SKRUGGS:

23 Q So how does this client -- when does this client
24 contract come into play in your process?

25 A So after the client has accepted the quote and we've

1 decided to move forward with creating for them, then we will
2 send them this contract and they will sign it. And then we
3 will begin work on their artwork.

4 Q Now is this the exact copy of what you give each
5 client?

6 A Very close. We customize a few areas with their
7 name, the date that their pieces will be completed, what
8 exactly we're creating for them, the payment that's been
9 agreed upon.

10 Q Okay. Earlier you mentioned some information being
11 exchanged between you and the client. Just tell me about what
12 information's being exchanged there.

13 A Yeah. So at the beginning we want to find out about
14 their event, practical details like when is it, where is it
15 happening. Also we want to know what's the style of your
16 event, what colors have you chosen, what's the feeling of your
17 event, is it very formal, more informal, what's the venue.

18 Q Why is that information important to you?

19 A Because we're going to be customizing these pieces
20 for that event so we want to make sure that the pieces are a
21 great fit and go along with that style.

22 Q Typically how much input do you have when a client
23 orders a custom work?

24 A How much input do we have?

25 Q Yes. How much input do you have?

1 A A considerable amount. We basically use the
2 information they give us kind of as the raw materials or the
3 starting point and then we take that and we turn it into
4 something artistic for them.

5 Q Now whether inside the wedding context or out, have
6 you ever declined to create something a client requested?

7 A We did have someone come to us at one point
8 requesting a logo and they indicated a desire that it be
9 similar to another logo. And we told them, you know, we
10 cannot copy that logo, but we will create something unique for
11 you.

12 Q Okay. After you gathered the information you talked
13 about, what -- what do you do with that information?

14 A Again, we use that as the starting point for what
15 we're creating. We'll also usually communicate with the
16 client more after the contract has been signed, start to share
17 with them some of the ideas that we have and how we think that
18 the style of their wedding could be displayed in our artwork.

19 Q So once you gather that information, how -- well,
20 take me through the actual process of you coming up with the
21 idea.

22 A So Breanna and I will usually discuss that back and
23 forth first, and we'll talk about, you know, we could
24 incorporate these colors in this way. We may bring in this
25 lettering style. Let's do this kind of painted design if we

1 put this here and that there.

2 Then we start putting it out on paper, painting it
3 out, maybe sketching it with pencil, seeing how it looks,
4 making adjustments. And then we go into creating the final
5 proofs.

6 Q Okay. Just back before you were actually putting
7 pen to paper during this kind of imagination process, who
8 plays a role in that?

9 A Breanna and I.

10 Q What role does the client play?

11 A After we've received all the information we need
12 from the client, they don't play a role in that point.

13 Q What skills are you using during this imagination
14 process?

15 A I think an understanding of how colors work
16 together, the style of different lettering options and how
17 those would work with the style of the wedding and the painted
18 details, layout, the way different elements work together.

19 Q And earlier you mentioned you -- eventually you do
20 put that one pieces of paper into -- into drafts. Who plays a
21 roles in that process of physically creating the draft?

22 A Breanna and I.

23 Q And what role does the client play?

24 A The client does not play a role at that point.

25 Q What skills are you using during the actual physical

1 creation of the artworks?

2 A Painting and hand-lettering and calligraphy skills.

3 Q How much say do you ultimately have over what you
4 decide to create for a client?

5 A We have the ultimate say.

6 Q Okay. I think you mentioned this, but just to be
7 clear. So after you and the -- the client agree on a draft,
8 what's next?

9 A Then we begin creating the final piece. And that
10 process can take between several hours and several days. We
11 may create the same piece multiple times until we get it
12 exactly like we want.

13 Q And who plays a role in that final creation process?

14 A Breanna and I.

15 Q What role does the client play?

16 A Unless we need to have any last minute tweaks or
17 adjustments, the client wouldn't play a role in that.

18 Q Got you. And if you do need to do a tweak or
19 adjustment, what happens then with the client?

20 A We'd go to the client and say hey, we're going to
21 need to adjust this or the client might say, you know, can you
22 adjust this part. We'll say, yeah, we can or no, let's do it
23 this way. We kind of go back and forth and then we'll --

24 Q Got it.

25 A -- create that.

1 Q So after you create the final work, how do you get
2 it to the client?

3 A We will package it up really beautifully. If
4 they're local, we'll deliver it to them or meet to have that
5 delivered. If they're not local, then we'll mail that to
6 them.

7 Q And where have you mailed things in the past? In
8 what cities?

9 A Other parts of Arizona, California, Washington, New
10 York, Ohio, Japan.

11 Q There you go.

12 A Thank you.

13 Q All right. Ms. Duka, I've handed what -- you as
14 marked actually as Exhibit 9. We skipped over an exhibit. Do
15 you recognize what this document is?

16 A Yes, I do.

17 Q And what is it?

18 A This is a wedding invitation we created.

19 Q Okay. And who is the we there?

20 A Breanna Koski and I.

21 Q Well, so who designed this wedding invitation?

22 A Breanna Koski and I.

23 Q Can you briefly take me through your design process
24 for this particular invitation?

25 A Yeah, definitely. So this client was having her

1 wedding in New York at a waterfront outdoor venue. Blue was
2 her main color theme, and she really liked artistic kind of
3 abstract looking pieces. And she also liked things with a
4 romantic flair. She had a lot of floral elements in her
5 wedding.

6 And so we thought that this was the perfect
7 combination of all of that. We've got the very abstract dark
8 blue background bearing shades of blue kind of mimics the
9 water in the ocean a little bit. The lettering style is very
10 romantic, a little bit more laid back.

11 So all together it really expresses the style of her
12 event.

13 Q Let me point to the actual language. Who chose the
14 actual language in the invitation?

15 A We did with the client.

16 Q Okay. Let me point you to the line that says
17 request the pleasure of your company at the celebration of
18 their marriage. Do you see that line?

19 A Yes, I do.

20 Q And who chose that language?

21 A We did with the client.

22 Q And -- and why -- why did you choose that particular
23 language?

24 A So we chose request the pleasure of your company
25 because we're, you know, inviting the guests who are receiving

1 this to be at and celebrate this wedding. And also it's a
2 little bit more of an informal language. Request the honor of
3 your presence would be more for a formal church wedding, so
4 that reflected that aspect of the wedding.

5 And then at the celebration of their marriage is
6 really the focal point of that because that's what this
7 invitation is about celebrating this wedding. And so we
8 wanted that to be foremost.

9 Q Now how often is language like that used in the
10 wedding invitations you create?

11 A Pretty often.

12 Q Okay. Have you ever made a wedding invitation that
13 did not have language like that before?

14 A No, all language is celebratory at the wedding.

15 Q Well, let me ask you just about the font size of
16 this wedding invitation. So who chose the font size?

17 A Breanna and I did.

18 Q And can you take me through some of your thinking on
19 that?

20 A Yeah. So you'll notice the focal point of this is
21 the couple's names and they're the largest font size on this
22 piece. So we did that for a couple of reasons. First,
23 artistic, it really draws your attention there, gives a focal
24 point.

25 And then also the main focus of this is the couple.

1 It's their wedding and their celebration, so we wanted the
2 attention to be on them there. And then the second largest
3 font size which we also wanted to stand out is the venue and
4 the celebration of their marriage. We wanted people to know
5 right away when they look at it, hey, this is for a wedding.
6 Come and celebrate with us.

7 And then a lot of the main or practical details are
8 in a smaller block font just to lighten up the whole look and
9 they're not as key.

10 Q So moving on from the size to the style, who chose
11 the -- the style font?

12 A I did.

13 Q And could you briefly really quick take me through
14 the thinking on that?

15 A Yes. So the flourished lettering style is romantic,
16 relaxed, not extremely formal, kind of fun, little bit quirky.
17 And then the block lettering is very simple, very clean.

18 Q Looking at the invitation as a whole, how would you
19 describe its style?

20 A I would say modern, contemporary, abstract, somewhat
21 romantic.

22 Q Okay. And what were you trying to convey with this
23 wedding invitation?

24 A The -- the, you know, the celebratory attitude of
25 this wedding, that this is an exciting event, that this is

1 something -- this is the first piece the guests are going to
2 receive for this wedding. So we wanted them to be wowed, be
3 excited for this wedding, and also get an idea of the style of
4 what the couple has planned.

5 Q Let me -- well, on the same exhibit, let me tell you
6 to turn the page there. Okay. And what exactly is this page?

7 A This is the back side of the invitation.

8 Q Okay. And I'm going to point you to the text there
9 where it says Brush & Nib Studio dot com.

10 A Yes.

11 Q Do you see that?

12 A I do.

13 Q And what exactly is that?

14 A That is our business name and website.

15 Q Okay. How often do you add this text to your custom
16 wedding invitations?

17 A We always have it there.

18 Q And -- and why do you do that?

19 A It's like a signature. It's like we're signing our
20 work and saying, hey, we created this and we want our name to
21 be on it. And it's also letting people who receive it know
22 who we are, who created it. Hopefully they'll go to our
23 website and see our work.

24 Q Okay. Now that we've looked at this one wedding
25 invitation, talked about the text and things like that, what

1 typically changes from one wedding invitation you create to
2 another?

3 A The colors, the style of the artwork, the mood of
4 the invitation, the lettering style, the layout, everything
5 about it.

6 THE COURT: Did you want 9 in evidence?

7 MR. SKRUGGS: Oh, yes, Your Honor. I move to exh --
8 admit -- move to admit that exhibit.

9 MR. CAMPBELL: No objection.

10 THE COURT: 9 is admitted.

11 (Plaintiffs' Exhibit 9 admitted)

12 BY MR. SKRUGGS:

13 Q All right. I've handed you what is marked as
14 Exhibit 10. Do you recognize what this document is?

15 A Yes, I do.

16 Q And what is it?

17 A This is another wedding invitation we created.

18 MR. SKRUGGS: I -- I move that this would be
19 admitted, Your Honor.

20 THE COURT: Any objection?

21 MR. CAMPBELL: No, none, Your Honor.

22 THE COURT: Exhibit 10's admitted.

23 (Plaintiffs' Exhibit 10 admitted)

24 BY MR. SKRUGGS:

25 Q So let me point you to the lines in the middle there

1 where it says Natalie and Ryan invite you to share in the joy
2 of their marriage; do you see that?

3 A Yes, I do.

4 Q Who came up with that language?

5 A Breanna Koski and I with the client.

6 Q And what were you trying to convey with that
7 language?

8 A That this wedding is a joyful celebration.

9 Q And who came up with the general style or let me ask
10 you this. How would you describe the style of this
11 invitation?

12 A This is very clean and simple. The wedding was
13 taking place in Italy, so it has kind of a Italian flair.

14 Q And who came up with that style?

15 A The -- well, the client gave us the information
16 about her wedding which kind of inspired that look. And then
17 Breanna and I created the style.

18 Q Got you.

19 (Pause)

20 BY MR. SKRUGGS:

21 Q All right. I've handed you what's marked as Exhibit
22 -- well, let me go back. I do want to clarify this -- back to
23 Exhibit 10. Now just for the record --

24 A Yes.

25 Q -- what are the jaded edges around the outside of

1 the invitation?

2 A They're actually deckled edges.

3 Q Deckled edges.

4 A And they're -- they're hand torn and they give just

5 a rough unfinished look to the outside.

6 Q Okay. So was that on purpose?

7 A Yes, definitely.

8 Q All right. So that's Exhibit 11 that I handed you.

9 Do you recognize what this document is?

10 A Yes, I do.

11 Q And what is it?

12 A This is a chalkboard sign that we created.

13 Q And for what event did you create that for?

14 A We created this for a wedding.

15 Q And what is the text on the sign?

16 A The text says the two shall become one flesh so they

17 are no longer two but one. What therefore God has joined

18 together let not man separate, Mark 10:8 through 9.

19 Q And where does that -- where does that text come

20 from?

21 A From the Bible, Mark, Chapter 10, verses 8 and 9.

22 Q And who drew the letters on that sign?

23 A I did.

24 Q And what were you trying to convey in that?

25 A This scripture is just a foundational scripture

1 about marriage and God's design for marriage. And this is
2 something that the couple wanted as a focal point at their
3 wedding.

4 MR. SKRUGGS: I'd move that this would be admitted,
5 Your Honor.

6 THE COURT: Any objection?

7 MR. CAMPBELL: None.

8 THE COURT: Exhibit 11 is admitted.

9 (Plaintiffs' Exhibit 11 admitted)

10 BY MR. SKRUGGS:

11 Q I handed you Exhibit 12. What is this document?

12 A This is a wedding invitation we created.

13 Q Okay. And I want to point you to the line at the
14 middle that says invite you to the celebration of their
15 marriage. Do you see that?

16 A I do, yes.

17 Q Who came up with that language?

18 A Breanna and I.

19 Q And what were you trying to communicate with that
20 language?

21 A Again, just the celebratory nature of a marriage
22 event.

23 Q And how would you describe the style of this
24 invitation?

25 A This is a very light, summery garden themed style so

1 we had a lot of bright watercolor flowers and very flowing fun
2 calligraphy.

3 MR. SKRUGGS: I'd move that this would be admitted,
4 Your Honor.

5 THE COURT: Any objection?

6 MR. CAMPBELL: None, Your Honor.

7 THE COURT: Exhibit 12 is admitted.

8 (Plaintiffs' Exhibit 12 admitted)

9 BY MR. SKRUGGS:

10 Q Generally speaking, what inspires you to create your
11 art?

12 A I think nature is one of our biggest inspirations
13 and just the beauty that God's created all around us. We
14 believe that beauty comes from God. And so whether we see
15 that in nature or, you know, in the beautiful colors that he's
16 created that inspires us, how those colors work together.
17 We're inspired by architecture, textures, paper.

18 Q What do you generally try to convey in your artwork?

19 A Our main goal is to convey beauty, and we get our
20 idea of beauty from God.

21 Q So you're mentioning God. I do want to talk about
22 your religious beliefs right now. What religion do you adhere
23 to?

24 A Christianity.

25 Q Could you just give me a brief summary of your --

1 your religious beliefs?

2 A Yes. I believe that all people have sinned and
3 fallen short of God's glory and that we are unable to
4 reconcile ourselves to God so he sent his son Jesus Christ to
5 die for us to take the penalty of our sins on himself and to
6 give us his righteousness and to reconcile us to himself.

7 Q How important are your religious beliefs to you?

8 A Extremely important.

9 Q What areas of your life do your religious beliefs
10 affect?

11 A They affect every area of my life.

12 Q How do they aff -- how do your religious beliefs
13 affect your business?

14 A Again, every part of our business we want to be
15 honest and have integrity in how we conduct our business. We
16 want to treat everyone who comes to us, everyone who's a
17 client, everyone we come in contact with with love, with
18 respect, with dignity.

19 And we also want the artwork that we create to be
20 honoring to God and to reflect his glory and his beauty.

21 Q Why don't you keep your religious beliefs and your
22 business separate?

23 A We can't do that because in our religion our belief
24 in Christ is fundamental to who we are and to how we do
25 everything.

1 Q What are your religious beliefs about art?

2 A I believe that art should glorify God. I believe
3 that the art that I create I want to depict beauty and again,
4 that beauty comes from Him.

5 Q How do your religious beliefs affect how you promote
6 Brush & Nib?

7 A We want to again promote ourselves with honesty and
8 integrity. We want to be upfront and honest. We want to be
9 loving in all of our promotion of our business.

10 Q Another document there.

11 THE COURT: Phones need to be turned off.

12 BY MR. SKRUGGS:

13 Q Okay. I've handed you what's marked as Exhibit 13.
14 Do you recognize what this document is?

15 A Yes, I do.

16 Q And what is it?

17 A This is the meet us page from the Brush & Nib
18 website.

19 MR. SKRUGGS: I move that this would be admitted,
20 Your Honor.

21 MR. CAMPBELL: No objection.

22 THE COURT: Exhibit 13 is admitted.

23 (Plaintiffs' Exhibit 13 admitted)

24 BY MR. SKRUGGS:

25 Q Okay. Let me point to -- point you to the section

1 under your name there. Okay. Do -- do you see that kind of
2 text section?

3 A Yes, I do.

4 Q And who wrote that?

5 A I wrote that.

6 Q And who are you describing in that section?

7 A I'm describing myself.

8 Q Is everything in that section accurately describe
9 you?

10 A Yes, it does.

11 Q And when did you write that section?

12 A Around April 2015.

13 Q And when did it go up on your website?

14 A About that same time.

15 Q All right. Let me point you to the last three
16 sentences there where it says Jesus is my hope and salvation.
17 I am humbled by His grace and love. Phil 3:8. So what was the
18 Phil 3:8?

19 A It's a scripture verse. It's from Philippians,
20 Chapter 3, verse 8 and it --

21 Q What does -- what does that verse say?

22 A Yeah. It basically says whatever I had counted as a
23 gain before now I count as loss and rubbish that I would gain
24 Christ. And I consider everything rubbish compared with Him.

25 Q Why did you want to include those -- that language

1 on your website?

2 A Because this is a scripture that I love and it's
3 fundamental to my belief about my Christian faith. Basically
4 nothing that I bring to the table is of any value but only
5 what Christ has done in my life.

6 Q So besides this page, do you on any of your other
7 Brush & Nib media sites, do you reference your religious
8 beliefs?

9 A Yes, we do.

10 Q Let me talk to you about your religious beliefs
11 about marriage. What are your religious beliefs about
12 marriage?

13 A I believe that God created marriage to be a covenant
14 between a man and a woman that reflects first his glory and is
15 also a picture of Christ and his love for the church.

16 Q According to your religious beliefs, who can be
17 joined in marriage?

18 A One man and one woman.

19 Q Can three people be joined in a marriage?

20 A No.

21 Q Can two people of the same sex be jointly married?

22 A No.

23 Q And how did you develop these religious beliefs?

24 A From reading God's word.

25 MR. SKRUGGS: Your Honor, did I move to admit

1 Exhibit 13? I don't remember.

2 THE COURT: It's already admitted.

3 MR. SKRUGGS: Okay. Thank you.

4 (Pause)

5 BY MR. SKRUGGS:

6 Q Okay. I've handed you what's marked as Exhibit 15.

7 I skipped another exhibit. Do you recognize what this is?

8 A Yes, I do.

9 Q And what is it?

10 A This is the operating agreement for Brush & Nib
11 Studio.

12 MR. SKRUGGS: I move that this would be admitted,
13 Your Honor.

14 THE COURT: Any objection to 15?

15 MR. CAMPBELL: Your Honor, there's redactions on it.

16 THE COURT: What are those redactions?

17 MR. SKRUGGS: Your Honor, those are addresses of our
18 clients.

19 THE COURT: Are they home addresses, residential
20 addresses?

21 MR. SKRUGGS: Yes, Your Honor.

22 MR. CAMPBELL: No objection, Your Honor.

23 THE COURT: All right. 15's admitted.

24 (Plaintiffs' Exhibit 15 admitted)

25 BY MR. SKRUGGS:

1 Q Okay. I want to point you to section 3.3 --
2 A Okay.
3 Q -- where the title there is Brush & Nib Studio
4 affirms the following core beliefs; do you see that?
5 A Yes, I do.
6 Q Does Brush & Nib abide by the core beliefs
7 articulated in this section?
8 A Yes, we do.
9 Q Do you personally believe in those core beliefs
10 articulated in this section?
11 A Absolutely, yes, I do.
12 Q I want to point you to section 3.3, section E where
13 it says based on the above values, Brush & Nib affirms the
14 following goals and procedures. Do you see that?
15 A Yes, I do.
16 Q Does Brush & Nib abide by the goals and procedures
17 articulated in section E?
18 A Yes, we do.
19 Q Now let me point you to subsection 4 of that section
20 where it says, for example, Brush & Nib will decline any
21 request to create custom artwork that communicates ideas or
22 messages for those events, services, products, organizations
23 that contradict Biblical truth, demean others, endorse racism
24 and cite God to promote any marriage besides marriage between
25 one man and one woman such as same-sex marriage.

1 Does that statement accurately reflect Brush & Nib's
2 policy?

3 A Yes, it does.

4 Q Why does Brush & Nib have a policy of not creating
5 custom artwork that endorses racism?

6 A Because as Christians we fundamentally disagree with
7 and do not believe in racism. We believe everyone has been
8 created in God's image and should be treated with equal
9 dignity and respect.

10 Q Why does Brush & Nib have a policy of not creating
11 custom artwork that incites violence?

12 A Because we oppose violent behavior and we do not
13 want to promote or incite that.

14 Q And finally why -- why does Brush & Nib have a
15 policy of not creating custom artwork that promotes any
16 marriage besides the marriage between one man and one woman?

17 A Because we believe God created marriage as a union
18 between one man and one woman and those are the only marriages
19 that we can celebrate.

20 Q How does that policy affect Brush & Nib's pre-made
21 artwork?

22 A Can you clarify?

23 Q Well, let me -- let me withdraw that. Let me ask
24 this instead and ask it another way. Why is it against your
25 religious beliefs to create custom artwork promoting the

1 same-sex marriage ceremony?

2 A Because when we create a custom piece of art, we are
3 celebrating that event or that marriage along with our
4 clients. And so we as Christians can only celebrate and
5 participate in a marriage that is in line with what God says
6 marriage is.

7 (Pause)

8 BY MR. SKRUGGS:

9 Q I'm handing you a document. I've handed you what's
10 marked as Exhibit 16. Do you recognize what this document is?

11 A Yes, I do.

12 Q And what is it?

13 A This is a canvas painting and lettering piece that
14 Breanna and I created.

15 MR. SKRUGGS: I move that this would be admitted,
16 Your Honor.

17 THE COURT: Any objection?

18 MR. CAMPBELL: I'm not quite sure what the relevancy
19 of this one is, Your Honor.

20 THE COURT: I -- I don't know either.

21 MR. SKRUGGS: I think it'll become clear, Your
22 Honor.

23 THE COURT: Well, let's make it clear first.

24 MR. SKRUGGS: Your Honor, I'm asking whether
25 essentially they will sell this item for a homosexual client

1 or a heterosexual client.

2 THE COURT: Say that again.

3 MR. SKRUGGS: I'm asking will they create this item
4 and sell it for a homosexual client.

5 THE COURT: All right. Let's ask a question and
6 then you can move it into evidence.

7 MR. SKRUGGS: All right.

8 BY MR. SKRUGGS:

9 Q What is Brush & Nib's policy on creating this print
10 for a heterosexual person?

11 A We would do so.

12 Q And what is Brush & Nib's policy on creating this
13 print for a homosexual person?

14 A We would do so.

15 Q What is Brush & Nib's policy on creating this print
16 for an opposite sex married couple?

17 A We would do so.

18 Q And what is Brush & Nib's policy on creating this
19 print for a same-sex married couple?

20 A We would do so.

21 THE COURT: You want to move it into evidence now?

22 MR. SKRUGGS: Oh, yes. I'm sorry, Your Honor. I
23 move that would be into evidence.

24 THE COURT: Any objection to 16?

25 MR. CAMPBELL: No, Your Honor.

1 THE COURT: 16's admitted.

2 (Plaintiffs' Exhibit 16 admitted)

3 BY MR. SKRUGGS:

4 Q I just want to point you back to Exhibit Number 11.

5 A Okay, I have it.

6 Q Okay. And -- and I think this -- you testified
7 earlier this is the wedding sign.

8 A Yes.

9 Q What is Brush & Nib's policy on creating this --
10 this sign for an opposite sex couple's wedding ceremony?

11 A We would do so.

12 Q What is Brush & Nib's policy on creating this sign
13 when it's ordered by a homosexual client for her son's
14 opposite sex wedding ceremony?

15 A We would do so.

16 Q What is Brush & Nib's policy on creating this custom
17 sign for a same-sex couple's wedding ceremony?

18 A We would not do so.

19 Q Okay. And why -- why not?

20 A Because first of all, we cannot create any artwork
21 that we feel is celebrating or participating in a marriage
22 that as Christians we cannot celebrate with. And then also
23 this particular piece has scripture on it basically explaining
24 what God says about marriage. And so to use that in a context
25 that something that God does not call marriage we feel would

1 violate our consciences and be a defamation of his work.

2 Q Let me point you to back to Exhibit 9.

3 A Okay.

4 Q Okay. Earlier you talked about how you did this as
5 a wedding invitation. What is Brush & Nib's policy on
6 creating this custom item when it's ordered by a homosexual
7 client for her son's opposite sex wedding ceremony?

8 A We would create that.

9 Q What is Brush & Nib's policy on creating this custom
10 invitation for a -- when it's ordered by a heterosexual client
11 for her son's same-sex wedding ceremony?

12 A We would not do so.

13 Q So explain to me the difference -- what's the
14 difference between the wedding invitation and the prints?

15 A This wedding invitation is celebrating this wedding,
16 and it's a part of the wedding celebration and ceremony and
17 event. And the print is just a piece of home decor that's not
18 celebrating a marriage.

19 Q So what factors do you use when you are making that
20 -- what -- when you make the determination of what you will
21 create and what you won't?

22 A When we create something we look at the message that
23 we feel we're sending through that and what we're
24 participating in or celebrating with that piece and if that's
25 something that we -- a message we can convey and something

1 that we can do that doesn't violate our consciences.

2 Q What role does a client's sexual orientation play in
3 that decision making?

4 A It doesn't play a role.

5 Q Has Brush & Nib ever received a request to create
6 custom artwork for a same-sex wedding ceremony?

7 A Yes, we have.

8 Q And when did you receive that request?

9 A I believe May of this year, 2016.

10 (Pause)

11 BY MR. SKRUGGS:

12 Q Okay. I've handed you what's marked as Exhibit 18.

13 A Yes.

14 Q What -- what is this document?

15 A This is an inquiry through our website.

16 MR. SKRUGGS: And Your Honor, I move this would be
17 admitted. We did redact certain private information on this
18 request.

19 THE COURT: Mr. Campbell.

20 MR. CAMPBELL: Your Honor, if they'll stipulate that
21 they did nothing to verify this was a real request and they do
22 not know it's a real request, I won't object. Without that
23 stipulation, I object.

24 MR. SKRUGGS: We're --

25 THE COURT: You have concerns as to whether or not

1 this is a genuine request?

2 MR. CAMPBELL: Yes Judge.

3 MR. SKRUGGS: Your Honor, we want to stipulate that
4 we will give the Court a copy of -- we have concerns. We
5 don't obviously want to put out someone's private information
6 to the public, but we're willing to give the Court -- and
7 we've given Opposing Counsel an unredacted version.

8 MR. CAMPBELL: Judge, if you look at the date of
9 this, it's May 20th. The lawsuit was filed I believe on May
10 12th. After the lawsuit was filed because of newspaper
11 publicity, they received a number of forms like this of
12 derogatory comments. This was during the same time period.

13 There's -- there's no one has ever demanded it to
14 determine whether it reflected a real request. It was just
15 part of the derogatory comments they were getting as a result
16 of the publicity they generated from the lawsuit.

17 MR. SKRUGGS: Your Honor --

18 THE COURT: Okay.

19 MR. SKRUGGS: -- Opposing Counsel can make that
20 argument all -- you know, as he sees fit, but obviously no
21 derogatory comments on the request. So --

22 MR. CAMPBELL: But Judge, there's no right to
23 privacy to redact it. It's -- it's a document that was given
24 to a business that says it's public.

25 MR. SKRUGGS: Your Honor, when someone requests

1 information, you can have personal client or private client
2 information in the same way that we can get a protective
3 order, Your Honor, to protect the privacy interests of
4 confidential information and of -- of trade secrets.

5 THE COURT: Where's the original -- not the original
6 but the unredacted?

7 (Pause)

8 THE COURT: Well, let's substitute this and we'll --
9 I'll consider putting it under seal, but I don't see why it
10 has to be under seal.

11 So I think you need to -- we're going to have to
12 mark this as a new exhibit number.

13 MR. SKRUGGS: Can we just replace the -- the --

14 THE COURT: No.

15 MR. SKRUGGS: Okay.

16 THE COURT: Sorry.

17 MR. SKRUGGS: That's fine.

18 THE COURT: Give it to my clerk. So what number
19 would it be Maiti (ph)?

20 THE CLERK: 51.

21 THE COURT: So it's 51.

22 THE CLERK: This is an unredacted copy of which one?

23 MR. SKRUGGS: Of Number 18.

24 THE CLERK: 18.

25 (Pause)

1 MR. SKRUGGS: Since we only have one copy, your
2 Honor --

3 THE COURT: That's all right. You said Counsel
4 had --

5 MR. SKRUGGS: I just wanted -- I apologize that you
6 don't have one.

7 THE COURT: That's okay. I've looked at it.

8 MR. SKRUGGS: Okay. Okay. So just to clarify where
9 I am, I think I've moved that to be admitted and you granted
10 that request; is that right, Your Honor?

11 THE COURT: Well, do it again because she hasn't
12 seen that one.

13 MR. SKRUGGS: Got you.

14 BY MR. SKRUGGS:

15 Q All right. What is this document, Ms. Duka?

16 A This is an inquiry through our website.

17 MR. SKRUGGS: Okay. I move that this would be
18 admitted.

19 MR. CAMPBELL: No objection to the unredacted
20 version.

21 THE COURT: All right.

22 MR. CAMPBELL: 51.

23 THE COURT: 51 is admitted.

24 (Plaintiffs' Exhibit 51 admitted)

25 BY MR. SKRUGGS:

1 Q So -- excuse me -- just to get back on my train of
2 thought there, what did you say this was again?

3 A This is a request that came through a form on our
4 website.

5 Q How does it compare to other requests that you have
6 received?

7 A It's similar.

8 Q Okay. Is there anything in this document that --
9 that leads you to think this is a fake request?

10 A No, there is not.

11 Q And what do you think this request is for?

12 MR. CAMPBELL: Object to speculation.

13 THE COURT: Sustained.

14 MR. SKRUGGS: I asked just based on what she thinks
15 it's for, Your Honor, not what it is for.

16 THE COURT: Well, you're asking her to speculate
17 because she doesn't know I assume.

18 BY MR. SKRUGGS:

19 Q Did you do -- when you receive a request --

20 THE COURT: Hold on one second. We've lost our FTR.

21 UNIDENTIFIED VOICE: It's --

22 THE CLERK: I think so.

23 UNIDENTIFIED VOICE: -- it's -- I mean it's not
24 recording.

25 THE COURT: Okay. We need to take a break then and

1 get it back up.

2 MR. SKRUGGS: Yes, Your Honor.

3 THE COURT: I'm concerned about your time, Counsel.

4 (Off record)

5 THE COURT: Just speak up so everyone --

6 THE WITNESS: Sorry about that.

7 THE COURT: Sound's not traveling very well in this
8 courtroom. Go ahead.

9 BY MR. SKRUGGS:

10 Q I think I asked you why have you not responded to
11 this request?

12 A Exhibit 19?

13 Q Yes, Exhibit 19.

14 A Yes. We did not respond because we didn't feel that
15 this was a legitimate request.

16 Q And why did you feel like it was not a legitimate
17 request?

18 A For several reasons. First, when asked how many
19 guests are you inviting, the individual that filed this form
20 says the world. And then when asked how did you hear about
21 us, it says from your hatred, fear, and ugliness. And then in
22 the description of their wedding, they just don't speak about
23 their wedding but their feelings about us.

24 Q I'm going to hand you what's marked as Exhibit 21.

25 THE COURT: Are you offering that, Counsel?

1 MR. SKRUGGS: Oh, yes, Your Honor. I apologize. I
2 move that would be admitted.

3 MR. CAMPBELL: No objection.

4 THE COURT: 19's admitted.

5 (Plaintiffs' Exhibit 19 admitted)

6 BY MR. SKRUGGS:

7 Q So on to 21, do you recognize what this document is?

8 A Yes, I do.

9 Q And what is it?

10 A This is gay weddings dot com, and it's a list of
11 wedding invitation companies in Arizona that create for
12 same-sex weddings.

13 Q Roughly how many companies are listed there?

14 MR. CAMPBELL: Objection, Your Honor. You know, if
15 this were a racial discrimination case we wouldn't say there's
16 other hotels that serve blacks. We object to the relevancy of
17 this.

18 THE COURT: What is the relevance, Counsel?

19 MR. SKRUGGS: Your Honor, in the narrow tailoring
20 analysis, they have to show that this -- their regulation is
21 the most narrowly tailored thing. If the -- if other people
22 can get access to invitations, that goes directly to that.

23 MR. CAMPBELL: Judge, sometimes I think we're two
24 ships passing in the night, but we can deal with that of
25 course in the legal memorandum. But there's no relevancy to

1 -- it doesn't justify their discrimination that there are
2 other businesses available.

3 MR. SKRUGGS: Your Honor, they can make that legal
4 argument, but one of the interests that's commonly used to
5 justify public accommodation laws is the need to provide
6 access to certain things. So we can -- if we -- you know, if
7 it goes directly to the heart of the fact that there's access
8 out there.

9 THE COURT: I'll allow it and I'll give it the
10 weight it deserve -- I think it deserves.

11 BY MR. SKRUGGS:

12 Q So I thi -- I believe I asked you how many
13 invitation companies that were listed on this website.

14 A I believe over 50.

15 Q Okay. Have you ever contemplated using information
16 on this webpage for -- in relation to Brush & Nib?

17 A Yes, we have. This would be the website that we
18 would direct people to if they were looking for invitation
19 companies for their same-sex wedding ceremony.

20 Q Let me hand you what's marked as --

21 THE COURT: So you're offering 21?

22 MR. SKRUGGS: Yes, Your Honor.

23 THE COURT: 21 is admitted over objection.

24 (Plaintiffs' Exhibit 21 admitted)

25 BY MR. SKRUGGS:

1 Q Let me hand you what's marked as Exhibit 22. Do you
2 recognize what this document is?

3 A Yes, I do.

4 Q And what is it?

5 A This is the vision statement that Breanna and I
6 would like to put on our Brush & Nib website.

7 MR. SKRUGGS: Okay. I move that this would be
8 admitted, Your Honor.

9 THE COURT: Any objection?

10 MR. CAMPBELL: Your Honor, it's talking about a
11 hypothetical. Are they saying that this is -- are they
12 offering -- it's irrelevant they're offering this that somehow
13 they think this statement would get them in trouble?

14 THE COURT: Yes. They haven't posted it. My
15 understanding from what I've read in their complaint in their
16 legal memoranda was that they haven't posted it because they
17 believe it would violate the ordinance. But they would like
18 to post it. Is that correct, Counsel?

19 MR. SKRUGGS: That's correct, Your Honor.

20 MR. CAMPBELL: Well, if that's why they're offering
21 it, then we won't object.

22 THE COURT: All right. Exhibit 21's (sic) admitted.
23 (Plaintiffs' Exhibit 22 admitted)

24 BY MR. SKRUGGS:

25 Q And I think your testimony said you wanted to admit

1 this.

2 A Yes.

3 Q Have you done so yet?

4 A No, we have not.

5 Q And why not?

6 A We have not done so because we are waiting for our
7 rights on this to be clarified in terms of the law.

8 Q If you had that clarity, when would you post this
9 statement?

10 A Immediately. We would have posted it already.

11 Q I'll hand you another document.

12 THE CLERK: Sorry, was that 21 or 22 just to --

13 THE COURT: That was 21.

14 MR. CAMPBELL: Actually, it's 22 I think, Your
15 Honor.

16 MR. SKRUGGS: It's 22.

17 THE COURT: Oh, I'm sorry. I made a mistake. Thank
18 you.

19 THE CLERK: Okay.

20 THE COURT: That was 22. So 22's admitted, not 21.
21 Thank you.

22 THE CLERK: So 21 is not admitted?

23 THE COURT: No, 21 is admitted over objection.

24 MR. SKRUGGS: Your Honor, I think it's actually --
25 is it not 22?

1 THE CLERK: I have 20.

2 MR. CAMPBELL: 21 was admitted over objection. 22 I
3 understand the Court had admitted.

4 MR. SKRUGGS: Okay.

5 THE CLERK: Got it. Okay.

6 THE COURT: That's correct.

7 BY MR. SKRUGGS:

8 Q Hand you another document.

9 A Thank you.

10 Q Do you recognize what this document is?

11 A Yes, I do.

12 Q And what is it?

13 A This is an article by John Piper about marriage and
14 the glory of God.

15 MR. CAMPBELL: What exhibit number is it?

16 MR. SKRUGGS: 24.

17 BY MR. SKRUGGS:

18 Q Actually let me point you back to Exhibit 22 there.
19 I apologize. Now I believe in that document has a blue where
20 it says click here. Do you see that bar code?

21 A Yes, I do.

22 Q And what happens if you click there?

23 A It goes to this article by John Piper.

24 Q And is that article Exhibit 24?

25 A Yes, it is.

1 Q Okay. Back to Exihi -- sorry, I apologize -- back
2 to Exhibit 22. You testified that you want to post this
3 statement. Why do you want to post this statement on your
4 website?

5 A This statement describes what we believe about God,
6 our artistic vision, what we believe about beauty and also
7 because of those beliefs what we can and cannot create.

8 Q Okay. What role do your religious beliefs play in
9 that desire?

10 A Our desire to post this statement?

11 Q Yes.

12 A They play a very big role. We feel first of all
13 that we want to be upfront and honest with everyone who comes
14 to our website about what we can and cannot create and to
15 respect them in that way.

16 And then also we want to be open and share what we
17 believe. And our faith in Christ is fundamental to our lives
18 so that's something that we want to be sharing with the world.

19 Q Let me hand you the last exhibit here I think, Ex --
20 Exhibit

21 THE COURT: And you --

22 MR. SKRUGGS: -- 25.

23 THE COURT: You didn't ask to admit 24. Are you
24 wanting 24?

25 MR. SKRUGGS: I apologize, Your Honor. Could you --

1 we move to admit 24.

2 THE COURT: This is the article that comes up
3 through 22 if you click on it if they were to post it.

4 MR. CAMPBELL: For that limited purpose, no
5 objection.

6 THE COURT: All right. 24 is admitted.

7 (Plaintiffs' Exhibit 24 admitted)

8 BY MR. SKRUGGS:

9 Q All right. I'm pointing you to Exhibit 20 -- let's
10 see that -- 25.

11 A Yes.

12 Q What is this document?

13 A This is the website for Sundance Invitations which
14 is our wedding invitation company in Phoenix.

15 MR. SKRUGGS: I move that this would be admitted,
16 Your Honor.

17 MR. CAMPBELL: Objection, Your Honor, hearsay.

18 MR. SKRUGGS: Your Honor --

19 MR. CAMPBELL: Anything -- if it's anything over the
20 Internet and not something I can authenticate.

21 MR. SKRUGGS: Your Honor, I'm just saying that she's
22 -- it goes to the effect of the (indiscernible) seeing that
23 she's been to this website.

24 THE COURT: It goes to what?

25 MR. SKRUGGS: The effect on the -- the observer that

1 she's seen this website and she learned -- learned what she
2 perceived to be information on it.

3 THE COURT: If you're not offering it for the truth
4 or you are offering it for the truth?

5 MR. SKRUGGS: Well, Your Honor, we are offering it
6 to the fact that our client has seen this information.

7 MR. CAMPBELL: I don't know what that's relevant
8 for, Your Honor.

9 MR. SKRUGGS: I -- I -- apologize, Your Honor. I --
10 I will -- well, I'll -- I'll --- we'll offer it for the truth,
11 Your Honor.

12 THE COURT: Well, then it's hearsay.

13 MR. SKRUGGS: Okay.

14 THE COURT: So the objection's sustained.

15 BY MR. SKRUGGS:

16 Q Ms. Duka, how much of Brush & Nib's business comes
17 from its custom artwork?

18 A The majority.

19 Q How much of Brush & Nib's business comes from its
20 wedding-related custom artwork?

21 A The majority of our custom artwork is for weddings.

22 Q How would your business be affected if you had to
23 stop doing wedding-related custom artwork?

24 A It would be greatly affected. Wedding is just
25 something that we love to do and we love to create for. And

1 also if we were not able to create for weddings, that would
2 cause us to have to either significantly restructure our
3 business or potentially consider closing it.

4 Q How has this lawsuit personally affected you?

5 A It has been difficult and at times stressful and
6 challenging and difficult to hear some of the comments that
7 are made.

8 Q Do you still want to continue this lawsuit?

9 A Yes, I do.

10 Q And why is that?

11 A Because I want the freedom to create and to run my
12 business in accordance with my faith and that's extremely
13 important to me and to be able to share that.

14 MR. SKRUGGS: That's all the questions I have.

15 THE COURT: Mr. Campbell, cross.

16 CROSS EXAMINATION

17 BY MR. CAMPBELL:

18 Q Ms. Duka, am I right from your testimony that you
19 have a full-time job?

20 A No.

21 Q Okay. You work -- you work for some other business,
22 Pregnancy Resource Center?

23 A Yes.

24 Q And is that a daytime job for you?

25 A Yes, it's a part-time job.

1 Q All right. Now this business started on or about
2 May 21st of 2015, true?

3 A That is correct, yes.

4 Q And you filed articles of organization with the
5 Arizona Corporation Commission, right?

6 A Yes.

7 Q And that's because you wanted the benefit of the law
8 with respect to limited liability companies, true?

9 A That is correct.

10 Q You set it up as a for-profit business, correct?

11 A We did.

12 Q And we asked for financial information regarding
13 this company, and you gave us financial information from June
14 of 2015 until May of 2016. And the business generate rev --
15 generated revenue of about \$8,000 over that whole year,
16 correct?

17 A I don't have the number off the top of my head, but
18 that sounds generally correct, yes.

19 Q All right. Let me just show you something. Let's
20 see if this just for purposes of -- if it refreshes your
21 recollection.

22 And my only question is does this refresh your
23 recollection that you earned just a little over \$8,000?

24 A Yes, it does.

25 Q And it's not clear to me --

1 MR. SKRUGGS: Your Honor, objection, this
2 document --

3 THE COURT: The document's not in evidence.

4 MR. SKRUGGS: Oh, I apologize, Your Honor.

5 BY MR. CAMPBELL:

6 Q Have you done six weddings in the last year?

7 A In 2016?

8 Q From June 15th of 2015 to May of 2016, the period of
9 time you gave us financial records.

10 A Give me just a moment to verify that.

11 (Pause)

12 THE WITNESS: I believe it was more like eight.

13 BY MR. CAMPBELL:

14 Q Eight weddings over --

15 A Yes.

16 Q -- the whole year?

17 A Yes.

18 Q And some of those were out of the country I gather?

19 A No.

20 Q I thought you said you sent something to Italy or --
21 or the wedding was out of the country?

22 A Yes. The -- the client was local.

23 Q You filed taxes for the calendar year 2015?

24 A Yes.

25 Q And you just broke even, correct?

1 A We -- we were slightly above, just slightly.

2 Q All right. You started the business without any
3 legal help, correct?

4 A That is correct.

5 Q But you did get legal help in contemplation of this
6 lawsuit, true?

7 A Yes.

8 Q And the Alliance Defending Freedom gave you
9 corporate help in terms of drafting your articles of -- or
10 your operating agreement?

11 MR. SKRUGGS: Your Honor, I object to this line of
12 questioning. I don't see why this is relevant.

13 THE COURT: What is the relevance?

14 MR. CAMPBELL: Your Honor, we think this suit is a
15 made up suit. We've already established that it may have
16 started one way, but it's turned into a vehicle really for
17 another cause.

18 MR. SKRUGGS: Your Honor, I -- I object to that. I
19 think that if they want to make that legal argument, they can
20 go ahead, but we have our clients here. I just don't see the
21 relevancy of that. They --

22 THE COURT: What do you mean by -- what --

23 MR. CAMPBELL: I guess my only question was who
24 prepared the operating agreement.

25 THE COURT: So what --

1 MR. SKRUGGS: Your Honor, it's still privileged.

2 THE COURT: It's not privileged if you prepare a
3 document and you file it with the Corporation Commission, so.

4 MR. SKRUGGS: But --

5 THE COURT: So, Counsel, are you saying that -- that
6 the documents that we've put into evidence regarding their
7 mission statement were not in existence by them and they were
8 put in later in order to file this lawsuit?

9 MR. CAMPBELL: Your Honor, let me lay some
10 foundation for that.

11 BY MR. CAMPBELL:

12 Q When you -- when you started the company all you
13 filed was articles of organization, correct?

14 A All we filed with regard to what?

15 Q When you started the business in May of 2015 --

16 A Yes.

17 Q -- remember they showed you the articles of
18 organization that --

19 A Yes.

20 Q -- were handwritten by you, correct?

21 A Yes.

22 Q you did that without any legal help, correct?

23 A That is correct, yes.

24 Q The operating agreement wasn't done until 2016,
25 correct?

1 A That is correct, yes.

2 Q And it was done by the lawyers here in the
3 courtroom?

4 MR. SKRUGGS: Again, Your Honor, I object. I -- I
5 don't see why it matters what -- which lawyers helped them
6 with documents. That's typical for a business, Your Honor.

7 THE COURT: Overruled. I'll -- I'll let it in and
8 give it the weight I think it deserves.

9 BY MR. CAMPBELL:

10 Q You could answer the question.

11 A Could you repeat the question for me?

12 Q The operating agreement was prepared for you by the
13 lawyers here in the courtroom representing you, true?

14 A I do not know which particular lawyers assisted with
15 it, but we did receive legal assistance in creating it.

16 Q In the same way with respect to the contracts that
17 were prepared for your clients, true?

18 A We received assistance, yes.

19 Q All right. Now the lawsuit was filed on May 12th,
20 2016?

21 A That is correct.

22 Q And before the lawsuit was filed, you never had any
23 same-sex couple ask you to do a wedding, true?

24 A That is correct.

25 Q So of the eight weddings that were done before May

1 of 2016, none of them involved a same-sex couple, right?

2 A Correct.

3 Q After the lawsuit was filed, on or about -- the
4 lawsuit was filed May 12th. And they've already introduced
5 one email that you got which was derogatory, correct?

6 A Yes.

7 Q The lawsuit stirred up passions among some people
8 who wrote emails expressing that to you, right?

9 A That is correct, yes.

10 Q You got more than one, true?

11 A Yes.

12 Q And the email that was Exhibit Number 51 came on May
13 20th the same day as the other email with the derogatory
14 comment, correct?

15 A I believe so. I would need to double check that.
16 Yes.

17 Q You did nothing to contact them and determine
18 whether this was someone that really wanted services, true?

19 A Which request are you referring to?

20 Q The one that you claim was from a same-sex couple.

21 A Yes, we never investigate potential clients.

22 Q You never investigated them. They never got back in
23 touch with you again.

24 A That is correct.

25 Q You have no reason to believe that was a true

1 request as opposed to someone just trying to harass you,
2 correct?

3 MR. SKRUGGS: Objection, Your Honor, calls for
4 speculation.

5 THE COURT: It does. Sustained.

6 BY MR. CAMPBELL:

7 Q You have no reason to believe it's a true request?

8 A We have no reason to --

9 MR. SKRUGGS: Your Honor, again, same objection.

10 THE COURT: Well, I think that question actually is
11 okay.

12 THE WITNESS: We have no reason to believe it is not
13 a true request.

14 BY MR. CAMPBELL:

15 Q Answer my question, please. You have no reason to
16 believe it's a true request, correct?

17 A It is similar to all requests we receive so with any
18 request it's possible I suppose that it could not be a true
19 request. But we take it at face value unless there's
20 something that obviously identifies it to be illegitimate.

21 Q All right. From May 20th till today, you have not
22 received a single request for a same-sex couple's marriage,
23 true?

24 A That is correct.

25 Q Now the City of Phoenix -- to your knowledge no

1 civil rights complaint has been filed against you with the
2 City of Phoenix, true?

3 A To my knowledge that is true, yes.

4 Q To your knowledge no investigation has been
5 conducted against you by the City of Phoenix, true?

6 A That is true, yes.

7 Q To your knowledge no criminal investigation has been
8 conducted against you by the City of Phoenix, true?

9 A True.

10 Q With respect to the City's program with respect to
11 equality, are you aware that the City has a conciliation and
12 mediation program for people that file complaints?

13 A I am not aware of that, no.

14 Q All right. Have you ever been invited into any
15 conciliation and mediation program by the City of Phoenix for
16 anyone that's filed a complaint?

17 A No, I have not.

18 Q Do you know whether or not the City of Phoenix has
19 ever initiated a criminal complaint referral under the
20 Administrative Rule regarding discrimination for public
21 accommodations?

22 A To our business?

23 Q No, to your knowledge, do you know if they have ever
24 done a criminal referral with respect to discrimination and
25 public accommodations?

1 A I don't know if I can answer that question. I'm not
2 sure.

3 Q Okay. Now with respect to the business, you
4 mentioned a home studio. I take it you did the business at
5 your home?

6 A It is at Breanna Koski's home.

7 Q Okay. Now you created your own website?

8 A Yes, we did.

9 Q And you created the website because you wanted to
10 solicit business from the public?

11 A That was one of the reasons.

12 Q All right. Well, you wanted to solicit business
13 from the public, but this is a for-profit business, true?

14 A It is a for-profit business, yes.

15 Q All right. And you understand that we're a very
16 diverse country, and the public encompasses a lot of people
17 with very diverse beliefs, true?

18 A Yes.

19 Q Your website has references to God?

20 A It does, yes.

21 Q Has anyone from the City of Phoenix at any time come
22 forward and prevented you from saying what you're saying on
23 your website as of today?

24 MR. SKRUGGS: Objection, Your Honor, calls for
25 speculation.

1 (Whispered conversation)

2 THE COURT: Okay.

3 MR. CAMPBELL: To your knowledge --

4 MR. SKRUGGS: And a legal -- and a legal opinion,
5 Your Honor.

6 THE COURT: Overruled.

7 BY MR. CAMPBELL:

8 Q You may answer.

9 A To our knowledge no individual has come to us to
10 make a complaint like that.

11 Q Now you're in the market of selling paper products,
12 correct?

13 A We're in the market of creating custom artwork.

14 Q And you create on paper, right?

15 A That's one of the things that we create on, yes.

16 Q Well, you do it on chalkboards too. But by in large
17 you're selling paper products over the website, correct?

18 A That we do sell paper products on our Etsy shop.

19 Q Right. And that could be business cards, right?

20 A Business cards are a custom item, but yes, we do
21 create business cards.

22 Q Pre-made prints?

23 A Yes.

24 Q Pre-made letterhead?

25 A We do not have any pre-made letterhead.

1 Q Okay. But with respect to anything that is pre-
2 made, you'll sell that to anyone, right?

3 A That is correct, yes.

4 Q Doesn't matter who they are?

5 A Yes.

6 Q And if someone buys your pre-made pro -- products
7 and they intend to use it in their wedding ceremony, you don't
8 care, correct?

9 A When we create a pre-made product, it's not created
10 with a particular event or client in mind. You know, we
11 create our prints and our thank you cards just to create
12 something beautiful for a decoration or -- or a thank you card
13 purpose so we have no control over how it's used after that.

14 Q Do you have any pre-made items that contain
15 scriptural references?

16 A Yes, we do.

17 Q All right. So let's say someone from the LGBT
18 community said I'd love to see that in my wedding and they
19 purchase that pre-made art that you created. You're fine with
20 selling them that, true?

21 A We will sell pre-made art to anyone.

22 Q So your objection is -- well, do you do semi custom
23 art?

24 A Everything that we create that's cu -- that has a
25 custom element we consider to be a custom piece.

1 Q All right. You sat in in Breanna's deposition,
2 didn't you?

3 A I did, yes.

4 Q Do you remember her testifying under oath that you
5 do semi custom art?

6 A Yes, I do.

7 Q What is semi custom art?

8 A She was referring to pieces where a portion of the
9 design has already been created and then that's combined with
10 other custom elements.

11 Q For example, let's say some -- on your website you
12 have some of the wedding invitation pieces you've created,
13 right?

14 A Yes.

15 Q And if someone were to come to you and say, you
16 know, I really love that. That's a great piece. Can I have
17 that? You know, that's semi custom art that you'll sell to
18 them, right?

19 A No, that would be considered custom because all
20 wedding invitations have at the very least the custom element
21 of the lettering.

22 Q All right. Let's say you have some of these cards.
23 They have pretty leaves around the edges of them, right?

24 A Yes.

25 Q All right. And it says you're invited to our

1 wedding, right?

2 A Yes.

3 Q So let's say someone comes to you and say, you know,
4 I just love this card. I want the exact same thing except I
5 want our names rather than these people's names. Will you
6 sell it to them?

7 A It would depend upon the event that it is for. This
8 is a --

9 Q It's for a wedding.

10 A -- custom piece.

11 Q Will you sell them that pre-made wedding invitation
12 except for the names?

13 A We do not consider it to be pre-made. It contains a
14 custom element that we create for that particular client and
15 for their wedding.

16 Q They want it exactly the same way so they want
17 different names. It's everything but the names that you've
18 already done, correct?

19 A The names though being done --

20 MR. SKRUGGS: Your Honor, objection, asked and
21 answered.

22 THE COURT: You may answer.

23 THE WITNESS: The names are done in calligraphy or
24 hand lettering and that process is very artistic, you know,
25 that maybe the first name's used or multiple names and how

1 that works with the rest of the layout. It's a very custom,
2 very artistic process.

3 BY MR. CAMPBELL:

4 Q But the only thing you're objecting to with respect
5 to a same-sex couple marriage if they like this on their card,
6 it's already done, the only thing you object to is writing two
7 male names or two female names?

8 MR. SKRUGGS: Objection, Your Honor, misstates --

9 THE COURT: Overruled.

10 THE WITNESS: When I create something for a wedding,
11 I am celebrating that wedding and I'm sending a message of
12 celebration about that wedding.

13 BY MR. CAMPBELL:

14 Q Who's getting married?

15 A In which -- what -- what are you referring to?

16 Q People that are getting married go to people in the
17 wedding business, correct?

18 A Yes.

19 Q And it's their wedding, correct?

20 A That is correct, yes.

21 Q And they're the ones sending the message to their
22 friends and to their family that they're getting married,
23 right?

24 MR. SKRUGGS: Objection, Your Honor, calls for
25 speculation.

1 THE COURT: Overruled.

2 THE WITNESS: When a wedding invitation is sent out,
3 it is coming as something being sent by the couple, but it's
4 also conveying our message and our artistic talent as well.
5 We share in that.

6 BY MR. CAMPBELL:

7 Q It will go quicker if you just answer my question.
8 The couple wants to send a message to their friends and family
9 about the day they're getting married and to invite them
10 there, true?

11 A That is true, but we are also sending a message.

12 Q And they're the ones that decide whether they're
13 going to buy your art, correct?

14 A That is correct, yes.

15 Q If they don't like what you do, they can just say
16 we're not buying this.

17 A That is true, yes.

18 Q They direct what's not on that card, correct?

19 A They have a part in, you know, we -- we use their
20 inspiration for their event as the raw materials. But we are
21 the ones creating that. It's art created by us.

22 Q They can absolutely refuse to accept it and ask you
23 to redo it, true?

24 A They can and --

25 Q The customer's in charge, correct?

1 A No, we are ultimately in charge of what we create
2 and we can reject a request for a change and --

3 Q And the customer can say --

4 A -- that is ultimately our decision.

5 Q -- I'm not going to buy it.

6 A Yes.

7 Q You have lots of competitors, correct?

8 A I believe so, yes.

9 Q Ever been to a Kinko's?

10 A Maybe a long time ago.

11 Q You understand you can go into these computer
12 printing stores and you can work with someone there to do a
13 wedding invitation. You're aware of that, aren't you?

14 MR. SKRUGGS: Your Honor, objection, speculation.

15 THE COURT: If she knows. If you know.

16 THE WITNESS: I was not aware of that. That could
17 -- could be true. I don't know.

18 BY MR. CAMPBELL:

19 Q Okay. You're not aware of any computer printing
20 companies in your work?

21 A Oh, I am. You were referring to Kinko's
22 specifically, and I'm not --

23 Q Okay. You're --

24 A -- I'm not familiar with what -- with all services
25 offered by Kinko's.

1 Q You're aware of computer graphic companies that
2 create wedding invitations, right?

3 A Yes, I am.

4 Q And customers go in to them and they have a host of
5 things they can pick, right?

6 A Yes.

7 Q They can pick all different sorts of calligr --
8 calligraphic forms, correct?

9 A Yes.

10 Q They can pick card sizes?

11 A Yes.

12 Q They can pick paper, correct?

13 A I believe so.

14 Q They can import art by computer?

15 A I believe so, yes.

16 Q And they can print it up by pressing a button,
17 right?

18 A Can you clarify? Are you referring to --

19 Q Just --

20 A -- a company that's printing or are you referring to
21 someone bringing something in to by copied? I don't
22 understand.

23 Q Someone creating the wedding invitation they want in
24 a computer graphics store and they're printing it out.

25 A Can you clarify who's the one who created that?

1 Q I can't do it any more than what I've done.

2 A I know. I'm sorry.

3 Q Can you answer the question or not?

4 A I just need you to clarify who's the one that
5 created it?

6 THE COURT: She can't answer the question so you
7 need to find another one, Counsel.

8 BY MR. CAMPBELL:

9 Q You would consider -- do you think the work that the
10 computer company does in selecting fonts and colors, is that
11 art?

12 MR. SKRUGGS: Objection, Your Honor, I don't see the
13 relevance of th -- of this.

14 THE COURT: Overruled. I think the relevance is
15 what her definition of art is.

16 MR. SKRUGGS: Well, that --

17 BY MR. CAMPBELL:

18 Q Is that art?

19 A Yes, I believe that's a type of graphic art.

20 Q You would sell it to Muslims?

21 A Yes.

22 Q You would do custom wedding invitations for Muslims,
23 true?

24 A Yes, we would.

25 Q You would sell to Hindus?

1 A Yes.

2 Q You'll do custom wedding invitations for Hindus,
3 true?

4 A I believe we would, yes.

5 Q You'll sell to atheists?

6 A Yes, we would.

7 Q You'll do custom wedding invitations for atheists?

8 A Yes, we would.

9 Q All right. You realize that since the Protestant
10 Reformation, the Christian churches have split into many
11 different denominations?

12 A I'm aware of that, yes.

13 Q All right. And for example, churches have split
14 about whether you can have music or not have music during your
15 services, correct?

16 A I'm not aware of that particularly, but it could be
17 true.

18 Q All right. With respect to Christian religious
19 denominations that are different than the church you belong
20 into -- you belong to, you will sell them wedding invitations,
21 true?

22 A Yes.

23 Q And you'll do custom wedding invitations for them,
24 correct?

25 A Based on the information you have given me, yes.

1 Q You're aware that there are Christian churches that
2 believe same-sex couple marriage is okay and is not forbidden
3 by God, correct?

4 A I believe so, yes.

5 Q All right. But if someone comes in to you who
6 belongs to one of those Christian churches and they disagreed
7 with you about the Biblical foundation of marriage, those are
8 the people you won't sell to?

9 MR. SKRUGGS: Objection, your Honor, speculation.

10 THE COURT: Over -- overruled. He's asking directly
11 what she -- who she will sell to.

12 THE WITNESS: So we will create for a wedding
13 between a man and a woman based on the information you've
14 given me. And the church that the wedding is taking place at
15 would not necessarily affect that.

16 BY MR. CAMPBELL:

17 Q All right. But you understand there are Christian
18 denominations that consider themselves Christians that do not
19 have this prohibition your church has on same-sex couple
20 wedding?

21 A I believe there are, yes.

22 Q And you won't do custom wedding invitations for them
23 is your testimony?

24 A Who is them? Would you clarify?

25 MR. SKRUGGS: Objection, Your Honor, misstates prior

1 testimony.

2 THE COURT: Sustained.

3 MR. CAMPBELL: I'm sorry, Judge. I didn't hear the
4 objection.

5 THE COURT: He said it misstates --

6 MR. SKRUGGS: Misstates prior --

7 THE COURT: -- testimony and I sustained it.

8 MR. CAMPBELL: All right. Well, let's me rephrase
9 it.

10 BY MR. CAMPBELL:

11 Q Let's assume it's a couple that's doing a marriage
12 in a church, okay, a Christian church a different denomination
13 from yours. And that particular Christian denomination thinks
14 same-sex couple wedding is okay. So they come to you and want
15 a wedding invitation done that invites people to celebrate
16 their wedding at that church. Will you do it?

17 A Is this a same-sex couple?

18 Q Yes.

19 A No, we would not do it.

20 Q Now with res -- you understand there's a lot of
21 people in the wedding business, right?

22 A Yes.

23 Q There's florists?

24 A Yes.

25 Q And you think what they do is art, correct?

1 A I believe it can be, yes.

2 Q There's photographers, yes?

3 A Yes.

4 Q You believe what they do is art, true?

5 A I believe so, yes.

6 Q There's videographers, correct?

7 A Yes.

8 Q Do you believe what they do is art?

9 A I believe it can be, yes.

10 Q There's people that bake cakes, and you believe that

11 the way they decorate their cakes and bake their cakes is art

12 also, true?

13 A I believe it can be, yes.

14 Q Do you advertise in any newspapers?

15 A No, we do not.

16 Q Have you ever advertised in newspapers?

17 A No, we haven't.

18 Q When a newspaper publishes an advertisement, do you

19 think they endorse the message of the advertisement?

20 MR. SKRUGGS: Objection, Your Honor, speculation. I

21 don't see the relevance either.

22 THE COURT: Well, I understand why he's asking the

23 question, but I do think it's irrelevant.

24 MR. CAMPBELL: All right.

25 THE COURT: Sustained.

1 BY MR. CAMPBELL:

2 Q Just so I have this right, you think somehow by
3 selling a product that you are making for the public and that
4 you advertise for the public to buy if it's bought by a
5 certain person, you think you're endorsing their beliefs; is
6 that it?

7 MR. CAMPBELL: Objection, misstates prior testimony,
8 Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: When I create a custom piece of art,
11 I'm putting my vision and my heart and soul into that piece of
12 art and I am participating in and giving my heart to that
13 event and I'm celebrating it. So to do that for something
14 that I don't believe in as a Christian would violate my
15 conscience and I believe it sends a message of celebration.

16 BY MR. CAMPBELL:

17 Q But then you're endorsing every other person you
18 sell to and what they believe?

19 A I did not say that, no.

20 Q All right. So when you do a Hindu wedding, are you
21 endorsing Hinduism?

22 A No.

23 Q When you do a Muslim wedding, are you endorsing
24 Muslims?

25 A No, the -- the invitation that's being created is

1 about the marriage not celebrating that religion.

2 Q When you -- when you do weddings for atheists, are
3 you endorsing atheists?

4 A No.

5 Q So the one situation you think you are endorsing
6 through your product is the same-sex couple marriage?

7 MR. SKRUGGS: Objection, Your Honor, misstates prior
8 testimony.

9 THE COURT: Over -- Overruled.

10 THE WITNESS: When a wedding invitation is created
11 that wedding invitation is celebrating that marriage. So the
12 focus is on the marriage, and I can only celebrate a one man,
13 one woman marriage. I couldn't celebrate a marriage of
14 multiple individuals or a same-sex marriage. That invitation
15 is celebrating that marriage and that violates my conscience.
16 BY MR. CAMPBELL:

17 Q Okay. But you don't ask any of your customers about
18 their religious beliefs and whether any of their beliefs would
19 violates your conscience; do you?

20 A I do not. That doesn't have relevance to the
21 wedding invitation I'm creating.

22 Q I thought you told me that to create the wedding
23 invitation you had to talk to the couple you're working
24 with --

25 A Yes, we do.

1 Q -- yes?

2 A Yes.

3 Q And if the couple says, you know, all this stuff
4 about God on your website we just think is malarkey, you'll
5 still go ahead and sell a product to them?

6 A If the item that we are creating for them is
7 communicating celebration for their marriage and not religious
8 beliefs that I disagree with, then yes, I could create that.

9 MR. CAMPBELL: No further questions, Judge.

10 THE COURT: Redirect.

11 (Pause - whispered conversation)

12 MR. SKRUGGS: No redirect, Your Honor.

13 THE COURT: All right. You may step down. Thank
14 you.

15 THE WITNESS: Thank you.

16 THE COURT: Do you rest?

17 MR. SKRUGGS: Your Honor, we would like to move to
18 admit Plaintiffs' response to our admissions and their
19 response to our interrogatories.

20 THE COURT: Are they marked?

21 MR. SKRUGGS: Yes, Your Honor, they are marked as
22 Exhibit -- I apologize. So the ones that we are moving to
23 admit would be 31, 32. And then 33 and 34 are documents
24 referenced in those requests for admissions.

25 THE COURT: 31.

1 MR. SKRUGGS: 31, 32 --
2 THE COURT: 33 and 34?
3 MR. SKRUGGS: 33 and 34.
4 THE COURT: Any objection?
5 MR. CAMPBELL: Yes, 31, these are the responses to
6 the first set of nonuniform interrogatories, no objection.
7 What's the next number?
8 MR. SKRUGGS: The next one is --
9 THE COURT: 32.
10 MR. SKRUGGS: -- 32, just the next.
11 THE COURT: Which is the response to the first set
12 of request for admission.
13 MR. CAMPBELL: No objection.
14 THE COURT: 33 is -- he says it's a document that's
15 referenced in one of the -- in either 31 or 32. And so is 34,
16 also a document referenced in either 31 or 32.
17 MR. CAMPBELL: 33 is just a letter from the Chute
18 (ph) law firm making a public records request. I don't
19 understand the relevance of 32.
20 THE COURT: I think he said it was referenced.
21 MR. SKRUGGS: Well, I think it is, Your Honor.
22 MR. CAMPBELL: I don't think it was referenced in
23 our stack.
24 MR. SKRUGGS: Let's see. In admission number 1, it
25 says we made the request provided in Exhibit 19 are true and

1 correct copies of the document. The City of Phoenix sent in
2 response to public records request provided in Exhibit 18.
3 Exhibit 18 is that public records request.

4 MR. CAMPBELL: I don't think --

5 MR. SKRUGGS: Which is currently marked as 33 --

6 THE COURT: 33.

7 MR. SKRUGGS: -- is what we're trying to --

8 THE COURT: So you're asking for the public records
9 request and then -- and that's 33. And then 34 is the
10 response to that public records --

11 MR. SKRUGGS: Yes.

12 THE COURT: -- request?

13 MR. SKRUGGS: Yes, Your Honor.

14 MR. CAMPBELL: Oh, all right.

15 THE COURT: That's what it is.

16 MR. SKRUGGS: I apologize for not being clear.

17 THE COURT: Any objection?

18 MR. CAMPBELL: No objection.

19 THE COURT: So I'm admitting Exhibits 31, 32, 33,
20 and 34.

21 (Plaintiffs' Exhibits 31 through 34 admitted)

22 MR. SKRUGGS: And I think just for the Court just
23 the Exhibit A that's attached to the interrogatories that --

24 THE COURT: I'm sorry. Well, that's part of 31.

25 MR. SKRUGGS: Yes.

1 THE CLERK: And it wasn't marked as 31.
2 THE COURT: It's not?
3 THE CLERK: They didn't provide me a copy of that
4 Exhibit A for 31.
5 MR. SKRUGGS: We didn't and we talked to Opposing
6 Counsel, Your Honor, before and they said they didn't have an
7 objection to that since it was attached.
8 MR. CAMPBELL: I thought they were going to --
9 there's an attachment that they were going to attach to and
10 then substitute for Exhibit 31 is what I --
11 MR. SKRUGGS: Okay. Well, we can do that.
12 MR. CAMPBELL: But if you want us to introduce it as
13 another number, that's --
14 THE COURT: Well, let's --
15 MR. CAMPBELL: -- okay.
16 THE COURT: -- put it --
17 MR. SKRUGGS: What I can do is --
18 THE CLERK: (Indiscernible).
19 THE COURT: No, no, no, no, no, no. Just attach it
20 to 31.
21 MR. SKRUGGS: Okay. Yeah, that's great, Your Honor,
22 if we just attach it --
23 THE COURT: Well, you have to give it to her.
24 MR. SKRUGGS: (Indiscernible).
25 THE COURT: So just attach that to the end of 31.

1 THE CLERK: Okay.

2 THE COURT: Do you have Exhibit 31 somewhere that
3 you can give my clerk?

4 THE CLERK: (Indiscernible).

5 MR. CAMPBELL: We have it, Judge, with Exhibit A
6 attached to it.

7 THE COURT: No, no, the one that's marked. She's
8 got it.

9 UNIDENTIFIED VOICE: Colin.

10 MR. SKRUGGS: I have it here.

11 UNIDENTIFIED VOICE: Colin, she wants the -- the
12 original.

13 MR. SKRUGGS: There you go.

14 THE COURT: Okay.

15 THE CLERK: Can I have my --

16 THE COURT: Now do you rest?

17 THE CLERK: -- exhibit with this?

18 MR. SKRUGGS: Oh, yes, sure.

19 THE COURT: And now do you rest, Counsel?

20 (Whispered conversation)

21 MR. SKRUGGS: I rest, Your Honor. Do you want us to
22 give closing now or after their --

23 THE COURT: Well, not before the other party has --

24 MR. SKRUGGS: That's what I wanted to confirm.

25 THE COURT: -- an opportunity to put on evidence.

1 MR. SKRUGGS: We rest, Your Honor.
2 THE COURT: Go ahead, Mr. Campbell.
3 MR. CAMPBELL: Mr. Logan.
4 THE COURT: Sir, if you'd come forward, we'll swear
5 you in.
6 THE CLERK: State your name for the record, please.
7 MR. LOGAN: Donald R. Logan.
8 THE CLERK: Can you raise your right hand.
9 (Oath administered)
10 MR. LOGAN: I do.
11 THE CLERK: Thank you.
12 THE COURT: Please have a seat and make your way
13 around.
14 (Pause)
15 THE COURT: Go ahead, Counsel.
16 DONALD R. LOGAN
17 called as a witness on behalf of the Defendant, having been
18 duly sworn, testified as follows on:
19 DIRECT EXAMINATION
20 BY MR. CAMPBELL:
21 Q Could you state your full name for the record?
22 A Donald Ray Logan.
23 Q And, Mr. Logan, what is your current position?
24 A I am director of the Equal Opportunity Department
25 for the City of Phoenix.

1 Q And how long have you held that position?

2 A If I make it until tomorrow, it'll be 13 months.

3 Q All right. Let's go back. You were born and raised
4 in Phoenix?

5 A I'm a native.

6 Q Went to high school at South Mountain?

7 A South Mountain High School, born and raised South
8 Phoenix, educated Arizona State University, started my
9 professional employment 1979.

10 Q And who did you go to work with first?

11 A Maricopa County Highway Department.

12 Q And how long were you with the Highway Department?

13 A Almost four years.

14 Q And then where'd you go after that?

15 A I left Maricopa County Highway Department and was
16 hired by City of Scottsdale.

17 Q And how long were you with the City of Scottsdale?

18 A Almost 30 years.

19 Q And what was your position there before you left?

20 A My last position was the fifth position that I held,
21 and it was the director of the diversity and dialogue office.

22 Q Now did you retire from the City of Scottsdale?

23 A I retired in 2007.

24 Q And then what did you do between your retirement
25 from the City of Scottsdale and returning to full-time work

1 for the City of Phoenix?

2 A When I retired, one of the reasons I retired is I
3 authored a memoir and spent part of my time traveling the
4 country, do motivational speaking and also took on a part-time
5 assignment as the diversity administrator for the City of
6 Glendale.

7 Q All right. And why did you go back? Why did you go
8 back to work?

9 A Well, I have a dog at home that looked at me every
10 day and kind of wondering what was I doing home. After
11 spending 35 plus years in the professional environment, the
12 City of Phoenix opportunity to lead the Equal Opportunity
13 Department for the sixth largest city in the country came at a
14 time when I was reenergized, re -- recharged and quite frankly
15 felt that retiring at 52 is too early. I was still ready to
16 work, to serve.

17 Q All right. Very good. Now, is your department
18 responsible for the enforcement of City Code 18-4 with respect
19 to discrimination and public accommodations?

20 A That is correct.

21 Q All right. Now, does the City have like a police
22 force they send out to enforce this code?

23 A The City for the most part reacts to complaints.

24 Q So the City doesn't do anything with respect to the
25 Administrative Code until a written complaint is received?

1 A Either written complaint or we receive complaints in
2 numerous fashions.

3 Q What happens when you receive a complaint?

4 A There's a phase where it is an inquiry phase which
5 can come either through an outside source directly to the
6 department to staff or it could be submitted anonymously.
7 Once the inquiry is made based on the contents of that
8 information we will schedule a -- engage in an interactive
9 process and that would be based solely on whether we feel that
10 there is merits to the complaint.

11 Once we've gone through an interactive process, if
12 we confirm that there is merits to warrant investigation, our
13 compliance and enforcement division of the Equal Opportunity
14 Department takes the lead role in investigating a complaint.

15 As we move forward through that process identifying
16 witnesses, allegations, ultimately after consulting with our
17 attorneys, we come to a determination based on a collaborative
18 between the Equal Opportunity Department and namely our law
19 department as to whether there is a cause finding or a no
20 cause finding as a result of the investigation.

21 Once the investigation has concluded, we notify the
22 complainant and take whatever corrective measures are
23 required.

24 Q In that process do you have alternative dispute
25 resolution like mediation and conciliation?

1 A We do.

2 Q And when is that triggered? What triggers
3 conciliation and mediation?

4 A One of the ways of being notified of a complaint
5 that I referenced earlier was an external complaint. We make
6 it an external complaint that is filed directly with the Equal
7 Opportunity Commission EEOC or the Civil Rights Divisions of
8 the Attorney General's office.

9 They too go through a similar process in evaluating
10 a complaint. Once we are notified that a complaint has been
11 filed with those external forces, they offer an option of
12 conciliation or mediation depending on the severity of -- what
13 they feel is the severity of the complaints.

14 So typically if we are aware of an incident and we
15 have knowledge to affirm what type of exposure we feel the
16 City may have, we may enter into a conciliation or mediation
17 again based on that knowledge.

18 Q All right. In your tenure at the City of Phoenix
19 have you ever done a criminal referral?

20 A No, we have not.

21 Q To your knowledge on what you know about the history
22 of the Department, are you aware of any referral for criminal
23 charges?

24 A No, I -- in fact, we've had conversations with our
25 law department about our readiness or ability to respond to a

1 criminal complaint with the current staff and the staff
2 training with the Equal Opportunity Department. And we've
3 come to the conclusion that in order for us to move in that
4 direction there would be additional training required of our
5 staff.

6 Q So at this point in time your staff doesn't even
7 have sufficient training to do criminal referrals?

8 A Not to my knowledge.

9 Q Now Brush & Nib, the company here, have you received
10 any complaints on Brush & Nib?

11 A No, I have not.

12 Q Any complaints on Breanna Koski?

13 A Don't know the name.

14 Q Any complaints on Joanna Duka?

15 A No.

16 Q Since this -- this case was filed on May 12th, 2016,
17 have you received any complaints about the -- those people or
18 the -- that entity?

19 A No, we have not.

20 Q To your knowledge is there any investigation going
21 on regarding Brush & Nib within your department?

22 A Not to my knowledge.

23 Q Is anyone even thinking about a criminal referral --
24 MR. SKRUGGS: Objection, calls for speculation.

25 THE COURT: I don't think it does.

1 BY MR. CAMPBELL:

2 Q As department -- is anyone in your department even
3 considering a criminal referral with respect to Brush & Nib?

4 MR. SKRUGGS: I renew the objection, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: No.

7 BY MR. CAMPBELL:

8 Q In your tenure, there's been one complaint about a
9 wedding business, true?

10 A That's correct.

11 Q What was that about?

12 A The -- and I wasn't directly involved in receiving
13 the complaint but did engage in conversation with my
14 compliance and enforcement manager, investigators as well as
15 the law department.

16 We have regular meetings with legal to assess
17 specific types of complaints that have been addressed by Equal
18 Opportunity Department. And I'm aware of a company who
19 alleged that they were denied an opportunity to be served by a
20 wedding -- affordable wedding company that they felt was
21 discriminatory.

22 Q And was the discrimination based on sexual
23 orientation?

24 A That's correct.

25 Q What happened with the investigation?

1 A We interviewed. We went through the inquiry
2 process. We engaged in an interactive process with the
3 complainant. We had some difficulties in terms of
4 communication and affirming as to whether a complaint
5 officially occurred.

6 And the end result after consulting with our
7 attorneys, we concluded that there wasn't enough evidence to
8 substantiate a cause finding so we issued a no cause.

9 MR. CAMPBELL: No further questions, Your Honor.

10 THE COURT: Cross.

11 (Pause)

12 MR. SKRUGGS: Your Honor, Plaintiffs have no cross
13 examination.

14 THE COURT: You may step down. You're excused.
15 Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: You have no other witness? You rest?

18 MR. CAMPBELL: We rest, Judge.

19 THE COURT: You have no rebuttal I assume?

20 MR. SKRUGGS: Sorry, Your Honor, I didn't hear that
21 question.

22 THE COURT: You have no rebuttal witnesses?

23 MR. SKRUGGS: No, Your Honor. Your Honor, I would
24 like to ask a question just for verification.

25 THE COURT: Sure.

1 MR. SKRUGGS: We have as you noted some other
2 declarations in evidence. Is the Court relying on that as
3 well in addition to the testimony here today?

4 THE COURT: I will.

5 MR. SKRUGGS: Okay.

6 THE COURT: That's the way you wanted to put your
7 case on you said rather than calling them. And -- and they
8 said they might call your clients as witnesses.

9 MR. SKRUGGS: Okay. Well, it's -- so -- yes, Your
10 Honor, we'd like to in addition to the testimony that we've
11 put forth put in the other evidence that we've put forth.

12 Thank you, Your Honor.

13 THE COURT: So if you want to make argument, I'll
14 give you -- I don't know -- I think 15 minutes maybe a side.
15 I don't think we need more than that.

16 Is it 3:40?

17 THE CLERK: Yes.

18 THE COURT: I'll give you 20 minutes a side if you
19 think you need that much.

20 MR. SKRUGGS: Yes, Your Honor. Your Honor, since
21 you've read all the briefs and seen all the documents, I will
22 just go I think right to the compelled speech argument.

23 We believe this motion is about artistic and
24 religious freedom. And essentially our compelled speech
25 claim, Your Honor, is governed by two cases, Coleman vs. City

1 of Mesa, which is Arizona Supreme Court and binding, and the
2 Hurley decision.

3 Now, in Opposing Counsel's brench (sic) memo, Your
4 Honor, they failed to cite Coleman because it really is the
5 (indiscernible) of this case. And Coleman involved a tattoo
6 parlor that was regulated. And essentially, Your Honor, the
7 City of Mesa raised much the same defenses that are raised
8 here saying that it's not speech, it's conduct.

9 And, Your Honor, in that case, they tried to
10 separate out the expressive product from the process. And
11 Coleman -- the court in Coleman said that you cannot do that,
12 that -- because the end product is purely expressive. And in
13 Coleman, Your Honor, involves the exact same expression here,
14 words and painting -- or words and paintings -- well, excuse
15 me in -- that case involved tattoos.

16 But the court explicitly said that words and
17 paintings are pure speech and because and as much as the
18 tattoo was pure speech it protected not only the end product
19 but the process of creating and also the business of creating,
20 Your Honor.

21 Now, because that is true, that also separates this
22 case from all the other cases that the City cites, such as the
23 photographer, the -- the baker, and all those other cases.
24 Those cases did not have to deal with Coleman, and they
25 conflict with Coleman because those cases try to separate out

1 the expressive end product from the process and the business
2 which Coleman instructs you cannot do.

3 So, Your Honor, any attempt to label what our
4 clients want to do as conduct or as discrimination fail under
5 Coleman. And I think that's a very important part of stress
6 as I think Coleman says -- Coleman endorses another case from
7 the Ninth Circuit called Anderson vs. City of Hermosa Beach.

8 And I think it articulates it well when it says you
9 can't separate Monet from the brush and the writer from the
10 end product. It's really the same principle. We can't divide
11 and conquer.

12 And, Your Honor, it's also I think undisputed that
13 the City is regulating the content of our expression. They
14 admit as much in their bench memo. They say we force you to
15 write the words. The words change from wedding invitation to
16 wedding invitation. To say that that is not an effect on the
17 message, it's a change in the literal words, Your Honor, and
18 so it also changes the message.

19 The City is forcing out client to change their
20 expressive message and their expressive media. If a principle
21 we put forth is simple. It's a principle acknowledged by
22 Hurley, the United States Supreme Court and also by Rumsfeld
23 that when the government compels access to an inherently
24 expressive media, that is compelled speech.

25 And so, Your Honor, Hurley also is very useful. It

1 involved a parade. A parade is arguably expressive -- more
2 like expressive conduct than pure speech. Here we have
3 undoubtedly pure speech, words and paintings. And so, Your
4 Honor, if Hurley said that you can't compel access to an
5 inherently expressive parade, it has to (indiscernible) apply
6 in this situation.

7 Now I'm sure Opposing Counsel will argue that Hurley
8 involved a nonprofit group. But the decision in Hurley
9 explicitly said the right not to speak applies to businesses
10 and other corporation and that is born out in a long line of
11 cases by the United States Supreme Court, Tormeo
12 which was the newspaper case, PG Electric which is the
13 electric company and the newsletter case. All those were for
14 profit businesses.

15 Your Honor, the other side claims that essentially
16 protecting our client's speech will allow widespread
17 discrimination. That's just not the case, Your Honor. Courts
18 have been drawing lines between speech and conduct all the
19 time. That's pretty regular.

20 Same way that argument would also -- they tried to
21 raise that exact same -- similar argument at least in Coleman
22 that hey, this is -- if we allow this to be speech, then we
23 can't regulate any business. That's not our argument, Your
24 Honor. Our argument is the government can't regulate a
25 business when the business is creating pure speech. And so

1 that is what separate that as the line that was drawn.

2 And so, Your Honor, we -- we would submit in that --
3 because of those reasons, it governs -- governs the scenario
4 here in terms of compelling these artists to sit down and
5 change the message. As you've heard the testimony, our
6 clients do not look at someone's status or race or religion.
7 They look at what the message of their art conveys. And so
8 that is the important difference.

9 Now we fully admit, Your Honor, that many public
10 accomm -- most public accommodate -- or many public
11 accommodation laws regulate conduct on their face, but that's
12 not the question in this case. It's whether does it regulate
13 speech as applied.

14 That's an important distinction. That goes to
15 Hurley, Your Honor. Hurley involved a public accommodation
16 case -- a public -- a public accommodation law. The court did
17 not say, well, this regulates conduct on its face
18 constitutional. No, it looked to how it was applied to purely
19 expressive activity.

20 The as-applied application is what's important and
21 that's what we're seeking, Your Honor. We're not -- in this
22 motion, we're not seeking to facially enjoin anything. We're
23 seeking limited and narrow relief just regarding our clients
24 to protect them and their consciences because they received a
25 same-sex request.

1 Now moving on I think to our other speech claim, our
2 clients want to put up a particular statement. Opposing --
3 the City of Phoenix has admitted in their interrogatories that
4 if a public accommodation posts the exact statement that we
5 want to post, it violates the law. And if a public
6 accommodation declines to create a custom wedding invitations
7 for a same-sex wedding, it violates the law.

8 So there can be no doubt that our clients are right
9 in that the target, the crosshairs. They want to put up their
10 message. They can't. It violates the law. That's enough.
11 Under -- and we'll brief this more thoroughly in our response
12 to their motion to dismiss -- all we have to show is that the
13 law violates what we want to do. That's it. That gives us
14 standing and a right to challenge it.

15 And so, Your Honor, in light of that and there's not
16 doubt that this -- this speech is pure speech. It's words,
17 the statement. And, Your Honor, it's not speech incidental to
18 conduct. Opposing Counsel raise its argument that well, this
19 is just like putting up a sign that says whites only. But
20 that's not the case, Your Honor.

21 In that situation, it's speech incidental to illegal
22 conduct. So because the underlying activity is illegal that
23 someone can't use that -- use those words to enact that
24 purpose. But this situation is not speech incidental to
25 illegal conduct. It's speech incidental to constitutional

1 speech.

2 Our clients are trying to exercise their
3 constitutional right to say I can't do that. It would be much
4 like, Your Honor, if in Hurley someone put up a sign and said
5 we -- you know, we can't accept this group into our parade.
6 Would they have the constitutional right to do that? Yes,
7 because they have the constitutional right to do the
8 underlying activity.

9 And so for that reason it is not Rumsfeld. Rumsfeld
10 as you remember, Your Honor, is the -- the military trying to
11 gain access to a building. And the court there said this is
12 not pure speech. Just going inside a building is not pure
13 speech. And it distinguished Hurley on that point. A parade
14 is pure speech. Gaining access to a building is not.

15 Here we have someone trying to gain access to
16 inherently expressive media so says Coleman. And because of
17 that reason, Your Honor, it is compelled speech. Our clients
18 not only have the right to decline in accordance with their
19 consciences, but they also have the right to say and to tell
20 people, hey, we can't do this. And that's all they're asking
21 for, Your Honor.

22 And -- and for the same similar reasons, we would
23 win on our free exercise of religion act claim. We had -- we
24 have identified that our clients have a sincere belief and are
25 motivated to post their statement and to decline certain

1 artworks that violates their religious principles. And so
2 they've exercised that, and there can be no doubt that they --
3 that is a substantial burden. The City has placed a
4 substantial burden on that. They are facing criminal
5 penalties, Your Honor.

6 And it's important to note the substantial burden
7 analysis cannot ask -- courts are instructed they cannot
8 inquire into the validity of someone's religious beliefs. So
9 the analysis is not how important is this belief to you or is
10 this burden under your religious theology. The court rejects
11 that argument in the Hobby Lobby case.

12 The analysis is is the degree of penalty coercive.
13 That's what the substantial burden is. And here there can be
14 no doubt there's a substantial burden when they face \$2500 in
15 penalties and up to six months in jail. The Supreme Court has
16 found substantial burden on much less.

17 So given -- Your Honor, given that we have these
18 valid speech claims and a valid (indiscernible) claim, the
19 other side has the burden to show that it can -- it serves a
20 narrowly tailored compelling interest, and we believe they
21 cannot do so, Your Honor. They've actually submitted no
22 evidence that there is a problem in the City of Phoenix and
23 even more importantly that it's necessary to regulate and
24 suppress our client's free speech rights.

25 And again, Hurley leads the way. In Hurley they had

1 a public accommodation law that banned discrimination on its
2 terms according to race, religion, sexual orientation. Hurley
3 in that case didn't say well, you have the compelling interest
4 necessarily tailored. Hurley said there is no compelling
5 interest to regulate and compel someone to speak beliefs
6 against their conscience. So Hurley again governs this case.

7 And, Your Honor, I think that's my general tenor
8 about -- of my arguments. I want to give the Court an
9 opportunity -- I know there's a lot of cases, a lot of
10 briefing -- if it could direct me if it has any questions.

11 THE COURT: I don't.

12 MR. SKRUGGS: Okay. Your Honor, well then we will
13 rest on our motion that we've presented.

14 THE COURT: All right. Thank you. Mr. Campbell.

15 (Pause)

16 MR. CAMPBELL: Your Honor, I'd first like to address
17 three cases that the Plaintiffs' Counsel started with. The
18 first is Coleman -- which involved tattooing -- and -- and the
19 City of Mesa. The tattoo parlor was not discriminating, and
20 so the court there addressed whether tattoos could be art.
21 But the conduct that's at issue here is the refusal to serve.

22 The other cases that we've cited in our briefs
23 involving photography, involving cake baking and so on, those
24 can all be expressive too. So the question here isn't whether
25 the Plaintiffs and Brush & Nib engage in expressive conduct

1 that in some abstract sense might be protected by free -- by
2 the free speech clause because there -- the longstanding law
3 is that prohibiting service denials, prohibiting refusal to
4 serve is conduct, not speech even if it involves expressive
5 elements.

6 That's the Rumsfeld case because the Rumsfeld case
7 which involved laws school prohibiting the military from
8 coming on campus involved more than access to buildings. The
9 court there emphasized that the law schools had to send emails
10 to their students. They had to post flyers for the military.

11 So -- but the court held that the government could
12 compel law schools to give access to the military to their
13 campus on the same terms as it gave to other employers. So
14 the law school could ban all employers or it could accept
15 employers, but it couldn't discriminate against the military
16 and treat them differently. The court held that that's
17 conduct, not speech despite their expressive elements.

18 The Hurley case that Plaintiffs discussed is a case
19 involving parade organizers trying to prohibit or trying to
20 deny entry for -- for marchers in a parade who wanted to have
21 their own message. In that case the court emphasized that --
22 that bystanders, that viewers would think that the marchers'
23 messages were endorsed by the parade organizers.

24 And so when you look at Rumsfeld and the cases that
25 we cited involving wedding photography and so on, those cases

1 emphasize that no reasonable person would view a wedding
2 vendor as endorsing the wedding itself. Unlike in the parade
3 where people would view the parade organizers as endorsing the
4 messages that are presented in the parade itself.

5 The bottom line here is that four other wedding
6 vendors have challenged anti-discrimination laws just like
7 this one raising essentially identical arguments. All four of
8 them lost. This one should fail too.

9 First of all, we ask that the Court deny the prelim
10 -- preliminary injunction on just justiciable grounds. This
11 is not a real case with justiciable claims. Brush & Nib has
12 brought a trumped up dispute to seek an advisory opinion. It
13 wants the Court and the City to do line edits on its marketing
14 copy to say that this statement is okay, that statement is not
15 okay.

16 It tries to get around that by saying it faces a
17 choice between speaking freely in a jail cell, but that's just
18 not true. Mr. Logan testified that the City has never
19 criminally enforced this ordinance. It's never enforced a
20 sexual orientation pro -- provision in this ordinance at all
21 whether civilly or criminally -- criminally.

22 No one has ever been fined under this ordinance.
23 There's no ongoing investigation. Nobody has any intention of
24 launching an investigation. Put simply, Brush & Nib has no
25 legitimate fear that it will be prosecuted. We should wait

1 for a real case to arrive -- arise so that we don't have to
2 deal in these abstracts.

3 And without justiciable claims, Brush & Nib does not
4 have a likelihood of success on the merits. But on the
5 merits, Brush & Nib has -- has raised two arguments. One is
6 free speech and one is free exercise of Arizona's Free
7 Exercise of Religion Act.

8 Those claims will not succeed on the merits either
9 because if you break this case down claim by claim and if you
10 look at what Brush & Nib will do and what Brush & Nib won't
11 do, what the city ordinance prohibits and what it allows, the
12 claims completely fall apart.

13 The ordinance permits a great deal of speech. It
14 generally permits Brush & Nib to criticize weddings for
15 same-sex couples. It permits them to proclaim and announce
16 their belief that the Bible limits weddings and marriages to
17 one man, one woman. It permits Brush & Nib to criticize the
18 City and the city ordinance, and it permits them to disclaim
19 any affiliation from weddings for same-sex couples.

20 By permitting those statements, the ordinance has
21 built-in broad protections for actual speech. And what's left
22 is conduct, not speech. We have two things left that Brush &
23 Nib focuses on. The first is that they want to refuse service
24 on the same commercial terms between same-sex couples and
25 opposite sex couples. And second it wants to publicly

1 announce its refusal to serve.

2 The law in both of those is settled. On the first
3 one refusal to serve, we have had public accommodation laws
4 going back half a century and in fact hundreds of years in the
5 common law. Those have with -- withstood challenge because
6 they regulate conduct not speech. And however fancy the
7 wedding invitations might be even if they involve painting and
8 hand calligraphy, creating them for same-sex message -- for
9 same-sex couples is not speech because if you put a same-sex
10 invitation or an invitation for a same-sex wedding on -- on
11 one hand and you compare it to directly to an invitation made
12 for an opposite sex couple for use in their wedding, the only
13 difference is one name.

14 Brush & Nib and its motion for preliminary
15 injunction said expressly that John and Jane on an invitation
16 is okay, but as soon as you change Jane to Jim -- and these
17 are the actual names used in their motion -- that that is not
18 okay. That's what this case is about. We're talking about
19 one first name.

20 But writing down that second name does not endorse
21 weddings for same-sex couples because these are wedding
22 vendors. And creating paper products for a wedding does not
23 endorse the wedding itself. The wedding planner, the
24 photographer, the chef, the cake baker, the venue, the deejay,
25 the videographer, the florist, all of those wedding vendors

1 facilitate the vision of the happy couple getting married.
2 But none of them endorse the couple or endorse the wedding.

3 That's why --

4 THE COURT: But that's not the issue though,
5 correct?

6 MR. FRASER: Well, Brush & Nib's contending that its
7 creation of paper products does endorse.

8 THE COURT: Well, that's what they're saying. They
9 -- they believe that they're endorsing it, but that's not the
10 legal issue.

11 MR. FRASER: I'm not sure I -- I follow your
12 question --

13 THE COURT: It's --

14 MR. FRASER: -- Your Honor.

15 THE COURT: This doesn't turn on whether or not
16 their putting the name on it is an endorsement by them of
17 same-sex marriage. That's not what this case turns on.

18 MR. FRASER: Well, they contend that it does,
19 that --

20 THE COURT: Well, they --

21 MR. FRASER: -- that their endorsement is -- is --
22 is --

23 THE COURT: That's what they say that they don't
24 want to do it for that reason, but that's not the legal
25 standard.

1 MS. FRASER: Well, that's in part how you -- how you
2 distinguish Hurley from Rumsfeld, right? In Hurley you have
3 the parade marchers. In Rumsfeld you have the law school.
4 And on Rumsfeld's side, you also have all the cases we cited
5 in our brief about Elaine Photography and -- and the other
6 wedding vendors.

7 Those turn in part on the fact that reasonable
8 observers would not view the -- the law school or the wedding
9 vendors as endorsing the message that they are facilitating.

10 THE COURT: Well, they said that, but I don't think
11 that's the legal standard is what I'm saying.

12 MR. FRASER: Okay.

13 THE COURT: That's not how I read those cases.

14 MR. FRASER: Okay. Well, there's no way to
15 distinguish those cases, Elaine Photography and Masterpiece
16 Cake Shop, Arlene's Flowers and the Gifford case and -- or the
17 Rumsfeld case from -- from the U.S. Supreme Court because
18 those cases hold that -- that the -- the vendor, the
19 facilitator does not have free speech rights to exclude
20 because that's cond -- that exclusion is conduct not speech.

21 And on publicly proclaiming their refusal to serve
22 or their intent to refuse to serve, that's settled law too
23 because we know that -- that putting a sign in the window
24 white applicants only is -- is not regulated as speech.
25 That's regulated as conduct.

1 The Rumsfeld case made that clear. We cited the
2 Reagan v. New York Times case, the case from the Supreme Court
3 involving the Pittsburgh newspaper. Those involved placing
4 advertisements or other -- other conduct that could be
5 considered expressive. The court said that when you place an
6 ad that suggests that you will refuse to serve or refuse
7 employment or refuse housing or refuse goods and services,
8 that the State can prohibit you from announcing that refusal
9 and that that's conduct not speech.

10 So in the City of Phoenix you cannot hang a sign in
11 your window or online on your website that says whites only or
12 no same-sex couples. So there's no chill and there's no
13 compelled speech so we don't even get to strict scrutiny or
14 content-based restrictions the Plaintiffs were talking about.

15 On the free exercise claim, Your Honor, we have
16 shown that -- that Phoenix has a compelling interest in
17 eradicating discrimination. We state the purpose of the
18 ordinance and the public policy right in the text of the
19 ordinance right in the City Code in black and white. It says
20 discrimination is contrary to the policy of the City of
21 Phoenix. We couldn't be clearer.

22 And in case after case after case after case courts
23 have affirmed and reaffirmed that eliminating discrimination
24 is a compelling government interest. In the Supreme Court
25 that's the Rotary Club case, the Roberts v. U.S. Jaycees case,

1 Bob Jones University, all of those say that eradicating
2 discrimination is a compelling government interest.

3 And to put it simply, the only way to prohibit
4 discrimination in public accommodations is to prohibit
5 discrimination in public accommodations. We submit that the
6 City and the state and the county combat discrimination. We
7 don't endorse it. We don't promote it. And so granting a
8 preliminary injunction though would be granting a temporary
9 license to discriminate and we urge the Court not to do so.

10 We submit, Your Honor, that if there's one case to
11 read, it's the Elaine Photography case which is on all points.
12 We have a copy for you if you'd like of it.

13 THE COURT: No, I have it.

14 MR. FRASER: Okay. If you have nothing further
15 unless you have any questions.

16 THE COURT: Thank you. I have one question that's
17 semi -- it's related procedurally. I haven't read your motion
18 to dismiss. It was filed yesterday?

19 MR. FRASER: On Monday.

20 THE COURT: Is it essentially the same argument over
21 and over? What arguments do you raise in the motion?

22 MR. FRASER: So the motion to dismiss is actually
23 very different from our preliminary injunction brief.

24 THE COURT: Okay.

25 MR. FRASER: And in our preliminary injunction

1 brief, we only have one short paragraph on that topic. It's
2 justiciability, its standing and ripeness.

3 THE COURT: Okay.

4 MR. FRASER: And so we -- we believe that -- that
5 the Court could either dismiss on that basis that there's no
6 justiciable claim or it could deny the preliminary injunction
7 on the basis that because there's no -- there's no justiciable
8 claim, then they have no likelihood of success on the merits.

9 THE COURT: Okay. Thank you.

10 MR. SKRUGGS: Is there an opportunity for -- for
11 rebuttal, Your Honor?

12 THE COURT: There is.

13 MR. SKRUGGS: Thank you. So a few points. The
14 argument that just changing the name, Your Honor, that's like
15 arguing in Barnett all they add is to raise their hands or the
16 argument in Wooley is all they had to do is screw the license
17 plate on the car.

18 Your Honor, that is a change of the content and
19 that's an admission on the other side that at the very least
20 the actual invitation is changing much less, Your Honor, you
21 know, the meaning is changing. The context of what the -- the
22 invitation means changes.

23 And they're being -- again, the principle that we
24 are putting forth and it explains all the cases that are bound
25 by this Court and are explained all the Supreme Court cases is

1 really that when the government compels someone to open up an
2 inherently expressive media, that is compelled speech. That
3 distinguishes Hurley from Rumsfeld, Your Honor.

4 And I would like to point as you noted, Your Honor,
5 the standard is not what the bystanders think. Your Honor, in
6 Wooley that's the argument the dissent raised. Oh, no one
7 would think that the license plate is speaking for the car as
8 the government's speech. No one's thinking that that -- the
9 driver endorses that message. That didn't matter in Wooley.
10 Same with Barnett, everyone knows that they're -- the -- the
11 students are being forced to do that. It didn't matter.

12 And, in fact, Your Honor, I point the Court to the
13 PG And Electric case, footnote 11, I believe where it
14 explicitly says the other side raise -- the government raised
15 the argument hey, just put up a disclaimer and that solves the
16 problem. And the court explicitly said that does not solve
17 the problem, the disclaimer, because that's not the problem
18 with compelled speech. It goes to -- as Wooley and Barnett
19 said -- it goes to the freedom of the mind. And that's what
20 we're asking for here, Your Honor.

21 A few other points, they said they compare this
22 again to the situation that says -- a sign that says no
23 homosexuals. Our clients don't want to put up that sign.
24 They -- they want to put up that says we can't express a
25 message we agree with or that we disagree with -- excuse me.

1 And as I explained, the principle is is this speech
2 incidental to conduct? No, it's speech incidental to
3 protected speech. That's why both are protected. And Your
4 Honor, it's important to note that Rumsfeld itself
5 acknowledged this principle. It went through the cases and
6 that's the principle it drew out. It said Hurley involved
7 something that's inherently expressive and under this
8 (indiscernible) in Coleman that what our clients are doing is
9 inherently expressive.

10 Your Honor, on the point of jurisdiction, they claim
11 that they haven't enforced this law recently. Your Honor,
12 that's not the standard. Our -- the -- the standard is does
13 our clients -- what our client want to do is it forbidden? Is
14 it is arguably forbidden by the law? That's the standard.
15 And they meet that standard.

16 In fact, I'll point the Court to Epperson vs.
17 Arkansas, Your Honor. In that situation the law wasn't
18 enforced for the past 43 years, and the court still found
19 standing in that situation. And we'll brief the Court more
20 thoroughly on all of the various standing arguments.

21 But I again emphasize that the City of Phoenix has
22 acknowledged in their interrogatories that what our clients
23 want to do is forbidden by the law. We can't speak. We are
24 currently being chilled. We have jurisdiction or we have
25 standing in ripeness.

1 Your Honor, for the strict scrutiny analysis, I want
2 to emphasize again, the City's put forth no evidence. The way
3 the strict scrutiny analysis works is the City can't just
4 invoke a general interest. They have to put forth evidence
5 that there's a problem and they have to explain how regulating
6 our client's speech regulates that problem.

7 And again, Hobby Lobby provides a good example of
8 that, of how that free speech analysis work. Same with
9 Hurley. Just invoking the name is not sufficient.

10 Your Honor, I think one of my last points I -- I
11 need to make is our -- our principle that we put forth has a
12 clear limit. Our -- our protection we're seeking is for
13 speech, pure speech.

14 The only side who has no limit is an argument is --
15 is the City's, because under the City's theory any time
16 someone enters into business they no longer have to -- they
17 can no longer engage in speech. It's conduct. And that's --
18 doesn't work, whether in the compelled speech context or in
19 the regular context, with respect -- you know, for example,
20 Coleman. That entity was engaged in speech even though it was
21 doing it for a profit, so.

22 And Hurley explicitly said for prof -- explicitly
23 protected the right of corporations not to speak. Tormeo and
24 EGN Electric, et cetera, et cetera. Your Honor, under their
25 theory, essentially, for -- for example, an atheist singer for

1 hire would have to sing at a Catholic wedding and sing
2 religious songs. We believe they shouldn't have to do that.

3 Another example, Your Honor, is a homosexual graphic
4 designer who designs websites and puts text on there that they
5 would have to essentially create a website for the Westboro
6 Baptist Church. That's what their theory requires. We say
7 that's wrong.

8 Your Honor, in closing, 73 years ago three religious
9 people went to the United States Supreme Court and asked for
10 the right not to -- not to be forced to promote and
11 participate in a ritual. Our clients come to this court just
12 like those Jehovah's witnesses did in Barnett. They simply
13 asked for the freedom to create pure speech and to express
14 their message.

15 Thank you.

16 THE COURT: All right. Thank you.

17 So given this motion to dismiss that's outstanding,
18 it was filed was it yesterday?

19 MR. CAMPBELL: Monday.

20 THE COURT: Monday.

21 (Pause)

22 THE COURT: So the re -- response is due on the 15th
23 of August. Has anyone calculated it?

24 MR. SKRUGGS: I -- I have not calculated that, Your
25 Honor. We can get a response by the 15 -- let me see a cal --

1 let me pull the calendar.

2 (Pause)

3 THE COURT: Well, unless I miscounted. That's what
4 I got.

5 MR. CAMPBELL: We -- we have the 15th as the due
6 date as well, Your Honor.

7 THE COURT: Okay. And the reply I think is due on
8 August 29th.

9 (Pause - whispered conversation)

10 MR. SKRUGGS: Your Honor, I think that's the correct
11 calculation. We might ask for an extension. We need to get
12 together and we -- and talk to Opposing Counsel if they'd
13 agree to an extension.

14 THE COURT: Well --

15 MR. SKRUGGS: But we can -- we can get a response
16 done.

17 THE COURT: No, I understand. I'm disinclined to
18 rule on this until I have all those papers.

19 MR. SKRUGGS: Okay. And, Your Honor, in that case,
20 we'll get it done.

21 THE COURT: Because I think -- I don't think it
22 makes sense to rule on this given that there's no active
23 investigation going on. I think it -- it makes sense not to
24 rule on this and then get the motion to dismiss and rule on
25 that because they're somewhat intertwined.

1 MR. SKRUGGS: I understand, Your Honor. I'm -- in
2 light of that, we -- we will get it by that date.

3 THE COURT: So then I guess the question becomes
4 whether I can just wait until the 29th or if somebody's going
5 to want oral argument and do I want oral argument. I don't do
6 oral arguments on motions to dismiss very often.

7 MR. SKRUGGS: We do not need oral argument, Your
8 Honor. We can rest in our papers.

9 MR. CAMPBELL: Same here, Judge.

10 THE COURT: Okay. Then I am taking it under
11 advisement with the caveat that don't expect to hear from me
12 until I get the motion to dismiss fully briefed, because I do
13 want to do it all at one time.

14 All right. I think we have all the exhibits. So
15 you have to stay. Exhibits will be released to you that
16 weren't used. Let me give this back to the Plaintiffs. I
17 know you had some original things in here. And also the
18 Defendants. Those are the exhibits.

19 All right. Counsel, thank you. Have a nice week
20 and a nice weekend.

21 MR. SKRUGGS: Thank you, Your Honor.

22 (Proceedings concluded at 4:11 p.m.)

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C E R T I F I C A T E

I, KIMBERLY C. McCRIGHT, CET, certified electronic transcriber, do hereby certify that the foregoing pages 1 through 136 constitute a full, true, and accurate transcript from electronic recording of the proceedings had in the foregoing matter.

DATED this 17th day of August, 2016.

/s/ Kimberly C. McCright
Kimberly C. McCright, CET
Certified Electronic Transcriber