SUPREME COURT OF ARIZONA

BRUSH & NIB STUDIO, LC, et al.,	)	Arizona Supreme Court
	)	No. CV-18-0176-PR
Plaintiffs/Appellants/	)	
Cross-Appellees,	)	Court of Appeals
	)	Division One
v.	)	No. 1 CA-CV 16-0602
	)	
CITY OF PHOENIX,	)	Maricopa County
	)	Superior Court
Defendant/Appellee/	)	No. CV2016-052251
Cross-Appellant.	)	

BRIEF OF CENTER FOR RELIGIOUS EXPRESSION AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

WRITTEN CONSENT OF PARTIES OBTAINED

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus Curiae Center for Religious Expression ("CRE") is a national non-profit legal organization based in Memphis, Tennessee. Its mission is to defend the expression and conscience of people of faith so they can speak and act freely. CRE represents such individuals in federal and state courts all over the country, including Arizona, in protecting and securing these fundamental liberties. The *amicus* is highly interested in this case before the Court due to its firm conviction that citizens should never be forced to write, speak, or otherwise express messages they cannot support in good conscience.

INTRODUCTION

Silence is golden.[1] Often, it better to say nothing at all, not only as proverbial wisdom, but as a fundamental aspect of free speech. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Thus, the choice one makes in putting words down in writing (or not) constitutes pure speech, entitled to pure protection. Artistic vendors like Joanna Duka and Breanna Koski (hereinafter "Joanna and Breanna")[2] should never be forced to write, draw, and paint creative messages violative of their own consciences.

But the City of Phoenix ("Phoenix") intrudes upon this liberty, requiring

[1] This idiom is attributed to the poet Thomas Carlyle.

[2] Because briefing identifies Appellants by their first names, *amicus* adopts the same reference to avoid any possible confusion.

Joanna and Breanna to author messages they would rather not communicate. (Def./Appellee's Court of Appeals Answering Brief ["COA Answering Br."], pp. 36-37, 52-53; Def./Appellee's Response to Petition for Review [Petition Resp.], pp. 19-21). Phoenix considers the forsaking of this cherished freedom the price of doing business in its marketplace. (COA Answering Br., p. 53). The appellate court below concurs with this sentiment. *Brush & Nib Studio, LC v. City of Phoenix*, 418 P.3d 426, 438 (Ct. App. 2018).

This price, however, is too high under the First Amendment. Antidiscrimination laws cannot be exploited to compel citizens to use their own words to express government-sanctioned ideas against their wills. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573, 578 (1995) (invalidating application of antidiscrimination law to compel inclusion of pro-LGBT message in parade). As the Supreme Court justices recently (and unanimously) recognized in *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* along with numerous other cases and groups, where governmental compulsion involves specific words, the intrusion on speech cannot be flouted. *See generally*, 138 S.Ct. 1719 (2018).

ARGUMENT

I. Selection and Writing of Words is Pure Speech and Can Not be Compelled by the State

Selecting and writing particular words and messages is an obvious form of

pure speech. *Bigelow v. Virginia*, 421 U.S. 809, 817 (1975). And, a government entity invalidly targets pure speech – and not merely conduct – when "[t]he only 'conduct' which the State [seeks] to punish is the fact of communication [or refusal to do so]." *Cohen v. California*, 403 U.S. 15, 18 (1971). *See Bartnicki v. Vopper*, 532 U.S. 514, 526-27 & n. 11 (2001) (holding that statute restricted "pure speech" where "what gave rise to statutory liability in this suit was the information communicated"). This precise concern is before the Court: Phoenix seeks to criminally punish Joanna and Breanna for refusing to write words they do not wish to convey.

Joanna and Breanna do not contemplate the sexual orientation of their clients when deciding whether to create a product for them; they willingly sell all products to all people (presuming ability to pay for it). (COA Opening Br., pp. 7-8, 55). What they cannot do is write and paint words – pure speech – celebrating causes or events they believe are morally wrong or otherwise violate their consciences, including same-sex weddings, regardless of the client's sexual status or proclivity. (COA Opening Br., pp. 7-8, 55 ROA-68, pp. 57-58).[3]

It is this pure speech that Phoenix seeks to control with its application of the antidiscrimination ordinance against Joanna and Breanna. The city demands they compose and write a specific message celebrating same-sex marriage using the

[3] As in Appellants' Brief, the number following "ROA" refers to the document number on the Superior Court's Electronic Index of Record.

same words they use to celebrate an opposite-sex marriage – no matter what Joanna's and Breanna's beliefs happen to be about the topic. (COA Answering Br., pp. 36-37; Petition Resp., pp. 19-21). Specifically, Joanna and Breanna must affirmatively write that God has joined together and blesses the wedding union of a same-sex couple because they write the same about an opposite-sex couple. (COA Answering Br., pp. 52-53). Phoenix portrays this compulsion as acceptable under the circumstances on the notion that Joanna and Breanna function as mere "scribe[s]" when writing names on invitations, asserting that "fill-in-the-blank" writings are not constitutionally protected, citing *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47 (2006) in way of support. (Def./Appellee's Supplemental Brief ["Phoenix Suppl. Br."], p. 6). But this dismissive description of Joanna's and Breanna's expressive work is inapt, in several respects.

First, undisputed evidence in the record demonstrates that Joanna and Breanna, in going about their custom creations, exercise significant editorial and artistic discretion in selecting the commissions they accept, developing the messages they create, putting together the designs they use, and choosing the words they employ, all in consideration of how to best celebrate the specified event. (COA Opening Br., pp. 9-10, 13-14). All these creative endeavors are independently determined by Joanna and Breanna for each custom design; they do

not perfunctorily fill in names, as Phoenix contends. Indeed, the exercise of such discretion is the idea behind commissioned custom-design products.[4] Conscripting such discretion to force the speaker to convey a disagreeable message is the very abuse the compelled speech doctrine is designed to protect. *Wooley*, 430 U.S. at 714.

Second, the argument that substituting one name for another does not alter the message "in any way the law recognizes" (Phoenix Suppl. Br., p. 7) is a nonstarter. No one can reasonably dispute, for example, that "*Trump* for President" and "*Hillary* for President" communicate two diametrically different things, although the names represent the only difference in the two phrases. Similarly, a message celebrating the marriage of "Jack and Jill" is different from one celebrating the marriage of "Jack and John," even if the remainder of the language is identical, because the change in wording reflects a change in events.[5]

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[4] In contrast, pre-made products often lack the degree of editorial and artistic discretion at issue in this case. For example, the pre-made products that Joanna and Breanna sell on their online Etsy store are made without a specific event in mind. (COA Opening Br., p. 8). They can and do sell these items to anyone for any event, whether the customer uses them for an opposite-sex wedding, same-sex wedding, or anything else. (COA Opening Br., p. 8). And this makes sense: the sale of a pre-made product does not oblige Joanna and Breanna into using their creative faculties to commend a discrete, specific function they find objectionable.

[5] Phoenix argues Joanna and Breanna have no "free-speech right to refuse to write something announcing [a same-sex wedding]," indicating such utterance is logistical information that falls outside of the First Amendment's reach. (Phoenix Suppl. Br., p. 8). Phoenix, though, is not merely requiring Joanna and Breanna to place the time, date, and location of a same-sex wedding on invitations, but also

Though Phoenix considers these two types of weddings as qualitatively the same, the compelled speech doctrine forbids the government from forcing Joanna and Breanna to adopt this view and formulate messages equally celebratory of both opposite-sex and same-sex weddings. *See Hurley*, 515 U.S. at 574, 579 (noting that a speaker has the right to determine what "merits celebration" and the First Amendment has "no more certain antithesis" than government prescribing that for them).

Third, *Rumsfeld* lends no support to Phoenix's position. The regulation upheld in that opinion in no way required the law schools to produce words celebrating or approving the military, its policies, its recruitment efforts, or its presence on campus. *Rumsfeld*, 547 U.S. at 62, 65.[6] Phoenix demands that Joanna

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use congratulatory language about the union itself. (COA Answering Br., pp. 36-37, 52-53; Petition Resp., pp. 19-21). And even if Phoenix was just requiring an announcement of an offensive event, the compelled speech doctrine "applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid." *Hurley*, 515 U.S. at 573; *see Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018) (invalidating requirement that pro-life pregnancy centers post a notice announcing existence of state-funded abortion programs).

[6] The law schools' argument in *Rumsfeld* was that by providing access (through a room) to military recruiters, they would be perceived as endorsing military policies. *Rumsfeld*, 547 U.S. at 64-65. The discrimination analog of such a "guilt-by-association" theory would be an unwillingness to sell products to certain persons on the theory that the sale would send an implicit message of endorsement regarding the customer's lifestyle and protected status. In contrast, Joanna and Breanna sell all products, including their custom designing services, to all persons; they only wish to be selective in the events they choose to participate in. (COA Opening Br., p. 8).

and Breanna custom design, write, and paint words promoting same-sex marriages. (COA Answering Br., pp. 36-37, 52-53; Petition Resp., pp. 19-21). This reality "amounts to nothing less than a proposal to limit speech in the service of orthodox expression." *Hurley*, 515 U.S. at 579.

Making Joanna and Breanna generate words praising a same-sex union, Phoenix acts to regulate pure speech, not conduct. *See Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1062 (9th Cir. 2010) ("[T]he processes of writing words down on paper [and] painting a picture are purely expressive activities…"). Contrary to the holding of the court below, involuntary words do not transform into conduct due to the application of an antidiscrimination law. *Compare Brush & Nib Studio*, 418 P.3d at 437-38 (holding writing words becomes mere conduct because purpose of antidiscrimination law is restrict conduct). *with Hurley*, 515 U.S. at 572-73, 578 (application of antidiscrimination law unjustifiably compelled speech, despite law's purpose to prevent conduct of discriminating). Nor do words become conduct when packaged and sold for profit. *Compare Brush & Nib Studio*, 418 P.3d at 438 *with Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) (sale of book produced for-profit was speech).

Given the expressive nature of Joanna's and Breanna's verbiage, the unconstitutionality of compelling it is evident. Requiring them to think of, design,

and convey words celebrating same-sex weddings, Phoenix wrongly treats Joanna's and Breanna's communication as a public accommodation itself. Such strained application of an antidiscrimination law to any form of expression would constitute a violation of the doctrine of compelled speech. *See Hurley*, 515 U.S. at 573 (parade). Its application to pure speech is unfathomable. Joanna and Breanna need not sell their soul to sell their expression. *See Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (newspaper company has First Amendment right to refuse to publish political candidate's response to criticism published in the company's newspaper). Joanna's and Breanna's hands, minds, hearts, and ultimately, their speech, are their own, not "a passive receptacle or conduit" for the State or anyone else. *Tornillo*, 418 U.S. at 258. Phoenix cannot rightly compel their words.

II. All Justices in the *Masterpiece Cakeshop* Case Unanimously Recognize Words Cannot be Compelled

In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court considered whether a cake artist named Jack Phillips (Phillips) could be forced to create custom wedding cakes designed to celebrate same-sex marriages. 138 S.Ct. 1719, 1724 (2018). Like Joanna and Breanna, Phillips is pleased to sell his pastry items to anyone, regardless of status, but he prefers not to custom design cakes that promote events and causes conflicting with his religious beliefs, a position that found him at odds with the state's use of an

antidiscrimination law. *Id.* Phillips contended that custom-design wedding cakes for same-sex unions, with or without written words, promoted and celebrated a type of marriage that is contrary to his faith. *Id.* For this reason, he declined to design and a prepare a cake for a same-sex wedding, without entertaining any written inscription on it. *Id.*

The Colorado Civil Rights Commission punished Phillips for his decision, and the case eventually came before the U.S. Supreme Court, where Phillips urged his rights to free speech and free exercise of religion. *Id.* at 1725-27. One issue before the Court was whether the act of baking a cake (as contrasted with writing words on it) could be considered speech for purposes of the First Amendment. *Id.* at 1723. Ultimately, the Supreme Court passed on the free speech question, ruling that the pervasive hostility shown by the Colorado Civil Rights Commission toward Phillips' religious beliefs in adjudicating his case violated his free exercise of religion. *Id.* at 1732. But a review of each opinion in this decision shows every participating justice acknowledging antidiscrimination laws cannot be invoked to compel words.

The Majority opinion, written by Justice Kennedy and joined by Chief Justice Roberts and Justices Breyer, Alito, Kagan, and Gorsuch, noted that the free speech question was a difficult one in the context of Phillips' refusal because no inscription was envisioned for the cake. *Id.* at 1723-24. The Court compared

Phillips' refusal with a refusal to "design a special cake with words or images celebrating the marriage," observing those "details might make a difference." *Id.* at 1723. The underlying assumption of the Majority was that a compulsion to inscribe words celebrating a particular marriage is certainly violative of free speech, whereas compelling the design of a cake without words posed a closer question. The Court confirmed this notion in analyzing the William Jack cases, where three bakers refused requests to bake cakes with specified words and images objecting to same-sex marriage that each baker found offensive. *Id.* at 1730. Analogizing those cases to Phillips' case, the Court found the Commission's inconsistent treatment signaled religious discrimination against Phillips "quite apart from whether the cases should ultimately be distinguished." *Id.* Therefore, the Court left open the question of whether a cake design without words could be compelled, while recognizing that written words and messages cannot be.

Justice Kagan, joined by Justice Breyer, wrote a separate concurrence that emphasized this distinction. *Id.* at 1732-33. According to Justices Kagan and Breyer, it is "obvious[ly]" proper to distinguish between declining to make a cake without words versus declining to make a cake with words. *Id.* at 1733. Justice Kagan wrote that the bakers in the William Jack cases could not have violated the law because they declined to "make a cake (one [with words] denigrating gay people and same-sex marriage) that they would not have made for any customer."

Id. Though William Jack was refused the service he requested, Justices Kagan and Breyer understood that the bakers had a right to refuse to construct words expressing a message they opposed.

Justice Gorsuch, joined by Justice Alito, separately concurred as well and shared the same view about words, albeit from a different perspective. *Id.* at 1738. These two justices concluded that a custom-designed wedding cake for a same-sex wedding necessarily celebrates the union. *Id.* at 1738. Accordingly, they opined that the bakers in both the William Jack cases and Phillips should be equally free to decline an offer to produce a product that "advance[d] a message they deemed offensive." *Id.* at 1738-39. Thus, while Justice Gorsuch's opinion took issue with much of Justice Kagan's, they found common ground in their agreement that citizens should not be forced to convey and present words they oppose.

Justice Thomas, joined by Justice Gorsuch, also concurred with the Majority, but this opinion directly considered Phillips' free speech claim, deeming the issue too important to ignore. *Id.* at 1740. They found a custom-designed wedding cake, even one without words, expressive, inherently communicating that "'a wedding has occurred, a marriage has begun, and the couple should be celebrated.'" *Id.* at 1742-43 & n. 2. Observing that "the Constitution looks beyond written or spoken words as mediums of expression," Justice Thomas implicitly recognized that written words are even clearer examples of speech than

"expressive conduct," and cannot be compelled. *Id.* at 1742.

Finally, Justices Ginsburg and Sotomayor dissented on the basis that they did not perceive a free exercise violation. *Id.* at 1748. Like Justice Kagan espoused, these justices believed it appropriate for the bakers in the William Jack cases to decline the requests based on their opposition to the requested wording. *Id.* at 1749. The justices noted that, by declining to generate a written message the bakers would not make "for any customer," they treated William Jack like anyone else – "no better, no worse." *Id.* at 1750. Justices Ginsburg and Sotomayor contrasted this arrangement from the Phillips' case because his refusal went beyond a written message. *Id.*

Thus, despite significant disagreements among members of the Court on the issues before it in *Masterpiece Cakeshop*, every justice agreed that citizens cannot be forced to write words they oppose. This common thread, representing unanimous reasoning from the Court, supports Joanna's and Breanna's arguments in this matter. Phoenix cannot punish Joanna and Breanna for abiding by conscience in refusing to create and convey words on their products commending same-sex marriage. The issue is all but decided by the Supreme Court.

III. Wide Consensus Agrees that Words Cannot be Compelled under Antidiscrimination Rationale

A wide consensus likewise recognizes that antidiscrimination laws cannot, consistent with the First Amendment, compel written words and messages.

A. Parties and *Amici* Opposing Phillips in *Masterpiece Cakeshop*

In *Masterpiece Cakeshop*, both the Colorado Civil Rights Commission and the ACLU argued that it was appropriate to exonerate the bakers in the William Jack cases (while simultaneously castigating Phillips) on the basis that a business owner's decision to not write a written message he will not write for anyone else is a valid practice. As the ACLU stated in their brief, it is not unlawful to "adopt[] policies that apply equally to all customers (for example, '*We won't write this message for anyone*')." Brief for Respondents Charlie Craig and David Mullins at 26, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719 (emphasis added), *available at* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/. The Colorado Civil Rights Commission advocated the same position, affirming in its brief that businesses have the right to refuse requests to create particular messages for anyone, including "declin[ing] to sell [products] with 'pro-gay' designs or inscriptions." Brief for Respondent Colorado Civil Rights Commission at 17, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, *available at* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/. The Commission then applied that very rationale to the bakers in the William Jack cases, explaining that the bakers could rightly "refuse[] to sell a cake with an anti-gay inscription to anyone – a Jewish person, a

customer of a different race, or a heterosexual couple." *Id.* at 48-49.

Amici curiae in support of the Colorado Civil Rights Commission echoed this notion. For example, the twenty (20) States that buttressed the Commission's position explained that a business owner may properly decline to make products that include a written inscription for anyone, because such refusal is not "because of" the status of the customer. Brief of Massachusetts et al. as *Amici Curiae* in support of Respondents at 28, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, *available at* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/. The 211 members of Congress who opposed Philips and Masterpiece Cakeshop contended the same, claiming "businesses are free to adopt neutral and generally applicable terms-of-service policies. For example, a business could adopt a terms-of-service policy refusing to sell products containing hate speech." Brief of 211 Members of Congress as *Amici Curiae* in support of Respondents at 23 n.6, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, *available at* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/.

It is for good reason that those who opposed Phillips in *Masterpiece Cakeshop* make these concessions: they all recognize compulsion of written messages that authors oppose seriously diminishes First Amendment guarantees.

Thirteen (13) First Amendment Scholars who filed an amicus against Phillips expounded on the principle:

> Had Masterpiece refused service because of a disagreement over the actual cake design, and if state law gave customers a right to sue in such circumstances, that hypothetical case might raise serious First Amendment questions about the extent to which the law may compel the actual content of a baker's artistic expression.

Brief of First Amendment Scholars as *Amici Curiae* in support of Respondents at 28, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, *available at* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/. Likewise, another group of free speech scholars opposing Phillips wrote that "serious constitutional questions would be raised if [a nondiscrimination] statute compelled a baker to affix an offensive message to a cake he or she was asked to bake." Brief for Freedom of Speech Scholars as *Amici Curiae* supporting Respondents at 8, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, *available at* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/. Similarly, the National League of Cities, an advocate for municipalities throughout the United States, distinguished the scenario in *Masterpiece Cakeshop* from a case where a printer was scrutinized for declining to print a message promoting a gay pride festival because in Phillips' case "[n]o actual images, words, or design celebrating same-sex marriage or the rights of LGBT individuals were ever at

issue." *Amici Curiae* Brief of the National League of Cities in support of Respondents at 1, 27, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, *available at* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/.

The *Masterpiece Cakeshop* case involved various parties and interests and generated an unusually large number of *amici*, totaling 95 for both sides. *See* http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/. And virtually everyone participating in *Masterpiece Cakeshop* recognizes that words cannot be compelled as means of complying with antidiscrimination law.

B. Other Cases

Masterpiece Cakeshop is not the only case to appreciate this widely-accepted principle. For instance, the court and those appearing in *State v. Arlene's Flowers, Inc.*, 389 P.3d 543 (Wash. 2017) , a case concerning an antidiscrimination claim against a florist who declined a longtime customer's request to design floral arrangement for his same-sex wedding, concur. At oral argument before the Washington Supreme Court, the attorney representing the same-sex couple contrasted floral arrangement with work of a professional advertiser, explaining that if an advertiser is asked to "say certain words endorsing a certain message" and the advertiser "refuse[s] to say those words regardless of who asks him,

whether the person is straight or gay, it's not discrimination based on sexual orientation." Video of Oral Argument at 49:56-50:41, *State v. Arlene's Flowers, Inc.*, 389 P.3d 543 (Wash. 2017), *available at* https://www.youtube.com/watch?v=bOV2--oey6o. And, in ruling against the florist, the state high court relied on the distinction between words, which it identified as "forms of pure expression that are entitled to full First Amendment protection," and a floral arrangement, which it considered non-expressive. 389 P.3d 543, 559 & n.13 (Wash. 2017) (quotation omitted) , *vacated and remanded for reconsideration in light of Masterpiece Cakeshop*, 138 S.Ct. 2671 (2018).

A similar conclusion was drawn in *Klein v. Oregon Bureau of Labor and Industry*, 410 P.3d 1051 (Or. Ct. App. 2017), a case, like *Masterpiece Cakeshop*, that involved a cake shop sued for declining to design a wedding cake for a same-sex wedding. There, the Oregon Court of Appeals ruled against the cake shop, holding it particularly relevant that the cake shop had not been "asked to articulate, host, or accommodate a specific message that [the owners] found offensive." *Id.* at 539. The court carefully distinguished a case pertaining to words, explaining:

> It would be a different case if [the government's] order had awarded damages against the Kleins for refusing to decorate a cake with a specific message requested by a customer ("God Bless This Marriage," for example) that they found offensive or contrary to their beliefs. [Citing *Masterpiece Cakeshop* and distinguishing the William Jack cakes].

Id. at 539-40. The *Klein* court knew that a compulsion of specific words and

messages would run afoul of the compelled speech doctrine. *Id.* at 537.

Additionally, in *Lexington Fayette Urban Cnty. Human Rights Comm'n v. Hands on Originals, Inc.*, the Kentucky Court of Appeals held a human rights commission could not wield an antidiscrimination ordinance to make a printer print t-shirts containing words and messages promoting a gay pride festival because such expressions qualify as "pure speech." No. 2015-CA-000745-MR, 2017 WL 2211381, at *7 (Ky. Ct. App. May 12, 2017). LGBT advocate and scholar John Corvino approved this decision, observing that the printer "was not refusing to sell the very same items to LGBTQ individuals…that it sells to other customers; it was refusing to sell a particular design" – "to write a message" – that it would not write for anyone. John Corvino, *Why Print Shops Shouldn't Be Forced to Make LGBTQ Pride T-Shirts*, Slate, May 15, 2017, http://slate.me/2rYHCwB.

Even before the *Masterpiece Cakeshop* case arrived at the Supreme Court, the Colorado Court of Appeals had acknowledged that an inclusion of "written inscriptions" on a cake could trigger a different outcome in the free speech analysis. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 288 (Colo. App. 2015). That court discerned that "in such cases, First Amendment speech protections may be implicated." *Id.* at 288.

Reverberating a nearly universal principle, these courts and others consistently recognized that selecting and composing written messages is pure

speech that cannot be compelled without betraying First Amendment freedoms. This Court should join the chorus.

CONCLUSION

For the reasons set out herein and in Appellants' briefing, this Court should reverse the decision of the Court of Appeals and restore Joanna's and Breanna's First Amendment freedom to avoid compelled expression of words.

Respectfully submitted,

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