

**ARIZONA SUPREME COURT**

BRUSH & NIB STUDIO, LC, et al.,

Plaintiffs/Appellants/  
Cross-Appellees,

v.

CITY OF PHOENIX,

Defendant/Appellee/  
Cross-Appellant.

Supreme Court  
No. CV-18-0176-PR

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

Maricopa County  
Superior Court  
No. CV2016-052251

**AMENDED BRIEF OF AMICUS CURIAE THE C12 GROUP, LLC IN  
SUPPORT OF PLAINTIFFS/APPELLANTS/CROSS-APPELLEES**

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## INTEREST OF THE AMICUS CURIAE<sup>1</sup>

Amicus Curiae The C12 Group, LLC (“C12 Group”) is the nation’s largest network of Christian CEOs, business owners, and executives, serving more than 2,200 business leaders representing over 1,500 companies in 37 States with more than 500,000 United States employees and spanning every major industry sector. C12 Group is deeply concerned about the First Amendment issues implicated by *Brush & Nib Studio, L.C. v. City of Phoenix*, 418 P.3d 426 (Ariz. Ct. App. 2018) (“*Brush & Nib*”). When public accommodations laws, like Phoenix City Code, Section 18-4(B) (“Section 18-4(B)”), are applied to the expression of businesses, religious liberty and freedom of speech are threatened, affecting all C12 Group members.

### ARGUMENT

This case requires the Court to consider the intersection of public accommodations laws and the broad protection afforded speakers under the First Amendment. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (stating that the First Amendment reflects the “profound national commitment to the principle that debate on public issues should be

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<sup>1</sup> As required by Rule 16(b)(3) of the Arizona Rules of Civil Appellate Procedure, *amicus* states that no person other than the *amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

uninhibited, robust, and wide-open”).<sup>2</sup> As the scope of public accommodations laws has grown—in terms of both the types of entities covered and the number of groups protected—the possibility for conflict with First Amendment speech rights has increased. This case is a prime example. The Arizona Court of Appeals (the “COA”) denied that the First Amendment protects businesses, such as Brush & Nib Studio, LC (“Brush & Nib”), from having to create expression that contradicts the sincerely held religious beliefs of companies and their owners. *See, e.g., Brush & Nib*, 418 P.3d at 436.

The COA’s analysis is wrong for two distinct reasons. First, the COA improperly takes *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006), to control the First Amendment speech issues implicated by the application of Phoenix’s antidiscrimination law to Brush & Nib’s expression. *Brush & Nib*, 418 P.3d at 437. *Rumsfeld*, however, does not change the First Amendment speech analysis that applies where, as here,

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<sup>2</sup> The Arizona Constitution protects the freedom of speech: “every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.” ARIZ. CONST., art. II, § 6. When interpreting the scope of the free speech guarantees under the Arizona Constitution, Arizona courts have applied the free speech jurisprudence of the Supreme Court of the United States. *See State v. Stummer*, 219 Ariz. 137, 142 (2008); *Brush & Nib*, 418 P.3d at 437 (“Thus, we analyze Appellants’ free speech claim pursuant to federal law.”). This brief, therefore, focuses on the Supreme Court’s compelled speech case law.

the government seeks to force a speaker to create and disseminate a message with which the speaker disagrees. See *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (explaining that the government cannot apply its antidiscrimination laws in such a way as to “declar[e] the sponsors’ speech itself to be the public accommodation” because doing so “violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message”). The law schools in *Rumsfeld*, unlike *Brush & Nib* here, “[we]re not speaking.” 547 U.S. 47, 64 (2006). Consequently, *Rumsfeld* is inapposite because the Solomon Amendment compelled conduct (allowing access to military recruiters), not speech (specific words and designs on wedding invitations and artwork).

Second, while *Hurley* acknowledges that public accommodations laws generally are constitutional when applied to a business’s conduct, it also holds that antidiscrimination laws must yield to the First Amendment when “the sponsors’ speech itself [is taken] to be the public accommodation.” *Hurley*, 515 U.S. at 573; *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S.Ct. 1719, 1727 (2018) (explaining that “the religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression.”). By applying Section 18-

4(B) to Brush & Nib’s expression, the COA violated the rule that a speaker has the right “to shape its expression by speaking on one subject while remaining silent on another.” *Hurley*, 515 U.S. at 573-74; *Janus v. American Fed. of State, Cty., Mun. Employees, Council 31*, 138 S.Ct. 2448, 2463 (2018) (“We have held time and again that freedom of speech ‘includes both the right to speak freely and the right to refrain from speaking at all.’”). And this rule safeguards individuals as well as for-profit businesses. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768 (2014) (“When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights ... of the humans who own and control those companies.”).

The COA’s decision requires Brush & Nib either to convey a message with which it disagrees (by creating custom-made wedding invitations and artwork for same-sex weddings) or to remain silent and lose the ability to create and disseminate its desired messages. *See Brush & Nib*, 418 P.3d at 444 (“Nor are Appellants penalized for refusing to create wedding-related merchandise as long as they equally refuse similar services to opposite-sex couples.”). But putting businesses that engage in expression to this choice—create a government-mandated message or stop creating expression—violates the freedom of thought and mind that the First Amendment was

meant to protect. *See Wooley v. Maynard*, 430 U.S.705, 714 (1977) (quoting *West Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 (1943)) (“The right to speak and the right to refrain from speaking are complementary components of the broader concept of ‘individual freedom of mind.’”). And, as *Wooley* instructs, this is true even if the message is initiated by someone other than the business creating the expression. *See Wooley*, 430 U.S. at 715 (holding that the government cannot compel speakers “to foster ... an idea they find morally objectionable”). As a result, absent a showing that Section 18-4(b) is narrowly tailored to serve a compelling interest, Phoenix cannot require Brush & Nib to design and create expression that contravenes their deeply held religious beliefs regarding marriage. *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S.Ct. 2361, 2371 (2018) (explain that content-based speech restrictions “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”).

**I. *Rumsfeld* does not insulate public accommodations laws from First Amendment challenge when the government applies such laws to the speech activity of businesses and their owners.**

In *Rumsfeld*, the Supreme Court applied the same “fundamental rule” set forth in *Hurley*—that the First Amendment is violated when “the complaining speaker’s own message [is] affected by the speech it [is] forced

to accommodate.” *Rumsfeld*, 547 U.S. at 63. The critical difference between this case and *Rumsfeld* is that the law schools in *Rumsfeld* were “not speaking when they host[ed] interviews and recruiting receptions.” *Id.* at 64. The Solomon Amendment “neither limit[ed] what law schools may say nor require[d] them to say anything”; rather, “[i]t affect[ed] what law schools must *do*—afford equal access to military recruiters.” *Id.* at 60. As a result, accommodating military recruiters did not affect or interfere with the law schools’ own message. To the extent the law schools were required to engage in any expression—sending out emails or posting notices on bulletin boards—such speech was “plainly incidental to the Solomon Amendment’s regulation of conduct.” *Id.* at 62.

*Rumsfeld*’s passing statement that a law school’s speech “is only ‘compelled’ if, and to the extent, the school provides such speech for other recruiters,” *Id.* at 64, cannot be taken as a general First Amendment pronouncement that speakers confronted with public accommodations laws must either acquiesce and convey the government’s desired message or stop providing their expressive goods to non-protected classes of individuals. Instead, *Rumsfeld* confirms the uncontroversial view that law schools do not have a constitutional right to engage in the underlying conduct giving rise to the incidental speech requirement.

Contrary to the COA's suggestion, however, neither *Rumsfeld* nor *Roberts v. U.S. Jaycees* supports "a state's authority to 'create rights of public access on behalf of its citizens'" when the compelled speech interferes with a speaker's expression. *Brush & Nib*, 418 P.3d at 439 (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984)). In *Roberts*, the Court held that the "[f]reedom of association ... plainly presupposes a freedom not to associate." *Roberts*, 468 U.S. at 623. An expressive association can invoke the protections of the First Amendment (and thereby defeat a right of public access) when the compelled inclusion of a member "will impede the organization's ability to engage in these protected activities or to disseminate its preferred views." *Id.* at 627. Applying Minnesota's public accommodations law to require the Jaycees to accept women members did not implicate the Jaycees' speech rights because the organization "failed to demonstrate that the Act imposes any serious burdens on the male members' freedom of expressive association." *Id.* at 626. Given that allowing women members did not interfere with the organization's desired message, *Roberts* upheld application of Minnesota's public accommodations law. See *Boy Scouts of America v. Dale*, 530 U.S. 640, 657 (2000) ("But in [*Roberts*] we went on to conclude that the enforcement of [public accommodations] statutes would not materially

interfere with the ideas that the organization sought to express.”). As a result, *Roberts* reinforces (1) *Rumsfeld*’s recognition that the First Amendment is violated when “the complaining speaker’s own message [is] affected by the speech it [is] forced to accommodate,” *Rumsfeld*, 547 U.S. at 63, and (2) *Hurley*’s admonition that the government cannot take a business’s “speech itself to be the public accommodation.” *Hurley*, 515 U.S. 573.

Unlike the laws in *Rumsfeld* and *Roberts*, Section 18-4(B) (as interpreted by the COA) compels Brush & Nib to speak by requiring its Owners to create specific messages on particular custom-designed stationery or artwork. In the present case, there are not two separate things—the conduct (allowing recruiters on campus) and the incidental speech (making students aware of the recruiters’ presence on campus); there is only the custom-designed and hand-made artwork, which is the expressive creation of Brush & Nib and its Owners. Accordingly, the decision forces Brush & Nib to make an unconstitutional Hobson’s choice—either acquiesce in a speech compulsion (by carrying the government-mandated message) or submit to a speech restriction (by ceasing to create custom-made wedding materials to avoid being punished under Section 18-4(B)).

Under the First Amendment, however, the government is not permitted to require Brush & Nib to design and create speech—whether in the form of invitations, books, tattoos, movies, video games, banners, art, music, or host of other expressive forms. And this is true even though the speech is generated through the “conduct” of drawing, writing, filming, programming, painting, and composing. *See Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061–62 (9th Cir. 2010) (“[N]either the Supreme Court nor our court has ever drawn a distinction between the process of creating a form of *pure* speech (such as writing or painting) and the product of these processes (the essay or the artwork) in terms of the First Amendment protection afforded. Although writing and painting can be reduced to their constituent acts, and thus described as conduct, we have not attempted to disconnect the end product from the act of creation.”); *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 582 (1983) (recognizing that a tax on ink and paper “burdens rights protected by the First Amendment”).

Moreover, contrary to the COA’s claim, one cannot cure the constitutional violation by arguing that a third party would know that Section 18-4(B) forces Brush & Nib to make the invitation or artwork. The COA cites *Rumsfeld* to support its claim that “it is unlikely that a general observer would attribute a company’s product or offer of services, in

compliance with the law, as indicative of the company’s speech or personal beliefs.” *Brush & Nib*, 418 P.3d at 439; *Id.* (citing *Rumsfeld* for the proposition that “observers can appreciate the difference between sponsored speech and speech which is permitted because it is required by law”).

But *Rumsfeld*’s statement cannot be taken as a general First Amendment rule regarding speech compulsions for at least three reasons. First, *Rumsfeld* affirms “the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.” *Rumsfeld*, 547 U.S. at 63-64 (quoting *Hurley*, 515 U.S. at 573). This guiding principle is violated whenever “the complaining speaker’s own message [i]s affected by the speech it [i]s forced to accommodate.” *Id.* at 63; *Janus*, 138 S.Ct. at 2464 (quoting *Barnette*, 319 U.S. at 633).

Second, the First Amendment protects more than just a speaker’s desired message; it also ensures that a speaker cannot be conscripted to serve as a courier for another’s message—even when a reasonable observer knows that the message belongs to a third party and not the speaker. In *Wooley*, the State of New Hampshire could not require the Maynards to display “Live Free or Die” on the license plate affixed to their car. The slogan was “the State’s ideological message,” and the Maynards simply served as “the courier for such message.” *Wooley*, 430 U.S. at 715, 717. Even though the

Maynards were not speaking themselves, the Free Speech Clause precluded the State's using them to facilitate the government's chosen message. Similarly, if a business objects to fostering the message of another,<sup>3</sup> the First Amendment safeguards that decision: "A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts." *Id.* at 714.

Third, if a reasonable observer understands that compliance with a generally applicable law does not reflect the speaker's own views, then *Wooley*, *Barnette*, *Riley*, *Pacific Gas*, and *Tornillo* were all decided wrongly. Observers would have known that New Hampshire forced the Maynards to be a "mobile billboard" and would have understood that displaying "Live Free or Die" was not a reflection of the Maynards' beliefs. *Wooley*, 430 U.S. at 715. The same holds true for the school children in *Barnette*, the fundraisers in *Riley*, the utility company in *Pacific Gas*, and even the newspaper in *Tornillo*. The problem, of course, is that the Court struck

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<sup>3</sup> If nothing else, a wedding invitation conveys a basic fact—that the event is a wedding or that the couple is getting married. But the First Amendment proscribes compelled statements of fact as well as ideological messages. *See Riley v. Nat'l Fed. of the Blind of North Carolina, Inc.*, 487 U.S. 781, 797-98 (1988) (explaining that "compelled statements of 'fact,'" just like compelled statements of opinion, "burden[] protected speech"). Thus, even if a wedding invitation does not convey a specific message celebrating same-sex marriage, the government cannot force Brush & Nib or its Owners to attest to the fact of the marriage through their designs and creations.

down the government regulations in each of these cases because the laws *did* compel speech. Thus, the COA's conclusion that *Rumsfeld* governs the present case is inconsistent with the Supreme Court's governing compelled speech case law and should be rejected.

**II. The Supreme Court's compelled speech cases prohibit the application of public accommodations laws in a way that interferes with a business's expression.**

The COA reaches the wrong result in this case because it applies *Rumsfeld* instead of the Supreme Court's compelled speech cases, which preclude government-mandated speech (*e.g.*, requiring Brush & Nib to create custom artwork when such expression contradicts the sincerely held religious beliefs of Brush & Nib and its Owners) as well as government-mandated silence (*e.g.*, forcing Brush & Nib to stop selling custom-made wedding artwork unless they "refuse similar services to opposite-sex couples," *Brush & Nib*, 418 P.3d at 444). Compelled expression "invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control." *Barnette*, 319 U.S. at 642. Consequently, "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion *or force citizens to confess by word or act their faith therein.*" *Id.* (emphasis added)

The First Amendment protects expression in all of its varied forms—art, calligraphy, books, newspapers, video games, paintings, music, and more. *Hurley*, 515 U.S. at 569 (“[T]he Constitution looks beyond written or spoken words as mediums of expression.”); *Anderson*, 621 F.3d at 1061 (holding that tattooing is fully protected because “a form of speech does not lose First Amendment protection based on the kind of surface it is applied to”). And this includes expression that businesses create and sell to the public. *United States v. Stevens*, 559 U.S. 460, 464, 481 (2010); *Brown v. Entm’t Merch. Ass’n*, 564 U.S. 786, 790 (2011).

Brush & Nib’s custom-made artwork (involving painting, calligraphy, and hand-lettering) falls comfortably within the Court’s expansive First Amendment protection. Brush & Nib can create an almost infinite number of messages, designs, and symbols, and such expression—whether ideological or factual—is protected under the First Amendment. *See Wooley*, 430 U.S. at 715 (concluding that New Hampshire could not force the Maynards to carry the State’s “ideological message”); *Riley*, 487 U.S. at 782 (confirming that “compelled statements of ‘fact’” impermissibly “burden[] protected speech”). With respect to custom-made artwork for a same-sex wedding, a customer may seek to celebrate a same-sex marriage and possibly promote the “view that people of [differing] sexual orientations

have as much claim to unqualified social acceptance as heterosexuals.” *Hurley*, 515 U.S. at 574. Like the parade organizers in *Hurley*, Brush & Nib “may object to unqualified social acceptance of gays and lesbians or have some other reason for wishing” not to create artwork for the same-sex wedding. *Id.* at 574-75; *Brush & Nib*, 418 P.3d at 432 (noting that Brush & Nib and its owners “believe being required to create customer-specific merchandise for same-sex weddings will violate their religious beliefs”). “[W]hatever the reason,” though, under the Court’s compelled speech and expressive association cases, “it boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government’s power to control.” *Hurley*, 515 U.S. at 575.

As *Hurley* notes, public accommodations laws “do not, as a general matter, violate the First or Fourteenth Amendments” because they typically focus “on the act of discriminating against individuals in the provision of publicly available goods, privileges, and services on the prescribed grounds.” *Id.* at 572. But *Hurley* also makes clear that when these laws are “applied in a peculiar way”—*i.e.*, when they “target speech” or “discriminate on the basis of its content”—antidiscrimination laws have “the effect of declaring the sponsors’ speech itself to be the public accommodation.” *Id.* at 572-73. Treating speech as the public accommodation, though, violates a

speaker's right under the First Amendment "to choose the content of his own message." *Id.* at 573.

In *Hurley*, the disagreement between GLIB and the parade organizers did not involve "the participation of openly gay, lesbian, or bisexual individuals in various units in the parade." *Id.* at 572. No member of GLIB alleged that they were excluded because of their LGBT identity from marching as part of an approved parade group, and the organizers disclaimed any such intent to exclude. *Id.* The problem in *Hurley* arose only when GLIB sought to participate in the parade organizers' speech activity by marching in the parade under its own banner. *Id.* Applying Massachusetts antidiscrimination law to the selection of participants forced the organizers "to alter the expressive content of their parade" and transferred authority over the message conveyed to "all those protected by the law who wished to join in with some expressive demonstration of their own." *Id.* at 573.

Similarly, and contrary to the COA's suggestion, Brush & Nib did not refuse service to any individual based on his or her sexual orientation or gender identity. Compare *Brush & Nib*, 418 P.3d at 438 with ROA-111-22:1-4 and ROA-68 at 26:19-25. Rather, Brush & Nib objects only to "being required to create customer-specific merchandise for same-sex weddings [because such expression] will violate their religious beliefs."

*Brush & Nib*, 418 P.3d at 432. Consequently, in requiring Brush & Nib to create designs and messages for same-sex weddings (or to stop doing all wedding-related work), the COA did the same thing that the lower court did in *Hurley*—treated Brush & Nib’s expression as the public accommodation. Specifically, the COA applied Section 18-4(B) to Brush & Nib’s “speech itself,” thereby violating the basic First Amendment principle that the government cannot control “the choice of a speaker not to propound a particular point of view.” *Hurley*, 515 U.S. at 573. Under the COA’s decision, Brush & Nib must create expression supporting or promoting same-sex marriage even though the Owners sincerely believe that they cannot in good conscience create such artwork. As the Court concluded in *National Institute of Family and Life Advocates v. Becerra*, such a compulsion “plainly ‘alters the content’ of petitioners’ speech,” 138 S.Ct. at 2371 (quoting *Riley*, 487 U.S. 781, 795 (1988)), and “compels individuals to contradict their most deeply held beliefs, beliefs grounded in basic philosophical, ethical, or religious precepts, or all of these.” *Id.* at 2378 (Kennedy, J., concurring); *Hurley*, 515 U.S. at 576 (“[W]hen dissemination of a view contrary to one’s own is forced upon a speaker intimately connected with the communication advanced, the speaker’s right to autonomy over the message is compromised.”).

Moreover, the use of another’s design does not cause the business creating the expression to forfeit its First Amendment protection. *See, e.g., Brush & Nib*, 418 P.3d at 437 (noting that “*Coleman* did not address the dichotomy between the speech of the artist and the speech of the patron choosing the message to be applied”). The First Amendment protects both the underlying message and the expressive work that conveys that message: “Nor, under our precedent, does First Amendment protection require a speaker to generate, as an original matter, each item featured in the communication.” *Hurley*, 515 U.S. at 570. *See also Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (stating that newspaper content is protected speech despite the fact that newspapers frequently compile the speech of others); *New York Times Co.*, 376 U.S. at 270 (recognizing that newspapers receive First Amendment protection for advertisements created by customers); *Anderson*, 621 F.3d at 1062 (protecting tattoo artists under the First Amendment even when the customer provides the design); *Coleman v. City of Mesa*, 284 P.3d 863, 871 (Ariz. 2012) (concluding that the fact that “a tattoo artist may use a standard design or message ... does not make the resulting tattoo any less expressive.”). The words, pictures, and symbols included in custom wedding invitations and artwork are paradigmatic forms of expression, and “a form of speech does not lose its

First Amendment protection based on the kind of surface it is applied to.”  
*Anderson*, 621 F.3d at 1061.

If adopted, the COA’s opinion would empower local governments to “compel affirmance of a belief with which the speaker disagrees” whenever the speaker is a public accommodation. *Hurley*, 515 U.S. at 573. A Christian calligrapher could be required to create a wedding invitation for a same-sex wedding, a Jewish choreographer could have to stage a dramatic Easter performance, a Catholic singer could be compelled to perform at a marriage of two divorcees, and a Muslim who operates an advertising agency could be required to create a campaign for a liquor company. Local governments also would be able to dictate the content of expressive works by writers, painters, musicians, and photographers. Yet requiring any of these businesses to convey messages with which they disagree “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.” *Barnette* 319 U.S. at 642. Expressive businesses, like their owners, have “the choice ... not to propound a particular point of view,” which means they can exclude viewpoints that conflict with their vision of “what merits celebration.” *Hurley*, 515 U.S. at 574-75. Thus, this Court should reverse the COA and hold that the First Amendment prohibits the City of Phoenix from requiring

Brush & Nib and its Owners to create expression that contradicts their religious and moral beliefs regarding marriage.

### CONCLUSION

To the extent a state seeks to apply its public accommodations law to expressive activity to “produce a society free of the corresponding biases” against members of the protected classes, “it is a decidedly fatal objective.” *Hurley*, 515 U.S. at 578-79. If courts can prevent stationery store owners, bakeries, photographers, florists, painters, musicians, writers, and other artists from expressing their views on certain issues and policies (such as same-sex marriage, gender relations, and religion), then it is possible that social discourse may become more neutral toward members of protected classes, thereby removing the need for courts to step in and correct aberrant or disfavored expression. But this outcome is possible only if the courts jettison the well-established First Amendment protections that preclude using “a noncommercial speech restriction ... to produce thoughts and statements acceptable to some groups or, indeed, all people.” *Tornillo*, 418 U.S. at 256. Under the Court’s compelled speech and expressive association cases, the government “is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored

one, however enlightened either purpose may strike the government.” *Id.* (citation omitted).

As the Supreme Court acknowledged in *Cohen*, the “constitutional right of free expression is powerful medicine” in our diverse society. 403 U.S. 15, 24 (1971). Recognizing that the First Amendment protects the expressive activity of businesses safeguards the right of all speakers—whether individuals or businesses—“to hold a point of view different from the majority and to refuse to foster ... an idea they find morally objectionable.” *Wooley*, 430 U.S. at 715. When the government applies its public accommodations law to force Brush & Nib or any other business to create expression promoting or supporting a cause, issue, or event with which the business disagrees—through a wedding invitation, banner, article, or any other type of speech—it infringes on the “individual freedom of mind” that the First Amendment was meant to guard, *Barnette*, 319 U.S. at 637, and fails to “comport with the premise of individual dignity and choice upon which our political system rests.” *Cohen*, 403 U.S. at 24. This Court, therefore, should reverse the COA and hold that the First Amendment prohibits applying Section 18-4(B) to mandated expression by Brush & Nib and its Owners.

Respectfully submitted this 20th day of December 2018.

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