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On Petition for Writ of Certiorari to the Colorado Court of Appeals Judges: Schutz, Dunn, Grove Case No. 2021CA1142 DISTRICT COURT, COUNTY OF DENVER District Court Judge: The Hon. A. Bruce Jones District Court Case No.19CV32214	
Petitioners: MASTERPIECE CAKESHOP INC. and JACK PHILLIPS, and Respondent: AUTUMN SCARDINA	**▲ COURT USE ONLY ▲**
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Brief of *Amici Curiae* First Amendment Scholars in Support of Petitioners	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of Colorado Appellate Rules (C.A.R.) 28, 29, and 32. Including:

It contains 4,407 words, which is not more than the 4,750 limit.

I acknowledge that this brief may be stricken if it does not comply with the requirements of C.A.R. 28, 29, and 32.

/s/ *Devin C. Daines*
Devin C. Daines

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INTEREST OF AMICI CURIAE

Amici are legal scholars who have dedicated years to teaching, studying, and writing about the First Amendment. The names and associations of *Amici* are printed in an appendix following the conclusion of this brief.[1]

SUMMARY OF ARGUMENT

The facts of this case carry a familiar echo from the U.S. Supreme Court's past precedents rejecting government compelled affirmation in its many forms. Too often, that Court has had to step in to halt state regulation forcing private citizens to mouth words against their conscience, which is anathema to the First Amendment. Indeed, earlier this year, the Court ruled that an attempt to use the statute at issue in this case to require a person of faith to engage in state-authorized speech contrary to her beliefs was unconstitutional. This case presents materially identical facts to that one and the Court's holding should control here. *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023). In *303 Creative*, the Court relied on and reaffirmed a line of cases on compelled speech that should guide this court. This precedent will be reviewed in this brief.

[1] Amici do not have a parent corporation or issue stock. No party or party's counsel authored the brief in whole or in part, or contributed money that was intended to fund preparing or submitting the brief. No person other than amici of their counsel contributed money to fund preparing or submitting the brief.

Perhaps no example rings louder than the Court's initial pronouncement of the compelled speech doctrine, which addressed West Virginia's effort to force its school children to speak words contrary to their most fundamental beliefs. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). The Court enjoined that regulation, affirming that the First Amendment provides robust and resilient protection against all government efforts to compel private individuals to speak a message contrary to their convictions to achieve its ends. In what is widely recognized as one of the most poignant and enduring passages from the Court's jurisprudence, Justice Robert H. Jackson wrote:

> If there is any fixed star in our constitutional constellation, it is that 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. If there are any circumstances which permit an exception, they do not now occur to us. *Id*. at 642.

This case presents no such exception. Despite the Constitution's unequivocal, time-honored protection of the right not to speak, the application of the Colorado Anti-Discrimination Act ("CADA") as interpreted by the courts below would do the same thing that West Virginia and others have attempted: force its citizens to speak the message it believes they should speak to further its ends. This time, instead of advancing the government's interests in promoting patriotism, "national unity," and "national security," *see Barnette*, 319 U.S., at 640, respondent seeks to employ state power to redress a claim of discrimination by requiring petitioner, through his

company's cake designs, to speak a message against his religious conscience—thereby "prescrib[ing]" to her "what shall be orthodox" and "forc[ing]" him "to confess" through that content a message contrary to his fundamental beliefs, *see Barnette*, 319 U.S., at 642.

In lending their imprimatur to Colorado's speech coercion against Mr. Phillip's religious conscience, the courts below transgressed fundamental principles of First Amendment law. "Laws that compel speakers to utter . . . speech bearing a particular message" are subject to "the most exacting scrutiny" known under Constitutional law. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994). When such laws require individuals to express messages that contradict their conscience, particularly religious conscience, they are viewpoint compulsions that should be subjected to a particularly strict version of traditional strict scrutiny. *See Matal v. Tam*, 137 S. Ct. 1744, 1757, 1763–64 (2017); *id*. at 1765, 1767 (Kennedy, J., concurring).[2] In failing to properly subject this application of CADA to this most rigorous test, the courts below severely erred.

[2] See also Lackland H. Bloom, Jr., *The Rise of the Viewpoint Discrimination Principle*, 72 SMU L. Rev. 20, 31 (2019) ("The Kennedy plurality [in *Matal*] . . . seemingly treat[ed] [viewpoint discrimination] as automatically unconstitutional. Perhaps it makes little difference since it appears that the Court will not find the strict standard satisfied once it has characterized a regulation as viewpoint discriminatory.").

Those courts' error was further compounded by their adoption of an extraordinary and especially dangerous new First Amendment principle: as expression increases in uniqueness, it enjoys ever decreasing First Amendment protection. First Amendment jurisprudence shows the opposite to be true: The Free Speech Clause's protection extends not only to common or non-controversial speech, but is at its apex when applied to unique and unconventional speech like Mr. Phillips'. By weakening protections for this unique speech, the courts below create a self-imposed quagmire that is irreconcilable with the U.S. Supreme Court's long-standing precedents to the contrary.

Notwithstanding the controversial and emotionally charged subject matter of Mr. Phillips' speech, the First Amendment unmistakably prohibits compelled speech against an individual's conscience. This remains true no matter how objectionable society may regard the individual's speech to be, and certainly if the Court deems that speech to be unique or distinctive in the marketplace of ideas.

ARGUMENT

I. The application of CADA to Mr. Phillips has the effect of compelling speech.

Being threatened with legal penalties for declining to create a customized cake commissioned by an individual for "celebrating her transition from male to female" (*Scardina v. Masterpiece Cakeshop, Inc.*, 2023 COA 8 at ¶6 (Colo. Ct. App., 4th Div.

2023)) constitutes compelled speech. The specific customization is dictated by the message—the colors pink and blue were not chosen at random. The District Court recognized that the colors represented "female or woman" and "male or man" respectively. Findings of Fact and Conclusions of Law, *Scardina v. Masterpiece Cakeshop LLC*, Case No. 19CV32214 (Colo. Dist. 2021), at 13. The findings of fact continue: "The symbolism of the requested design of the cake is also apparent given the context of gender-reveal cakes, which have become popular in at least the last six years." *Id*. at 14.

Thus, that an abstract pink and blue cake may not be inherently expressive does not mean that the customized cake sought in this context did not convey a message. A black armband need not have an inherent meaning. It could be worn for reasons of fashion or to conceal a tear in fabric, but in a specific context, as recognized by the Supreme Court in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), it could convey "objections to the hostilities in Vietnam and [] support for a truce" (*id*. at 504). This is true even if an outside observer might not immediately comprehend the meaning, perhaps mistaking it for a symbol of personal mourning or just a fashion choice.

II. Colorado's speech compulsion is antithetical to the First Amendment and subject to the most exacting scrutiny.

It is a fundamental tenet of First Amendment law that "[t]he government may not . . . compel the endorsement of ideas that it approves." *Knox v. Service Emps. Int'l Union, Local 1000*, 567 U.S. 298, 309 (2012). Compelled speech is "antithetical to the free discussion that the First Amendment seeks to foster." *Pacific Gas & Elec. Co. v. Public Utils. Comm'n*, 475 U.S. 1, 16 (1986) (plurality op.). Baked into this constitutional premise is a presumption that "speakers, not the government, know best both what they want to say and how to say it." *Riley v. National Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 791 (1988).

This principle has its roots in the founding generation, and that generation's effort to protect the American experiment against repeating the sordid history of affirmations against conscience coerced by those in authority. America's Founders were cognizant of this "history of authoritarian government," *see National Inst. of Family & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2379 (2018) (Kennedy, J., concurring), with its persistent pattern of abuses and injustices such governments have been all too prone to commit. Prominent among these is the biblical tradition of Hananiah, Mishael, and Azariah, (given the Babylonian names of Shadrach, Meshach, and Abednego) from the book of Daniel, and their refusal to bow before a golden statue as commanded by Nebuchadnezzar, who had them thrown into a fiery furnace as a consequence of their defiance. Daniel 3:1–21. Similarly, from late antiquity, Roman authorities often required Christians to commit what they believed

to be sacrilege by burning incense to pagan idols or paying obeisance to Roman emperors.[3] Later, under Christendom, Jews, Muslims, and unorthodox Christians were compelled to profess Christian doctrines which they did not believe.[4]

Beyond the oppressiveness of a prohibition on expressing one's beliefs, these practices were even more invasive because they forced people to affirm what they did not believe through both word and action. The injustice of this compulsion is particularly evident in the martyrdom of Sir Thomas More, who had served as Lord Chancellor to King Henry VIII. Instead of affirming the validity of Henry's annulment of his marriage to Catherine of Aragon and his marriage to Anne Boleyn, More resolved to remain silent. Despite his steadfast silence on the matter, More was imprisoned and beheaded because he would not affirm, contrary to his beliefs, Henry's annulment and succession.[5] More's story served as an important monument to freedom of expression and conscience in the Anglo- American tradition, and was thus an inspiration to many in the founding generation.

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[3] *See* B. Winter, Divine Honours for the Caesars: The First Christians' Responses (2015); 1 E. Gibbon, The Decline and Fall of the Roman Empire 537–538 (David P. Womersley ed., Penguin Press 1994) (1776).

[4] *See* B. Tierney, Religious Rights: A Historical Perspective, in Religious Liberty in Western Thought 29 (N. Reynolds & W. Durham, Jr. eds., 1996); N. Cantor, The Civilization of the Middle Ages 512– 13 (rev. ed. 1993); J. Gerber, The Jews of Spain 115 – 44 (1992).

[5] *See* R. Marius, Thomas More: A Biography 461–514 (1984).

The Founders themselves frequently warned of the dangers inherent in government coercion against conscience. For instance, in explaining his opposition to imposition of taxes to support Christian ministers, Thomas Jefferson wrote that it is "sinful and tyrannical" "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves." 2 The Papers of Thomas Jefferson 545 – 553 (J. Boyd ed. 1950) ("Papers of Jefferson").

In fact, during the First Congress's debate over which rights should be specifically enumerated in the Bill of Rights, reference was made to "[o]ne of the most notorious courtroom cases of religious intolerance in England" which incidentally involved government compelled speech against religious conscience. Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1471–1472 (1990). The founding generation was very familiar with this case arising from William Penn's indictment for speaking to an unlawful assembly. Specifically, Penn refused to observe the requirement of removing his hat in court because he viewed it to be "a form of obeisance to secular authority forbidden by [his Quaker] religion," *id*., at 1472, meaning removal of his hat would communicate an obeisant message contrary to his religious convictions. Although acquitted for the charge on which he was tried, Penn was held in contempt and imprisoned for refusing to remove his hat.

"This case became a cause célèbre in America," *id*., and was used by John Page of Virginia during the First Congress's debate to illustrate the importance of enumerating certain unalienable rights like the right to free speech. When Representative Theodore Sedgwick's objected to the inclusion of self-evident rights like the right of assembly, because doing so would be a "trifle[]" akin to specifying that an individual has "a right to wear his hat if he pleased," Page responded by referencing Penn's case, stating that "such rights have been opposed, and a man has been obliged to pull off his hat when he appeared before the face of authority[.]" I Annals of Cong. 759–760 (J. Gales ed. 1834) (Aug. 15, 1789).

Protecting citizens from government compulsion of this kind was thus very much at the forefront of the Founders' concerns in enumerating and adopting the Bill of Rights.

Modern constitutional theory reinforces this historical principle against compelled expression. Theorists offer numerous weighty bases for the constitutional commitment to freedom of speech; these include the important concepts of a truth seeking "marketplace of ideas," or of the communication of information as essential to the proper functioning of democratic processes, or of the inextricable link between free expression and individual autonomy and integrity.[6] Under any of these rationales, compelling a person explicitly or symbolically to affirm something

[6] *See* Toni M. Massaro, *Tread On Me!*, 17 U. PA. J. Const. L. 365, 386 (2014).

against her conscience defies any commitment to expressive freedom. Forcing people to profess or celebrate what they do not believe obstructs the pursuit of truth and distorts the marketplace of ideas; it undermines democracy by polluting the flow of information with insincere affirmations; and it assaults the autonomy, integrity, and conscience of those who are forced to affirm what they do not believe.

It is therefore axiomatic that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977); accord. *Barnette*, 319 U.S., at 645 (Murphy, J., concurring). This is because the "right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'" *Wooley*, 430 U.S., at 714 (citing *Barnette*, 319 U.S., at 637). When dissemination of a viewpoint 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." *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 576 (1995).

The Court's precedents overwhelmingly favor a categorical approach prohibiting compelled speech. Indeed, "[s]ome of this Court's leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say." *Rumsfeld v.*

Forum for Acad. & Inst. Rights, Inc., 547 U.S. 47, 61 (2006). Full stop. With few exceptions, governments' attempts to compel speech do not withstand scrutiny.[7]

First Amendment scholars of all ideological stripes are largely in accord on this point, particularly as it applies to compelled affirmations of fundamental beliefs contrary to one's convictions; such compelled affirmations violate the First Amendment and are nearly universally blocked or struck down under strict scrutiny.[8]

This Court again upheld this principle recently when California sought to require pro-life pregnancy centers to promote its preferred messaging advertising how women could obtain state-subsidized abortion services, even while those centers were simultaneously attempting to dissuade women from choosing that

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[7] *See, e.g.*, *Wooley*, 430 U.S., at 717 (holding that New Hampshire could not compel Jehovah Witnesses to display a state-scripted slogan on their vehicles' license plates); *Keller v. State Bar of Cal.*, 496 U.S. 1, 17 (1990) (holding that California could not compel bar members to pay for bar's ideological programs in contrast with bar-related activities); *Riley*, 487 U.S., at 799–800 (holding that North Carolina's law forcing professional fundraisers to announce to potential donors the percentage of funds raised that have been given to charities was unconstitutional under exacting First Amendment scrutiny); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 241–242 (1977) (holding that state cannot compel nonunion members to pay for union's ideological messages as opposed to union-related activities); *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (holding that Florida right-of-reply statute forcing newspapers to print political columns was unconstitutional); *Pacific Gas & Elec. Co.*, 475 U.S., at 20–21 (holding that state public utilities commission's order forcing companies to include opposing third-party newsletters in their billing envelopes was unconstitutional compelled speech).

[8] See, e.g., Corbin, *Compelled Disclosures*, 65 Ala. L. Rev. 1277, 1283 (2014) ("For the most part, government attempts to force individuals to affirm beliefs contrary to their own . . . are subject to strict scrutiny and struck down.").

option. *Becerra*, 138 S. Ct., at 2371. Because California's licensed notice altered the content of the pregnancy centers' speech, the law was enjoined under the First Amendment. *Id*., at 2378. As with the statute in *Becerra*, CADA "compels individuals to contradict their most deeply held beliefs, beliefs grounded in basic . . . religious precepts[.]" *Id*., at 2379 (Kennedy, J., concurring). This makes CADA another "paradigmatic example of the serious threat presented when government seeks to impose its own message in the place of individual speech, thought, and expression." *Id*. Accordingly, it is not "forward thinking" on the part of Colorado "to force individuals to 'be an instrument for fostering public adherence to an ideological point of view [they] fin[d] unacceptable.'" *Id*. (quoting *Wooley*, 430 U.S., at 715).

And as this Court also affirmed in recent years, compelled speech is a particularly noxious infringement on liberty, even more so than outright restrictions on speech. *See Janus v. American Fed'n of St., Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018) (holding that "measures compelling speech are at least as threatening" as those restricting "what can be said" (emphasis added)). This is especially true because compelled speech typically involves viewpoint compulsion,[9]

[9] Duncan, *Viewpoint Compulsions*, 61 Washburn L.J. 251, 259–272 (2021–2022) (illustrating that compelled speech cases typically concern viewpoint compulsions); *see also* Duncan, *Seeing the No-Compelled-Speech Doctrine Clearly through the Lens of Telescope Media*, 99 Nebraska L. Rev. 78 (2020) (explaining that

making it a viewpoint-based regulation of speech toward which the Court has shown utmost skepticism. *See, e.g., Morse v. Frederick*, 551 U.S. 393, 436 (2007) ("[C]ensorship that depends on the viewpoint of the speaker, is subject to the most rigorous burden of justification."); *Rosenberger v. Rector and Visitors of Univ. of Va*., 515 U.S. 819, 828–829 (1995) (holding that when the government targets "particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant" because "viewpoint discrimination is . . . an egregious form of content discrimination" (citation omitted)).

The egregious violation of First Amendment principles resulting from viewpoint compulsion can be seen in the facts of this case before the Court. When Mr. Phillips uses his artwork to express a viewpoint he favors, CADA not only restricts his speech because of the viewpoint communicated in that message, but also punishes him by compelling him to create new expression supporting a contrary viewpoint he does not believe. Such coercion thus amounts to a "twice- viewpoint-based regulation" that is "doubly poisonous" to the First Amendment.[10] In that sense, CADA is akin to the "right of reply" statute in *Miami Herald*, which required

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"viewpoint-based mandates are laws that compel an unwilling speaker to express a message that takes a particular ideological position on a particular subject").

[10] *See* Duncan, 61 Washburn L.J., at 272; *see also id*., at 253–259 (explaining how viewpoint compulsions are "more poisonous to freedom of speech than viewpoint restrictions"); *id*., at 254 ("If viewpoint restrictions give off the scent of authoritarian control of the marketplace of ideas, viewpoint compulsions give off the noiseome vapors of totalitarianism.").

newspapers publishing their viewpoints in editorials to use their limited space to print contrary viewpoints in the same publications. The statute contravened the First Amendment in two ways: first, because it was akin to a statute forbidding a newspaper from publishing its viewpoints altogether, and second because it forced editors who did speak their viewpoints to simultaneously "publish that which reason tells them should not be published." *Miami Herald*, 418 U.S. at 256–257.

Additionally, the Court has already decided that an unquestionably legitimate antidiscrimination law cannot be applied in a way that compels affirmation of its "orthodoxy." In *Hurley*, the Court held that a Massachusetts antidiscrimination law, which required private parade organizers and a parade council to allow an LGBT organization to march in its parade, contravened the First Amendment's proscription of compelled speech. Specifically, the Court reasoned that, under the First Amendment, the government may not "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." *Hurley*, 515 U.S., at 579. Accordingly, applying state public accommodations laws to a speaker's message and expressive conduct as "a means to produce speakers free of . . . biases is a decidedly fatal objective." *Id*.

Hurley's message is clear: Public accommodations laws cannot be used to force individuals to engage in speech or expressive activities that convey messages

they do not wish to convey. And yet this is precisely what CADA does here. Colorado is using a public accommodations law to compel speech without regard for the speaker's autonomy, much like the anti-discrimination law in *Hurley*. Mr. Phillips is being forced, through his conduct, to customize cakes for ceremonies against his religious conscience. This case similarly cuts to the heart of the "individual freedom of mind," *Wooley*, 430 U.S., at 714, that our Constitution zealously guards and protects.

Yet as the U.S. Supreme Court recently noted, Mr. Phillips' situation involves an even more egregious violation of his First Amendment rights than those at issue in *Hurley* because he actively creates each cake as part of his business practice. *See 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023). Juxtaposed against the more passive hosting of groups by the parade organizer in *Hurley*, it becomes clear that when Mr. Phillips speaks through his creative work, like the website creator in *303 Creative*, the content and viewpoints expressed in his work are much more likely to be attributed to him individually than would allowing the LGBT organization to march in a parade composed of numerous different messages and speakers that are not necessarily uniform. *Cf. Hurley*, 515 U.S., at 577 (compelled expression would be "perceived by spectators as part of the whole" message by the unwilling speaker). The government compulsion facing Mr. Phillips also imposes a more significant burden and quandary on him because his refusal to speak Colorado's preferred

message puts his very livelihood in jeopardy, in contrast with the law in *Hurley* that implicated the private parade organizers' ability to speak their preferred message once each year in a St. Patrick's Day parade. *See id.*, at 560. More so than the regulation in *Hurley*, CADA should be held to violate the First Amendment.

Accordingly, it follows from the above cases that "[l]aws that compel speakers to utter or distribute speech bearing a particular message are subject to . . . rigorous scrutiny"—"the most exacting scrutiny." *Turner Broad. Sys.*, 512 U.S., at 642.

It is true that the Court has recognized three narrow exceptions to the strict scrutiny applied to compelled speech: (1) compelled commercial speech containing "purely factual and uncontroversial information," *see Zauderer v. Office of Disciplinary Couns.*, 471 U.S. 626, 650 (1985), (2) regulations of professional conduct that incidentally burden speech, *see Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011), or (3) political disclaimer and disclosure requirements, *see Citizens United v. FEC*, 558 U.S. 310, 366–367 (2010). Outside these narrow contexts, the government "may not compel affirmance of a belief with which the speaker disagrees." *Hurley*, 515 U.S., at 573.

None of these categories of exclusion applies here. Therefore, CADA must be subject to a particularly rigorous application of strict scrutiny. And because this Court has never upheld a compelled speech regulation when it was subject to strict scrutiny, the courts below have entered uncharted territory. If instead they had

properly applied strict scrutiny in accordance with applicable precedents, CADA plainly would not be permitted to stand as applied to artists like Mr. Phillips.

If the First Amendment's Free Speech Clause "protects flag burning, funeral protests, and Nazi parades—despite the profound offense such spectacles cause," then certainly too, the Free Speech Clause permits Masterpiece Cakeshop to abstain from "mouth[ing] support for views they find objectionable." *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014); *Janus*, 138 S. Ct., at 2463–2464. Stated differently, if the Free Speech Clause permits the despicable and vociferous public jeering of a loved one at their private funeral, *Snyder v. Phelps*, 562 U.S. 443, 460–461 (2011), then surely the Free Speech Clause protects Mr. Phillips' right simply to remain silent in accord with his conscience.

In short, Colorado law compels Mr. Phillips and Masterpiece Cakeshop to speak a message they do not want to communicate. CADA requires them "to affirm in one breath that which they deny in the next," making the promise of freedom of speech "empty." *Hurley*, 515 U.S., at 576 (citation omitted). Because "[t]he First Amendment protects the right of individuals to . . . refuse to foster . . . an idea they find morally objectionable," *Wooley*, 430 U.S., at 715, CADA's intrusion on Mr. Phillips' speech and conscience must be prohibited.

The courts below have given their stamp of approval to Colorado's prescription of what is orthodox for public discourse by compelling people to mouth

support for views they find objectionable. This government-mandated speech is exactly the kind of compelled speech that the First Amendment unequivocally prohibits. If Jefferson was correct that it is "sinful and tyrannical" to compel individuals to monetarily subsidize opinions contrary to their conscience, *see* Papers of Jefferson at 545–553, it is even more problematic to compel their express affirmation of views that contradict their most fundamental beliefs, whether through word or deed. And by compelling Mr. Phillips to use his own artistic talents to create content celebrating messages that he believes to be contrary to his religious convictions, CADA's inconsistency with the First Amendment's dictates is even more obvious.

Contrary to the lower courts' failure to do so, if this Court applies strict scrutiny to Colorado's law with appropriate rigor, the outcome is inevitable: as applied to artists like Mr. Phillips, CADA's compulsion of speech is unconstitutional.

CONCLUSION

Because compelled speech against one's conscience is anathema to the First Amendment, a particularly strict version of strict scrutiny should be applied to CADA.

Respectfully submitted this 19th day of December, 2023, by:

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CERTIFICATE OF SERVICE

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