

ARIZONA COURT OF APPEALS
DIVISION ONE

BRUSH & NIB STUDIO LC, et al.,

Plaintiffs/Appellants/
Cross-Appellees,

v.

CITY OF PHOENIX,

Defendant/Appellee/
Cross-Appellant.

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

Maricopa County
Superior Court
No. CV2016-052251

Panel: Winthrop, Campbell,
McMurdie

Oral Argument: Apr. 10, 2018
10:15 a.m.

**BRIEF OF *AMICI CURIAE* COALITION FOR JEWISH VALUES, ETHICS
AND RELIGIOUS LIBERTY COMMISSION, JEWS FOR RELIGIOUS
LIBERTY, AND THE RABBINICAL ALLIANCE OF AMERICA, INC. IN
SUPPORT OF APPELLANTS**

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INTRODUCTION

The United States includes millions of individuals in faith communities who believe in an afterlife and that our conduct matters toward eternal salvation. The government has never felt it necessary to deny such citizens the ability to exercise their beliefs or to force them to be complicit in what they consider to be sin. Yet that foundational principle of our pluralistic society is what is at stake in this case.

Appellant Brush & Nib is an upscale hand-painting, hand-lettering and calligraphy company that creates and sells customized art, including for weddings. That art expresses messages, both in pictures and words. So the service is the promotion of pure speech. And because Brush & Nib is not a government entity or a public forum, it has the right to choose the messages it is willing to promote.

Brush & Nib's owners are Christians who operate their business consistent with their faith. For example, they decline to promote messages that demean others, promote racism, or objectify the female body. The company has never refused a customer because of who they are; such a refusal would itself be contrary to the owners' beliefs. They serve all people but decline to promote all messages.

The problem with the Phoenix law at issue here is that it forces Brush & Nib to print messages that conflict with the company's owners' beliefs or shut down their business. This is an untenable choice, and it violates the Arizona

Constitution.

This Court should uphold Appellants' rights. It used to be a common American value that everyone had the freedom to live out their faith without government coercion. But that value apparently does not extend to a person of faith who respectfully exercises her beliefs in the public square. That is a stunning result for the millions of business owners and workers who believe they have the responsibility to practice their faith in their business vocation by refraining from activities that violate their religious beliefs.

This amicus brief will focus on the obligations of a person of faith to integrate his or her beliefs and business practices. It is these obligations—not any hostility or animus—that motivate individuals like Brush & Nib's owners to follow Biblical teachings in the way they conduct their business. As a result, Brush & Nib will sometimes decline to promote certain messages. But the company will also serve its customers and its employees with love and a respect for the dignity of the human person that is often lacking in other businesses. Such faith-based business practices should be encouraged, not stifled, particularly by the government. Accordingly, this Court should reverse and render judgment for Appellants.

IDENTITY AND INTERESTS OF *AMICI CURIAE*

The **Coalition for Jewish Values** (CJV) is a trade name of Project Genesis, Inc., a Maryland-based charity operating pursuant to 26 U.S.C. § 501(c)(3). The CJV advocates for classical Jewish ideas and standards in matters of American public policy. The CJV represents over 200 rabbis who have served the Jewish and greater American communities for decades as leaders, scholars and opinion makers.

The **Ethics and Religious Liberty Commission** (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, with over 46,000 churches and 15.2 million members. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. Religious freedom is an indispensable, bedrock value for Southern Baptists. The Constitution's guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in the practice of their faith.

Jews for Religious Liberty is an unincorporated cross-denominational group of lawyers, rabbis, and communal professionals who practice Judaism and are committed to defending religious liberty. Amicus's members have each written

extensively on the role of religion in public life. Representing members of the legal profession, and as adherents of a minority religion, amicus has a unique interest in ensuring that Free Exercise jurisprudence enables the flourishing of religious viewpoints and practices in the United States, including for communities of traditional faith.

The Rabbinical Alliance of America, Inc. is an Orthodox Jewish Rabbinical organization with more than 950 members that has, for many years, been involved in a variety of religious, social, and educational endeavors affecting Orthodox Jews. For several decades it has maintained a religious court for the adjudication and resolution of disputes brought to it by members of the Orthodox Jewish faith.

STATEMENT OF THE CASE

Appellant Brush & Nib is an upscale Phoenix art studio that creates custom artwork for many occasions and purposes, including weddings. Its owners and sole employees are Appellants Joanna Duka and Breanna Koski, Christian artists who met through a Bible study. Most of their custom work includes hand paintings and hand-written words.

Joanna's and Breanna's faith infuses every aspect of Brush & Nib. The company's operating agreement explains Joanna and Breanna's belief "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." This includes creating art that represents goodness, truth, and beauty, and declining to create art that dishonors God or their religious beliefs.

Joanna and Breanna serve all customers, regardless of sexual orientation. Their decision to accept a commissioned assignment depends on the message that they are being asked to convey. So while Joanna and Breanna interact extensively with their customers before starting a custom project, it is the message expressed—not the identity of the customer—that dictates the work they can and cannot do.

The Phoenix public-accommodation ordinance at issue here prohibits discrimination based on sexual orientation. As noted above, Brush & Nib does not

consider its customers' sexual orientation when asked to begin a new project. If a customer with a same-sex orientation desired to commission artwork that celebrates Jesus Christ as God's son, Joanna and Breanna would no doubt be happy to design and create the artwork. Conversely, if a customer with an opposite-sex orientation desired to commission artwork that demeaned women or supported a view of marriage as anything other than a union between one man and one woman, Joanna and Breanna would no doubt turn the project down.

The City of Phoenix has a different view. According to the City, Joanna and Breanna cannot express, on the Brush & Nib website, their belief that "God created marriage as a life-long union exclusively for one man and one woman. Yet businesses can publish their beliefs supporting same-sex marriage. Published or spoken contradictions of the City's views about marriage could result in jail time.

The trial court has now twice agreed with the City. First, it denied Brush & Nib's preliminary-injunction request. Then, on the merits, the trial court granted the City's motion for summary judgment.

The trial court's merits opinion assumes that while "Plaintiffs are willing to sell any pre-made products to any customer, they intend to refuse to sell or offer for sale any custom-made product for same-sex couples." 10/24/17 Op., p. 2. That is false. The opinion continues by concluding that the ordinance does not violate

free-speech rights because it seeks to eliminate discrimination based on sexual orientation, *id.* at 6, even though Brush & Nib does not differentiate among its customers based on sexual orientation. The opinion also concludes that the ordinance's restrictions are no greater than necessary to further that government interest because its provisions are "limited to the sale of goods and services," *id.*, as though religious believers have no right to express and live according to their beliefs when engaged in commerce.

Finally, the opinion holds that the Phoenix ordinance does not violate religious-exercise rights because "Plaintiffs have failed to assert even an incidental burden on the exercise of their religion." *Id.* at 10. The trial court reaches that conclusion despite holding that Appellants cannot respectfully decline to make custom art with expressive messages that violate Appellants' religious beliefs, and despite prohibiting Appellants from posting their beliefs on the Brush & Nib website.

ARGUMENT

Individuals and religious organizations have never limited the way they express their faith to activities that take place in the home or a place of worship. To the contrary, one of the most fundamental ways to exercise religion is to live out one's faith in the public square, including at work and while running a business. And courts have never conditioned an individual's constitutional rights to free expression and free exercise on that person's willingness to keep her faith beliefs under a bushel basket and not engage in commerce. And that condition is precisely what the City of Phoenix seeks to impose on Brush & Nib: promote messages that violate your faith and conscience, or else.

It cannot be the case that the government, over a religious objection, can force a Muslim grocer to serve pork, a Jewish website designer to develop a website for pornography, or a Christian screen printer to promote messages that conflict with the printer's owners' deeply-held religious beliefs. Yet that is the clear aim of the City's position here. This Court should use this case as an opportunity to recognize and reaffirm the fundamental role that faith plays in the workplace.

I. Exercising one’s faith does not stop at the doorstep of one’s home or place of worship.

The practice of faith does not end when a religious believer leaves her home or place of worship. Rather, she is called to live out her faith—including fundamental beliefs about sex, marriage, and the family—in every aspect of her life, including work. To do otherwise is hypocritical and risks eternal damnation. *E.g.*, Psalm 11:7 (NASB): “For the Lord is righteous, He loves righteousness. The upright will behold His face.”

Christian, Jewish, and Muslim teachers have all emphasized the instruction that one’s faith beliefs should be fully integrated in every aspect of one’s life. For example, the Catechism of the Catholic Church instructs that “[b]y reason of their special vocation it belongs to the laity to seek the kingdom of God by engaging in temporal affairs and directing them according to God’s will.” Catechism of the Catholic Church ¶ 898 (1997). Lay believers are called “to illuminate and order all temporal things with which they are closely associated” considering the Catholic faith. *Id.*

The Catholic Catechism’s teaching on this point echoes a dominant theme of the Second Vatican Council of 1962-65. The Council’s Pastoral Constitution of the Church in the Modern World instructed that “[t]he split between the faith which many profess and their daily lives deserves to be counted among the more

serious errors of our age. . . . The Christian who neglects his temporal duties, neglects his duties toward his neighbor and even God, and jeopardizes his eternal salvation.” *Gaudium et Spes*, ¶ 43 (1965).¹ Catholics are called to bring their faith in Christ “to all their earthly activities and to their humane, domestic, professional, social and technical enterprises,” by “gathering them into one *vital synthesis* with religious values, under whose supreme direction all things are harmonized unto God’s glory.” *Id.* (emphasis added). The goal of this synthesis of religious values with work is to “contribute to the sanctification of the world by fulfilling their own particular duties” in personal and professional life. *Christifideles Laici*, ¶ 15 (1988).²

This synthesis is not limited to teachings regarding marriage and sexuality. The Catholic Church offers specific directives for how believers should act in the market with respect to advertising, *e.g.*, Saint Pope John Paul II, *Centesimus annus*, #36 (1991), fair wages, *e.g.*, Saint Pope John Paul II, *Centesimus annus*, #8 (1991), Catechism of the Catholic Church, ¶ 2434, employee ownership of companies, *e.g.*, Saint Pope John XXIII, *Mater et magistra*, #77 (1961), and workplace hours, *e.g.*, Saint Pope John XXIII, *Rerum novarum*, #42 (1891). See generally *A Catechism for Business: Tough Ethical Questions & Insights from Catholic Teaching* (Andrew V.

1 <https://goo.gl/k1zvkv>

2 <https://goo.gl/xsvKm7>

Abela, Joseph E. Capizzi, ed. 2014).

Great teachers of the Protestant tradition agree. Martin Luther “often speaks about specific occupations, but the purpose in doing so is not to restrict vocation to occupation but to affirm that even the most mundane stations are places in which Christians ought to live out their faith.” Marc Kolden, *Luther on Vocation*, 3 *Word & World* 382 (Oct. 1, 2001).³ Thus, as the Lutheran Church-Missouri Synod summarizes Luther, “Vocations are ‘masks of God.’ On the surface, we see an ordinary human face – our mother, the doctor, the teacher, the waitress, our pastor – but, beneath the appearances, God is ministering to us through them. God is hidden in human vocations.” Lutheran Church-Missouri Synod, *Life Library – Vocation*.⁴ “With the doctrine of vocation, everyday life is transfigured. We realize that the way to serve God is not by some extraordinary act of mystical devotion, but by serving our neighbors in the daily circumstances of life—in our families, our jobs, our church and our involvement in the community.”

Id.

3 <https://goo.gl/oSQ1S9>

4 <https://goo.gl/b7vx9r>

John Calvin likewise “regarded vocation as a calling into the everyday world. The idea of a calling or vocation is first and foremost about being called by God, to serve Him within his world.” Alister McGrath, *Calvin and the Christian Calling*, 1999 First Things 94 (July 1999).⁵ One’s daily occupations, including one’s work, are part of a fully integrated synthesis of one’s faith life: “Work was thus seen as an activity by which Christians could deepen their faith, leading it on to new qualities of commitment to God. Activity within the world, motivated, informed, and sanctioned by Christian faith, was the supreme means by which the believer could demonstrate his or her commitment and thankfulness to God.” *Id.*

Contemporary Protestant teachers continue to emphasize this doctrine. Doctor Wayne Grudem, Research Professor of Theology and Biblical Studies at Phoenix Seminary in Arizona, has emphasized that the Eighth Commandment’s protections against theft necessarily implies that the businesses of Christians, including their “time, talents and opportunities,” are all things Christians have as “a stewardship from God” and that Christians “are accountable” for how those things are used. “The Eighth Commandment as the Moral Foundation for Property Rights, Human Flourishing, and Careers in Business,” *THEMELIOS*, 41.1 (April

⁵ <https://goo.gl/aEaFft>

2016) at 79, 82.⁶ A prominent Baptist preacher aptly stated, “Our work, our jobs, our careers—those things are not just incidentals or necessary evils that we tack on to our spiritual lives. Our jobs are a massive arena in which God matures us as Christians and brings glory to himself.” Southern Baptist Convention, Ethics & Religious Liberty Commission, *The Gospel at Work: A Conversation with Greg Gilbert and Sebastian Traeger* (Jan. 15, 2014).⁷ Similarly, a former President of the ERLC stated: “As Southern Baptists, we believe God has endowed all people with the freedom to believe and express religious faith. . . . Americans should not have to check the freedom to exercise their faith at the door of their workplace.” Southern Baptist Convention, Ethics and Religious Liberty Commission, *SBC’s Richard Land Testifies in Support of Workplace Religious Freedom Act* (Nov. 10, 2005).⁸

The doctrine that one’s faith should be fully integrated into a believer’s daily life—including her job, occupation, and profession—has deep roots in non-Christian religions as well. For example, it is a central tenet of Judaism that, throughout one’s daily life, one should accept and act upon the great multitude of opportunities to improve one’s thoughts and behavior. Talmud, Makkos 23b; see

6 <https://goo.gl/Fozuv6>

7 <https://goo.gl/n7SXtK>

8 <https://goo.gl/GMFwPG>

also Rabbi Moshe Chaim Luzzato, *Derech Ha-Shem* §§ 1:2:1-5. These opportunities are “mitzvot,” or commandments, which constitute a complete set of civil and criminal laws that govern literally all aspects of Jewish life. The mitzvot apply as equally to commercial transactions as to a believer’s personal life:

- Because many Jews believe themselves prohibited from deriving any benefit from a cooked mixture of dairy and meat, such a Jewish store owner cannot sell a cheeseburger to any customer, Jewish or Gentile, and would not be allowed to profit from allowing one of his employees to cook meat and dairy together. *Why Not Milk and Meat*, Aish.com⁹; Exodus 23:19, 34:26, Deuteronomy 14:21, and Babylonian Talmud: Hullin 113b, 115b.
- Likewise, while a Jewish florist could contribute to a wedding between two Christians or two Muslims, or a Muslim and a Christian, many such florists would consider it inconsistent with their faith to contribute to an intermarriage between a Jew and a member of another religion. Deuteronomy 7:3; Babylonian Talmud: Yevamoth 23a.
- Many religious Jews would be unable to engage in work that would enhance a polytheistic festival. Babylonian Talmud: Avodah Zarah 6a; Code of Jewish Law: Yoreh De’ah 148:1.
- The Bible prohibits Jews from wearing garments made from mixtures of wool and linen. Jews who follow this commandment would require an accommodation exempting them from wearing a prison, school, or military uniform made from a mixture of these materials. And many Jewish tailors would find it religiously objectionable to create such a garment for a Jewish customer. *Shatnez-Free Clothing*, Chabad.org¹⁰; Leviticus 19:19; Deuteronomy 22:9-11.

9 <https://goo.gl/ymSYnr>

10 <https://goo.gl/RZRcSm>

Similarly, “Islam regards it as meaningless to live life without putting [one’s] faith into action and practice,” and proclaims that living the central tenets of the faith “weaves [believers’] everyday activities and their beliefs into a single cloth of religious devotion.” Oxford Islamic Information Centre, *Five Pillars of Islam*.¹¹ Islam has strict rules forbidding the charging of interest, and an entire global industry (Islamic Finance) has been created to comply. See generally Muhammad Ayub, *Understanding Islamic Finance* (2007).

Indeed, some of the country’s largest businesses participate in the market yet still engage in religiously motivated practices, including closing on Sunday (Chick-fil-A, Inc.), printing Bible references on products (In-N-Out Burger), publishing Bibles and other Christian media (Tyndale House Publishers, Inc.), providing financial advice based on the Bible (Lampo Group, Inc.), producing and selling kosher foods (Empire Kosher), offering financial products consistent with Islamic teachings about usury (LARIBA American Finance House), placing Bibles and the Book of Mormon in all its hotel rooms (Marriott, Inc.), employing chaplains to provide spiritual counseling to employees (Tyson Foods, Inc.), and taking out full-page newspaper ads to evangelize (Hobby Lobby, Inc.).

¹¹ <https://goo.gl/6Ywi8J>

In sum, for millions of believers, “freedom to embrace religion as a way of life isn’t an optional extra added on to practicing that way of life; freedom to embrace and hold onto religion *is a constitutive component of a religion’s way of life* without which that very way of life is fundamentally compromised. For world religions, freedom of religion is a key substantive good.” Miroslav Volf, *Flourishing: Why We Need Religion in a Globalized World* 113 (2015) (emphasis added). And secular society benefits when it honors religious liberty and allows religious practices to flourish. See generally Angus J. L. Menuge, *The secular state’s interest in religious liberty*, in *Religious Liberty and the Law: Theistic and Non-Theistic Perspectives*, 89 (Angus J. L. Menuge ed., 2017).

II. The government should not be allowed to punish Brush & Nib for its owners’ faith beliefs.

Turning to the present case, Brush & Nib’s business is deeply influenced by the Christian faith of its owners, who believe that God ordained marriage as a sacramental and spiritual union between one man and one woman. They are not alone in that belief. *E.g.*, Thomas Aquinas, *Summa Theologica II-II*, Q. 154, art. 12 (Tr. 1920)¹²; *Summa Theologia* Suppl., Q. 41, art. 1 and Q. 44 art. 1 (Tr. 1920);

¹² <https://goo.gl/igLDKn>; <https://goo.gl/7AGBGr>

Martin Luther, 3 Luther's Works 255 (1961) (non-marital sexual relations "depart[] from the natural passion and longing of the male for the female, which is implanted into nature by God."); Rabbi Tzvi Hersh Weinreb, *Orthodox Response to Same-Sex Marriage* (June 5, 2006)¹³ ("Homosexual behavior between males or between females is absolutely forbidden by Jewish law," as rooted in the procreative nature of male-female relations ordained in the Book of Genesis); Catechism of the Catholic Church ¶ 2357 ("Basing itself on Sacred Scripture, . . . tradition has always declared that 'homosexual acts are intrinsically disordered.' They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from genuine affective and sexual complementarity."); *Amoris Laetitia* (The Joy of Love), ¶ 52 (Mar. 19, 2016)¹⁴ ("absolutely no grounds for considering homosexual unions to be in any way similar or even remotely analogous to God's plan for marriage and family"); Lutheran Church-Missouri Synod, *LCMS Views – Marriage/Human Sexuality* 10 ("*LCMS Views*")¹⁵ ("[h]omosexual behavior is prohibited in the Old and New Testaments as contrary to God's design," and "on the basis of Scripture, marriage is the lifelong union of one man and one woman."); National Association of Evangelicals, *God Defined*

¹³ <https://goo.gl/u4zjbd>

¹⁴ <https://goo.gl/qUvEsB>

¹⁵ <http://www.lcms.org/faqs/lcmsviews>

Marriage (June 26, 2015)¹⁶ (“As first described in Genesis and later affirmed by Jesus, marriage is a God-ordained, covenant relationship between a man and a woman. This lifelong, sexually exclusive relationship brings children into the world and thus sustains the stewardship of the earth.”); Church of Jesus Christ of Latter-day Saints, *The Divine Institution of Marriage*, Newsroom (Aug. 13, 2008)¹⁷ (reaffirming the Mormon Church’s declaration that marriage is the lawful union of a man and a woman”); *Islamic Perspective on Same-Sex Marriage* (July 7, 2015)¹⁸ (noting what Islamic commentators on The Qur’an have concluded is a clear prohibition on same-sex relations).

And the City should not be allowed to punish Brush & Nib’s owners for attempting to live their lives and run their business consistent with their faith beliefs. This does not require the City to endorse discrimination; Brush & Nib faithfully serves all customers and employees. But it does require the City to respect that Brush & Nib cannot promote certain messages that violate the owners’ religious beliefs. Two principles counsel strongly in favor of granting that respect.

1. Plainly, the teachings of Judaism, Christianity, and Islam are not rooted in bigotry or animus. For example, describing “the attitude toward homosexual

16 <https://goo.gl/zX43BB>

17 <https://goo.gl/FrW51s>

18 <https://goo.gl/UZjCTT>

individuals prescribed by the Jewish tradition,” Rabbi Weinreb directs that “tolerance for individuals who manifest homosexual tendencies is certainly a Jewish value.” *Orthodox Response to Same-Sex Marriage, supra*. Likewise, Rabbi Dr. Nachum Amsel comments that “[w]e do not and cannot reject people as Jews and as individuals because of a particular sin.” Rabbi Dr. Nachum Amsel, *Homosexuality in Orthodox Judaism* 5.¹⁹

Similarly, Christian teaching on marriage is founded on a divinely ordained understanding of human sexuality, and Christian churches condemn *any* rejection of individuals. The Catechism of the Catholic Church directs that all persons with homosexual inclinations “must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided.” Catechism of the Catholic Church ¶ 2358. Pope Francis confirmed this instruction in *Amoris Laetitia*, stating that “[w]e would like before all else to reaffirm that every person, regardless of sexual orientation, ought to be respected in his or her dignity and treated with consideration. . . .” *Amoris Laetitia* ¶ 250.

Protestant authorities emphasize the same point. The Lutheran Church-Missouri Synod instructs that “[t]he redeeming love of Christ, which rescues humanity from sin, death, and the power of Satan, is offered to all through

¹⁹ <https://goo.gl/r2bvXR>

repentance and faith in Christ, regardless of the nature of their sinfulness.” *LCMS Views*, at 11. The National Association of Evangelicals likewise emphasizes that “[a]s witnesses to the truth, evangelicals should be gracious and compassionate to those who do not share their views on marriage.” *God Defined Marriage, supra*.

All these instructions reflect that the historic doctrine of marriage is not rooted in animus, but in the divinely ordained procreative potential of male-female unions. In 2015, dozens of prominent Catholic and Protestant theologians joined this statement: “Throughout history and across all cultures, marriage has been understood to be the union of male and female and is organized around the procreative potential of that union.” Evangelicals and Catholics Together, *The Two Shall Become One Flesh: Reclaiming Marriage*, First Things (March 2015).

Muslim scholars similarly instruct that Muslims are to treat homosexual persons, both Muslim and non-Muslim, with the same respect due to all other people. For example, the Islamic Shura Council of Southern California instructs that “[p]eople practicing something immoral according to Islamic values still deserve the basic respect and rights of any other human being. . . . Muslims should not discriminate and/or harass anyone.” *Islamic Perspective on Same-Sex Marriage, supra*.

2. While uniformly and consistently upholding marriage between a man and a woman as divinely ordained and while condemning prejudice or animus against any person, teachers in Judaism, Christianity, and Islam counsel against any public witness or activity that would seem to celebrate, endorse, or condone same-sex weddings. In the wake of the recent creation of same-sex marriage, many Jewish, Christian, and Islamic leaders have called for believers to engage in respectful public witness supporting the historic understanding of marriage.

For example, the former chief Rabbi of Great Britain, Lord Rabbi Jonathan Sacks, has called for respectful and courteous public witness in support of the historic understanding of marriage. In a famous 2014 speech to a Vatican conference, Rabbi Sacks instructed that “our compassion for those who choose to live differently should not inhibit us from being advocates for the single most humanizing institution in history [*i.e.*, male-female marriage].” Lord Rabbi Jonathan Sacks, *Humanum* Colloquium on Complementarity (Nov. 17, 2014).²⁰

Likewise, the President of the Southern Baptist Convention’s Ethics & Religious Liberty Commission has publicly stated that “[a]ll of us must stand together on conserving the truth of marriage as a complementary union of man and woman. . . . [T]here is a distinctively Christian urgency for why the Christian

²⁰ <https://goo.gl/oKvhhH>

churches must bear witness to these things.” Rev. Dr. Russell D. Moore, *Man, Woman, and the Mystery of Christ: An Evangelical Protestant Perspective*, Touchstone (Nov. 18, 2014).²¹ And the National Association of Evangelicals counsels that “[e]vangelicals and other followers of the Bible have a heightened opportunity to demonstrate the attractiveness of loving Christian marriages and families.” *God Defined Marriage, supra*.

The Mormon Church has made a similar statement, urging its members as “responsible citizens” to publicly promote adherence to the historic understanding of marriage: “We call upon responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.” *Divine Institution of Marriage, supra*.

In 2015, Catholics and Evangelicals agreed: “As Christians, it is our responsibility to bear witness to the truth about marriage as taught by both revelation and reason. . . . Christians have too often been silent about biblical teaching on sex, marriage, and family life. . . . If we are to remain faithful to the Scriptures and to the unanimous testimony of the Christian tradition, there can be no compromise on marriage.” Evangelicals and Catholics Together, *The Two Shall Become One Flesh, supra*.

²¹ <https://goo.gl/BucZqn>

Islamic authorities concur: “Sexual behavior within a society is not a purely private concern but rather affects all the people living in that society. Islam does not forcefully impose its teachings upon people of other faiths and persuasions. Nonetheless, it draws certain moral lines to make sure that the entire society is not affected negatively.” *Islamic Perspective on Same-Sex Marriage, supra.*

Many believers interpret these calls for positive public witness as necessarily meaning that believers should not publicly contradict their churches’ teachings on marriage, including by participating in the celebration of same-sex marriages. Thus, to be responsible public witnesses for their beliefs on marriage, there are many millions of faithful citizens who reasonably conclude that publicly witnessing to their belief in marriage as the union of man and woman requires refraining from participating in same-sex wedding ceremonies. Regardless of the circumstances, the government should never force individuals—or the faith communities to which they belong—to choose between violating their deeply held beliefs or withdrawing from the public square entirely, see *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), including the market for public accommodation.

To use government power and the courts to enforce such compulsion, as the City seeks to do, is to needlessly penalize people of faith, to wound the country’s long tradition of celebrating and protecting religious exercise, and to depress the

fundamental pluralism that motivated our country's founding. This Court should safeguard the right of all people to exercise their faith in the public square, including places of public accommodation.

CONCLUSION

For all the foregoing reasons, this Court should reverse the trial court, render summary judgment in favor of Appellants, and permanently enjoin the City of Phoenix's ordinance as applied to Appellants.

Dated: March 6, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This certificate of compliance concerns an amicus curiae brief, and is submitted under Rule 16(b)(4) of the Arizona Rules of Appellate Procedure. The undersigned certifies that the brief to which this Certificate is attached uses proportionately spaced typeface of Equity font of 14 points, is double-spaced, and contains 4,790 words as measured with the word-counting feature of Microsoft Word. The document to which this Certificate is attached does not exceed the word limit that is set by Rule 14.

Dated: March 6, 2018

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