



Freedom of Speech Protects Calligraphers' Right Not to Create Custom Same-Sex Wedding Invitations

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From this morning's decision in *Brush & Nib Studios, LC v. City of Phoenix*:

The rights of free speech and free exercise, so precious to this nation since its founding, are not limited to soft murmurings behind the doors of a person's home or church, or private conversations with like-minded friends and family. These guarantees protect the right of every American to express their beliefs in public. This includes the right to create and sell words, paintings, and art that express a person's sincere religious beliefs.

With these fundamental principles in mind, today we hold that the City of Phoenix ... cannot apply its Human Relations Ordinance ... to force Joanna Duka and Breanna Koski, owners of Brush & Nib Studios, LC ..., to create custom wedding invitations celebrating same-sex wedding ceremonies in violation of their sincerely held religious beliefs. Duka, Koski, and Brush & Nib ... have the right to refuse to express such messages under article 2, section 6 of the Arizona Constitution [which protects the freedom of speech and of the press], as well as Arizona's Free Exercise of Religion Act

Our holding is limited to Plaintiffs' creation of custom wedding invitations that are materially similar to those contained in the record. We do not recognize a blanket exemption from the Ordinance for all of Plaintiffs' business operations. Likewise, we do not, on jurisprudential grounds, reach the issue of whether Plaintiffs' creation of other wedding products may be exempt from the Ordinance.

Duka and Koski's beliefs about same-sex marriage may seem old-fashioned, or even offensive to some. But the guarantees of free speech and freedom of religion are not only for those who are deemed sufficiently enlightened, advanced, or progressive. They are for everyone. After all, while our own ideas may be popular today, they may not be tomorrow. Indeed, "[w]e can have intellectual individualism" and "rich cultural diversities ... only at the price" of allowing others to express beliefs that we may find offensive or irrational. *West Virginia State Board of Education v. Barnette* (1943). This "freedom to differ is not limited to things that do not matter much ... [t]he test of its substance is the right to differ as to things that touch the heart of the existing order." *Id.*

I hope to post more about this soon; note that I cosigned an amicus brief in this case, together with the Cato Institute and fellow Volokh Conspiracy blogger Dale Carpenter.