

reason

2-1 Decision Holds Web Site Designer May Be Required to Design Site for Same-Sex Weddings

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The case is *303 Creative LLC v. Elenis*; the majority opinion is by Judge Mary Briscoe, joined by Judge Michael Murphy, with a dissent by Chief Judge Timothy Tymkovich. This was just handed down, so I thought I'd pass it along; I hope to blog more about it later. (Note that I co-filed an amicus brief on behalf of the Cato Institute, supporting the web site designer.)

At first glance, this appears to be inconsistent with the Eighth Circuit's decision in *Telescope Media Group v. Lucero*, which upheld videographers' right not to create videos of same-sex weddings. I expect this circuit split will make this a good candidate for Supreme Court review—unlike *Masterpiece Cakeshop*, this case indubitably involves the creation of speech, and not just of a wedding cake, so it squarely tees up the compelled-creation-of-speech issue. (There's also a religious freedom issue present as well, though I don't think there's a square split of authority on that particular subject, since the Arizona calligraphers' case, which upheld a religious freedom objection, focused on Arizona's religious freedom statute, not the federal Free Exercise Clause.)