No. 15-1245

==========

In The

Supreme Court of the United States

♦

JASON ADAM TAYLOR,
Petitioner,
v.

TAMMY JEFFERSON, et al.,
Respondents.

♦

On Writ Of Certiorari To The United States Court Of Appeals For The Fifteenth Circuit

♦

BRIEF OF RESPONDENTS

♦

TEAM R

Counsel for Respondents

==========

QUESTIONS PRESENTED

1. Does enforcement of a public accommodation law that requires a person to provide private business services when doing so violates that person's strongly held beliefs violates the free speech clause of the First Amendment of the Constitution?

2. Does enforcement of a public accommodation law that requires a person to provide private business services for religious events and which may compel that person to enter religious buildings violates the Free Exercise and Establishment Clauses of the First Amendment?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Jason Adam Taylor brought this action on his own behalf as plaintiff in the district court and appellant in the court of appeals.

Official-capacity defendants Tammy Jefferson, Thomas More, Olivia Wendy Holmes, Joanna Milton, and Christopher Heffner were defendants in the district court and appellees in the court of appeals.

COPRORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, respondents make the following disclosures:

1. Petitioner Jason Taylor holds nearly all of the stock to a closely held corporation called Taylor's Photographic Solutions.

2. Petitioner's wife is the only other shareholder to Taylor's Photographic Solutions.

3. The Madison Commission on Human Rights is a not-for-profit entity. The Commission does not issue stock and does not have any parent companies. No publicly-held corporation owns ten percent or more of the stock of the Madison Commission on Human Rights.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASE **PAGE**

OPINIONS BELOW

The opinion of the court of appeals is unreported (Civ. Action No. 2:14-6879-JB). R. at 1-12. The opinion of the district court granting respondent's motion for summary judgment is unreported (App. No. 15-1213). R. at 39-46.

♦

JURISDICTION

This Court has jurisdiction over this action under 28 U.S.C. § 1254(1). The judgment of the court of appeals was entered on November 12, 2015. This Court granted a timely petition for certiorari.

♦

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. Const. amend. I.

The Madison Human Rights Act prohibits a public accommodation from discriminating against individuals based on "race, color, religion, national origin, sex, disability, sexual orientation, gender identity or expression, socioeconomic status, political affiliation, or other protected classes." Mad. Code Ann. § 42-101-2a, *et seq*.

STATEMENT OF THE CASE

Jason Adam Taylor ("Petitioner" or "Photographer") refuses to photograph religious events, including weddings performed in houses of worship. Petitioner identifies as a "militant atheist," having discovered his disdain for religion and religious belief around the age of eighteen. R. at 17, ¶¶ 26, 24. He views religion as "a detriment to the future of humanity . . . regardless of what the religion is." R. at 16, ¶ 18.

Petitioner applies his hatred for religion even in the running of his business – Taylor's Photographic Solutions, Inc. – a closely held corporation owned only by Taylor and his wife. R. at 14, ¶¶ 1-2. While Taylor's Photographic Solutions photographs a wide array of events from birthday parties to graduations to weddings, he will not photograph religious events. R. at 14, ¶¶ 7-8. Petitioner attends religious events with members of his family despite his insistence that he does not want the public interpreting his work as an endorsement of religion. R. at 17, 15, ¶¶ 27-28, 15. Petitioner continues to attend these events without participating in the rituals associated with those events. R. at 17, ¶ 28.

In the summer of 2014, two prospective clients approached Petitioner to retain his services as a photographer; Petitioner denied both customers service because their events were religious in nature. R. at 18-19, ¶¶ 37-52. On August 11, 2014, the Madison Commission on Human Rights ("the Commission") informed Petitioner of two complaints lodged against him for religious discrimination. R. at 20-21, ¶ 60. Petitioner was informed that he needed to file a position statement and "engage in an administrative hearing" or waive both remedies. R. at 21, ¶ 62-63. Petitioner voluntarily waived both the statement and the hearing. R. at 21, ¶ 64. On September 15, 2014, Petitioner was notified that the Commission investigated the claims and determined that he engaged in unlawful discrimination. R. at 21, ¶ 65. The Commission levied fines against Petitioner, and ordered him to cease his discriminatory practices, in accordance

with Title II of the Madison Human Rights Act of 1967. Id. Petitioner refused to pay the fines. R. at 21, ¶ 67.

Petitioner filed a timely civil complaint in the United States District Court for the District of Eastern Madison alleging Tammy Jefferson, and other commissioners, of the Commission deprived him of his constitutional rights under state law in violation of 42 U.S.C. § 1983. On May 25, 2015, the Commission filed a motion for summary judgment, which the United States District Court for the District of Eastern Madison granted. Petitioner appealed the grant of summary judgment. The United States Court of Appeals for the Fifteenth Circuit affirmed the district court's decision.

SUMMARY OF THE ARGUMENT

Title II of the Madison Human Rights Act of 1967 ("Title II") confers upon Madison residents the right to elicit services from public accommodations without facing discrimination by those public accommodations. Petitioner challenges the law on the grounds that it violates the rights afforded him by the Free Speech, Free Exercise, and Establishment Clauses of the First Amendment. Under this Court's precedent, Petitioner's arguments that Title II violates each of these three clauses must fail.

Title II does not violate Petitioner's right to free speech because Petitioner, by virtue of his business, acts a vehicle for the messages his clients wish to convey. He does not convey his own messages through his photographs. His clients pay for the photograph as well as "for [Petitioner's] talent, or the talent and creativity of [his] staff." R. at 15, ¶ 16. Clients do not pay Petitioner to convey his own message within the photographs he produces. Clients do not compel Petitioner to adopt or circulate a message against which Petitioner is opposed. In fact, several buffers, including disclaimers like the one currently posted on the door to his shop,

prevent the public from viewing the messages contained in Petitioner's photographs as indicative of his beliefs or ideologies. Clients reach out to Petitioner for his artistic technique in capturing their special moments; not for his ability to disseminate messages.

The law does not violate the Establishment Clause of the United States Constitution by requiring service providers to enter houses of worship as means of rendering those services. The Establishment Clause protects against governmental sponsorships of a particular religion. Title II neither introduces any religion as the official religion of the state of Madison nor mandates that Petitioner sponsor any religion. Therefore, the government did not impede upon Petitioner's rights under the Establishment Clause.

Petitioner cannot establish that Title II violated his rights under the Free Exercise Clause because atheism does not qualify as a religion for the purposes of the Clause. Even in the event that this Court found the Free Exercise Clause applies to atheism in addition to other, more orthodox religions, Title II does not compel Petitioner to adopt a different religion or participate in the rituals associated with other religions. Petitioner does not undermine his own beliefs simply by entering houses of worship and photographing events held therein. He functions as a documentarian for those events. He interacts with religious events insofar as he records them, but he is not expected to perform the rituals associated with the events.

Title II, as a neutral and generally applicable law, survives rational basis review. The law bars public accommodation from refusing services to prospective clients to protect Madison residents from continued discrimination and mistreatment based on their beliefs. The reasoning behind Title II is rationally related to legitimate government interest – namely, protecting all citizens from discrimination.

Based on the above arguments, Title II does not violate Petitioner's First Amendment rights. Respondent respectfully requests that the United States Supreme Court affirm the decisions of the lower courts to grant the Madison Commission for Human Rights' Motion for Summary Judgment.

ARGUMENT

I. TITLE II DOES NOT VIOLATE PHOTOGRAPHER'S FIRST AMENDMENT RIGHTS TO FREE SPEECH

Title II of the Madison Human Rights Act of 1967 ("Title II"), 42 U.S.C. § 2000a, *et seq*, pertains to photography studios as "places of public accommodation." The law bars places of public accommodation from refusing use of, or service from, a place of public accommodation on the basis of "race, color, religion, national origin, sex, disability, sexual orientation, gender identity or expression, socioeconomic status, political affiliation, or other protected classes." Mad. Code Ann. § 42-101-2a, *et seq*.

Petitioner argues that Title II violates his Constitutional right to freedom of speech despite Photographic Solutions' status as a public accommodation. The First Amendment of the United States Constitution protects photography as a form of speech. See Kaplan v. California, 413 U.S. 115, 119-20 (1973) (Photography, "pictures, films, paintings, drawings, and engravings . . . have First Amendment protection"). The Commission, though, does not seek to prohibit Petitioner from photographing any subject or event. The Commission applies Title II only as a means of barring Petitioner from discriminating against patrons. Petitioner unlawfully refused service to prospective patrons because of their chosen faiths. As such, the Commission did not violate Petitioner's First Amendment right to free speech Title II by fining Petitioner for each day he fails to comply with state law.

A. The Message Contained in the Photographs Are Not Associated With Photographer When He Acts As A Conduit Rather Than As The Speaker Of That Message

Petitioner, in his capacity as a photographer, acts a conduit through which the client relays his or her message. The Court determines whether the speaker was the conduit based on: (1) the level of involvement the speaker has to forming the message the speaker must disseminate and (2) the speaker's ability to disclaim the message. Turner Broad. Sys. v. Fed. Commc'n Comm'n, 512 U.S. 622, 655 (1994). In Turner, the United States Supreme Court held that a statute requiring a cable company to carry local broadcast stations did not violate the company's First Amendment freedom of speech because the company existed only to convey other parties' messages. Id. at 655. The cable companies could renounce any message with which they disagreed. Id.

Here, Petitioner has little involvement in the formation of the message. He adjusts the lighting, focal length, aperture, and angle of the photograph before taking the photograph. Yet for many events, including weddings, baptisms, and the like, clients create a list of desired shots that they present to their photographers. A bride request photographs of her groom's face as she walks down the aisle. A new mother may request a photograph of the moment the holy water touches the forehead of the child she is having baptized. The client creates the message. Petitioner simply frames the message within his art.

Petitioner likens his photography service to the events of Hurley v. Irish-Am. Gay, Lesbian, and Bisexual Grp. of Boston. 515 U.S. 557 (1995). Boston's City Council used the St. Patrick's Day parade to impart a common message to which all participants must add rather than adopting the message generated by one specific group. Hurley v. Irish-Am. Gay, Lesbian, and Bisexual Grp. of Boston, 515 U.S. 557, 576 (1995). To avoid compelling all other groups involved in the parade from circulating a message generated solely by one group, the Hurley

court permitted parade organizers to exclude the Irish-American Gay, Lesbian, and Bisexual Group of Boston from the St. Patrick's Day parade. Id. The parade organizers functioned as the "speakers" – not mere conduits – of the common message. Id. at 573-574.

Petitioner, though, is not the speaker. The couples requesting Petitioner's services intend to pay Petitioner to photograph particular moments according to their own expectations and specifications. Petitioner captures only those shots the client requests. The relationship between Petitioner and his clients, then, resembles an attorney speaking on his client's behalf, thereby stripping him of his First Amendment rights when he renders photography services. See Mezibov v. Allen, 411 F.3d 712, 721 (6th Cir. 2005) (an attorney does not retain First Amendment rights when he advocates for clients within the confines of a courtroom).

Without his clients, Petitioner would have no message to convey. See Dallas v. Stanglin, 490 U.S. 19, 25 (1989) ("It is possible to find some kernel of expression in almost every activity a person undertakes . . . but such a kernel is not sufficient to bring the activity within the protection of the First Amendment"). The conduct cannot be protected under the First Amendment unless Petitioner can prove his intent to convey his own message. See id.

The public is not likely to confuse Petitioner's photographs with messages endorsing religious belief, especially when he acts a conduit for his clients' messages. Petitioner may disclaim or denounce any message contained in those photographs after the photographs are taken and released into the clients' custody. He need not adopt the messages. He need not spread the messages.

Petitioner reserves the right, during the advertisement and consultation phases of his business, to disclaim any activities depicted in the photographs. He could easily assert his own views regarding religion through a disclaimer either on his website or in his office. Petitioner

currently hangs a sign on his door denouncing religion and informing potential customers of his refusal to photograph religious events. R. at 23. Petitioner could replace the paragraph refusing service for religious events with a paragraph disassociating him with any religious beliefs. Petitioner has several options available to him that do not discriminate against potential clients. The decision to publish the photographs – and any messages therein – lies solely with Petitioner.

B. Photographer Must Neither Adopt Nor Circulate Any Message Under Title II

Under the First Amendment, Petitioner has a right to refrain from speaking. See Riley v. Nat'l Fed'n for the Blind, 487 U.S. 781, 797 (1988) (holding that the First Amendment protects the freedom to choose "what to say and what *not* to say"). Any American citizen may refrain from speaking the government's message. See W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) (the government cannot "force citizens to confess by word or act their faith in" the government's message). Citizens are also protected from propagating a third party's message. See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. Of Boston, 515 U.S. 557, 572-73 (1995) (compelling parade organizers to include a particular group in a parade forced them to adopt the group's message despite the organizers' "autonomy to choose the content of [their] own message"). Title II does not violate Petitioner's First Amendment right because it does not compel him to adopt a government-mandated message or the messages of his clients.

Petitioner may refrain from circulating a government-mandated message. See W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (holding that children may refrain from saluting the American flag without fear of expulsion from school). In Wooley v. Maynard, the Court held that New Hampshire could not criminalize a driver's decision to cover up the "Live Free or Die" motto on the license plate. Wooley v. Maynard, 430 U.S. 705 (1977). New

Hampshire effectively forced drivers to display a "'mobile billboard' for the State's ideological message." Id. at 715.

Petitioner's case is distinguishable from Barnette and Maynard because both cases involved state governments compelling its citizens to either embrace or propagate its messages. Here, Madison requires only that Petitioner extend the same services to citizens with religious beliefs that it extends to citizens without religious beliefs.

Similarly, Title II does not require Petitioner to accept any connection with the messages of third parties. For example, the Court permitted expressive activity by private groups at a public shopping center because the owner of the shopping center could "disavow any connection with [any] message. PruneYard Shopping Center v. Robins, 447 U.S. 74, 87 (1980). The Court determined that the messages conveyed at "a business establishment that is open to the public" were "not likely to be identified with those of the owner." Id.

The Court affirmed similar behavior in Rumsfeld v. Forum for Academic & Institutional Rights, Inc. when it rejected the argument that, by permitting military recruiters the same access to campuses, the federal government violated the non-military recruiters' First Amendment rights. 547 U.S. 47, 64-65 (2006). The military recruiters' presence on campus did not require, or suggest, that the institutions of higher education endorsed the military's message(s). Id. at 65. Therefore, the chances that observers would assume the equal access as support of the military's policies would be minimal. Id. at 65.

The likelihood of viewers interpreting the photographs taken by Petitioner as endorsements of his client's messages is equally slim. Photographing a religious event does not constitute Petitioner's direct or indirect endorsement of the underlying religious beliefs. See, e.g., PruneYard, 447 U.S. at 87. Any reasonably intelligent person would understand the

photographs were a means of securing income rather than supporting the clients' messages. Petitioner could easily disclaim the photographs taken in houses of worship either on a website or when speaking with prospective clients to avoid confusion regarding his own beliefs.

Furthermore, the actions of a photographer at any wedding or religious event do not constitute inclusion in the rituals of those events. Photographers must have the special talent of keeping the spotlight solely on the clients while capturing those moments the client deems important. A photographer at a Catholic wedding would not be required to receive Communion. A photographer at a Sikh wedding would not be required to participate in Kirtan. Petitioner need not participate in any religious ritual because he is not a guest; he is a vendor. As with PruneYard and Rumsfeld, there is little danger that the guests – or any other observer – would view Petitioner's actions as an endorsement of the rituals performed at religious ceremonies.

The Commission does not compel Petitioner to disseminate any message by enforcing Title II. As such, the Commission has not violated Petitioner's right to freedom of speech.

II. TITLE II DOES NOT VIOLATE THE RIGHTS AFFORDED TO PHOTOGRAPHER BY THE FIRST AMENDMENT'S RELIGION CLAUSES

Title II does not violate the Establishment Clause or the Free Exercise Clause of the United States Constitution. While the two clauses may overlap at times, each forbids a different form of infringement upon religion by the government. Engel v. Vitale, 370 U.S. 421, 430 (1962). The government violates the Establishment Clause by enacting laws that adopt an official religion, regardless of compulsion. Id. A claimed violation of the Free Exercise Clause requires a showing that the government compelled action or inaction related to religious practices or belief. Id. at 431. A violation of the Free Exercise Clause is based on coercion while the Establishment Clause violation need not be so attended. Sch. Dist. of Abington Twp., Pa. v. Schempp, 374 U.S. 203, 222-23 (1963).

A. Title II Does Not Violate Photographer's Rights Under the Establishment Clause

A statute does not offend the Establishment Clause when the statute: 1) has a secular legislative purpose, 2) has a primary effect does not advance or inhibit religion, and 3) does not foster an excessive government entanglement with religion. Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971) (citing Bd. of Educ. v. Allen, 392 U.S. 236, 243 (1968) and Walz v. Tax Comm'n, 397 U.S. 664, 674 (1970)).

First, Title II does not serve a religious purpose. Nothing in Title II suggests that Madison targeted religion, or atheism, when drafting the law. Religion does not have a prominent place in the text of the law. In the text of the law, "religion" is featured among numerous other classes to which people may belong. Title II precludes discrimination against people based on anything from sexual orientation to socioeconomic status. Therefore, Title II is secular in nature.

Second, the primary effect of the law is to prevent discrimination against any citizen. The law does not work to elevate the influence of their religious beliefs and it does not serve to inhibit their beliefs. Title II ensures all citizens are granted equal treatment. Last, the government does not "excessively entangle" itself with the government by barring discrimination based on religious belief. With all elements of the Lemon test clearly satisfied, Title II does not violate Petitioner's rights under the Establishment Clause.

B. Title II Does Not Violate Photographer's Rights Under The Free Exercise Clause

The United States Constitution forbids states from prohibiting the free exercise of religion. U.S. Const. amend. I. As a self-described "militant atheist," Petitioner harbors no religious belief with which the government can interfere. Title II does not prohibit Petitioner from freely exercising religion.

Petitioner must show that one secularly-motivated public accommodation is allowed to discriminate in a situation – without a corresponding exemption for religiously-motivated discrimination – to establish that the Commission violated his rights under the Free Exercise Clause. Petitioner offered no evidence suggesting a religiously-affiliated photographer could refuse to photograph secular events, or events celebrating other religions, while Petitioner could not likewise discriminate.

Furthermore, Title II is not directed at any particular religion, either on its face or as applied. Title II neither promotes one religion over another nor prohibits the practice of any religion. The law simply advances the primary effect of the law: preventing discrimination.

1. Photographer's atheism does not constitute a "sincerely held religious belief"

The Free Exercise Clause ensures that the government does not infringe upon a citizens exercise of their religion. The government cannot compel Petitioner to enter places of worship to perform his business if doing so goes against a "sincerely held religious belief." Petitioner, who adamantly opposes all religion, has no "sincerely held religious belief" preventing him from entering places of worship. He does not believe higher power, and he practices no daily rituals associated with his beliefs. By definition, atheism is not a religion. The Oxford English Dictionary defines "atheism" as a "disbelief in, or denial of, the existence of a God. Oxford English Dictionary, available at http://www.oed.com. "Disbelief" is defined a "mental rejection of a statement or assertion" or a "positive unbelief." Id.

Historically, the United States Supreme Court has extended the protections of the Free Exercise Clause only when a citizen's belief system closely resembles the belief system of a recognized religion. In Welsh v. U.S. and U.S. v. Seeger, two men sought to avoid conscription through the conscientious objector exception. Welsh v. U.S., 398 U.S. 333, 337 (1970); U.S. v.

Seeger, 380 U.S. 163, 174 (1965). A provision exempted those who objected "by reason of religious training and belief * * * conscientiously opposed to participation in war in any form" from service in the United States Armed Forces. Welsh, 398 U.S. at 335. The court laid out a test for determining whether a conscientious objector's beliefs are "religious." The test of belief turns on whether a sincerely held belief occupies a "place in the life of" the applicant "parallel to that filled by [the orthodox belief in] the God of" someone who clearly qualifies for the exemption. Id. at 339. Seeger and Welsh both strongly believed that killing in war was wrong, unethical, and immoral. Welsh, 398 U.S. at 335; Seeger, 380 U.S. at 164-65. In Seeger and Welsh, the applicants proved their beliefs clearly paralleled the beliefs of those holding more "orthodox" religious beliefs.

Claims rooted in the Free Exercise Clause typically involve citizens who have sincerely held religious beliefs that keep them from obeying a regulation. These citizens apply the tenets of their beliefs to their daily lives.

Here, Petitioner must hold beliefs akin to those beliefs held by devout adherents of orthodox religions. Petitioner has not proven the strength of his religious beliefs. His beliefs do not necessarily prevent him from entering into places of worship. He does not fear the wrath of a higher power based on his decision to enter places of worship or observe the religious rituals of others. Petitioner displays a "sometimes I can, sometimes I cannot" attitude about entering places of worship; he admits making exceptions to attend religious events. The exceptions Petitioner made, in conjunction with the lack of faith in a higher power, indicates Petitioner does not hold beliefs that pass the muster of the test created in Seeger and Welsh.

While not binding, Circuit Judge Adams's concurrence in Malnak v. Yogi, 592 F.2d 197 (3d Cir. 1979), is helpful in illustrating the difference between religion and belief. Circuit Judge

Adams states that a "religion" must: 1) address ultimate questions concerning, for example, man's role in the world; 2) consist of a comprehensive system of beliefs; and 3) present "certain formal and external signs," such as weekly congregations to perform common rituals. Malnak v. Yogi, 592 F.2d 197, 207-209 (3d Cir. 1979) (Adams, J. concurring). While atheism may satisfy one, or even two, of the elements, Petitioner does not present the "formal and external signs" of atheism required under the Malnak concurrence. His belief, then, cannot be considered a protected "religion."

2. Title II does not compel a photographer to support or practice any religion

Petitioner's Free Exercise claim fails even if the Court finds that atheism constitutes a "religion" for the purposes of First Amendment protections. The government does not force him to embrace any theistic religion. The Free Exercise Clause requires proof that Title II forces Petitioner to adopt a religion, or its practices, by requiring him to photograph religious events in places of worship. The Court clearly states that a claimed violation of the Free Exercise Clause requires a showing of compulsion on the government's part. Engel v. Vitale, 370 U.S. 421, 431 (1962). Petitioner must show the coercive effect of Title II as it operates against him in the practice of his religion or, in this case, lack thereof. Every argument Petitioner asserts as to the law's coercive effect lacks merit.

While Petitioner may need to enter places of worship to accommodate all clients, he need not participate in any religious event or adopt a particular religion and its teachings. Petitioner admits that he has entered into places of worship -- for non-business reasons -- without outwardly supporting any single religion. Petitioner passively observes the religious rituals, such as prayer, with which he disagrees without participation in those rituals. He would be able to perform the functions of his business in an equally passive manner. Since he would be

photographing the events for which he was retained, he can clearly disassociate himself with the beliefs professed at those events.

3. Title II is both neutral and generally applicable

The United States Supreme Court determined that "neutral, generally applicable laws that incidentally burden the exercise of religion usually do not violate the Free Exercise Clause of the First Amendment." Holt v. Hobbs, __ U.S. __, 135 S. Ct. 853, 859 (2015) (citing Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U.S. 872, 878-79 (1990)). According to the Court, "a law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context." Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 533 (1993).

The Court's inquiry as to the neutrality of the law cannot end with facial neutrality. Id. at 534. Under the Free Exercise Clause, a law may not make "subtle departures from neutrality," Gillette v. U.S., 401 U.S. 437, 452 (1971), or "covert[ly] suppress[] . . . particular religious beliefs." Bowen v. Roy, 476 U.S. 693, 703 (1986). The Court will find a law is prejudiced, as opposed to neutral, if the law or ordinance is passed to "suppress[] the central element" of a given religion. See Church of the Lukumi Babalu Aye, Inc., 508 U.S. at 534 (finding that the choices of words "sacrifice" and "ritual" in a city ordinance indicates that the city targeted the practice of Santeria). The "adverse impact" of a law upon citizens with closely held religious beliefs could affect a law's neutrality in the eyes of the Court. See id., 508 U.S. at 535-42 (finding that the city ordinance adversely impacted Santeria practitioners by excluding from the ordinance "all killings of animals except for religious sacrifice"). The Court concluded that the text and the adverse impact of the ordinance in Church of the Lukumi Babalu Aye, Inc. render that ordinance prejudiced, as opposed to neutral. 508 U.S. at 536.

Here, Title II satisfies the neutrality requirement because the law applies to all public accommodations, religious or secular. Nothing in the record suggests that the Madison government conspired to pass a law with the intention of suppressing the central element of atheism or of religion. Nothing in the record indicates that the law targets religious belief, let alone the lack thereof. Apart from Petitioner's grievances with Title II, the law does not adversely impact citizens with closely held religious beliefs or citizens with closely held atheistic beliefs.

A law can violate the Free Exercise Clause if it cannot satisfy the general applicability requirement discussed in Employment Div. v. Smith. The a law will fail "the general applicability requirement if it burdens a category of religiously motivated conduct but exempts or does not reach a substantial category of conduct that is not religiously motivated and that undermines the purposes of the law to at least the same degree as the covered conduct that is religiously motivated." Blackhawk v. Pennsylvania, 381 F. 3d 202, 209 (3d Cir. 2004) (citing Church of the Lukumi Babalu Aye, Inc., 508 U.S. at 543–46).

In Smith, two Native American men challenged a state statute that classified peyote as a controlled substance. Smith, 494 U.S. at 874. The men used peyote during religious ceremonies, and therefore alleged the statute violated their rights under the Free Exercise Clause. Id. at 878. This Court held that the law was generally applicable because it did not outlaw purely religiously motivated conduct; the law applied to all citizens regardless of their religiously motivated conduct. Id. The Smith Court did not apply strict scrutiny when the law was both neutral and generally applicable. Id. at 890.

If a law is both neutral and generally applicable, the law must only survive rational basis review. Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. at 531. The First

Amendment "right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Smith, 494 U.S. at 879. Title II proscribes conduct in a way that is rationally related to preventing discrimination. The impact of Title II – barring public accommodations from refusing services to patrons based on their religious beliefs – is rationally related to the legitimate government interest in preventing systemic discrimination. Therefore, the law does not violate Petitioner's right to free exercise.

CONCLUSION

Petitioner clearly violated Title II's law against discrimination by refusing to photograph religious events. Title II's requirement that Petitioner provide its photography services all events – both religious and secular – does not violate Petitioner's freedoms under the Freedom of Speech Clause, Free Exercise Clause, or Establishment Clause of the First Amendment. For the foregoing reasons, Respondent respectfully requests that the United States Supreme Court affirm the holdings of the United States District Court for the District of Eastern Madison and the United States Court of Appeals for the Fifteenth Circuit and uphold the grant of Commission's Motion for Summary Judgment.