No. 15-1245

In the

Supreme Court of the United States

JASON ADAM TAYLOR,

Petitioner,

v.

TAMMY JEFFERSON, THOMAS MORE, OLIVIA WENDY HOLMES, JOANNA MILTON, and CHRISTOPHER HEFFNER,

In their official capacities as Commissioners of the Madison Commission on Human Rights,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team I
Counsel for Petitioner
January 31, 2016

QUESTIONS PRESENTED

I. Does the Madison Human Rights Act violate the petitioner's right to freedom of expression when it compels him and his closely-held business to create photographs of religious events for customers, even though his business, as a policy, does not photograph such events for any person of any background due to his firmly held belief that religion is harmful to society?

II. Does the Madison Human Rights Act violate the petitioner's free exercise rights or violate the Establishment Clause of the First Amendment, when it compels him to participate in a religious ceremony?

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RELEVANT CONSTITUTIONAL PROVISIONS

The relevant constitutional provision is the First Amendment. It is reprinted in Appendix A.

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions involved are the Madison Human Rights Act of 1967 (MHRA), and the Civil Rights Act of 1964, which are reprinted in Appendix B.

STATEMENT OF JURISDICTION

The U.S. Court of Appeals for the Fifteenth Circuit entered final judgment on this matter on Nov. 12, 2015. This Court granted a timely petition for certiorari, and has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Statement of the Facts

Jason Adam Taylor is an atheist who owns a closely-held business, Taylor's Photographic Solutions. (R. at 3.) During his childhood, Taylor's parents practiced different religions. As a result, he was verbally abused by extended family members about his mixed-faith background. Due to this abuse, Taylor declines to involve his business or expressive abilities with any religious ceremonies. Taylor Aff. ¶ 18. Despite his strong feelings about religion, Taylor employs religious individuals in his business, and does not tolerate any discrimination against employees because of their religion; he also allows his employees to miss work or assignments due to their religious views. (R. at 4.) While Taylor has had spirited debates with his employees about religion, he has not harassed any employee because of her religious faith. (R. at 4.)

Taylor and his business refuse to provide photography services to religious ceremonies of any kind. (R. at 4.) He has consistently refused to provide photography services for any religious ceremony, even for family members. (R. at 17.) While he occasionally witnessed religious ceremonies of close family members, even his passive presence during these ceremonies caused him noticeable discomfort. Taylor Aff. ¶¶ 27–29. In June 2014, Taylor placed a notice in the window of his business, which communicates his no religious events policy to potential customers. Taylor Aff. ¶¶ 29–31. The notice also emphasizes that the business bears no prejudice toward customers of any particular religion. Taylor Aff. ¶¶ 29–31. Mr. Taylor and his business provide photography services for non-religious events, even if those services are for religiously devout customers. Taylor and his business only decline to provide photography services for religious events, regardless of the customer. Taylor Aff. ¶¶ 29–31. In June and July 2014, Taylor received requests from two

customers to photograph religious weddings, which would take place in a Catholic church and Jewish synagogue, respectively. After explaining the business's policy and offering suitable alternative photographers, the two customers filed complaints with the Madison government. Taylor Aff. ¶¶ 45–59.

Procedural History

On July 31, 2015, the Madison Human Rights Commission (the Commission) initiated an investigation of Taylor after receiving two complaints alleging that he had engaged in acts of religious discrimination. (R. at 4.) After investigating, the Commission concluded that Taylor had engaged in two acts of religious discrimination. (R. at 25.) On September 15, the Commission informed Taylor of its conclusion and ordered him to cease his stated practice, to remove the sign, and to pay a fine of $1,000 per week for each week from July 14 to the date of the letter. (R. at 25.) The Commission threatened to file a civil enforcement action against him if he refused to comply with within 60 days. (R. at 4.)

Taylor filed a suit against the Commission's individual members in their official capacities in the U.S. District Court for the District of Eastern Madison. (R. at 1–2.) Taylor alleged that the Commission's action violates the Free Speech, Free Exercise, and Establishment Clauses of the First Amendment of the United States Constitution. (R. at 2.) Taylor sought an injunction of the enforcement action, attorney's fees, and compensatory damages. (R. at 3.) The Commission moved for summary judgment on May 25 (R. at 3.) The district court ruled in favor of the Commission on July 13, 2015. (R. at 3.) The court held that Taylor does not speak through his photographs nor does he expressively associate with his clients through his business because he offers to photograph events of his clients' choosing. (R. at 7–8.) The court also held he was not compelled to engage in a religious act. (R. at 9.) Taylor appealed the ruling of the district court to the United States Court of Appeals for the Fifteenth Circuit. (R. at 39.) On November 12, the court affirmed the district court's ruling on both claims for similar reasons. (R. at 40–43.) He filed an appeal to this court, which granted a writ of certiorari to review the constitutional questions raised. (R. at 47).

SUMMARY OF THE ARGUMENT

The issues on appeal are whether the Commission's actions impermissibly violated Mr. Taylor's and Taylor's Photographic Solutions' First Amendment right to freedom of speech as well as the First Amendment's Free Exercise and Establishment Clauses. The Court of Appeals for the Fifteenth Circuit incorrectly concluded that the Commission's action did not violate the First Amendment. This court should reverse the holdings of the lower court on both issues.

The Commission violated Mr. Taylor's and Taylor's Photographic Solutions' right to freedom of speech by compelling them to speak. Both Mr. Taylor and his business have free speech rights under the First Amendment, and the photographs they create and sell are a form of protected expression. The Commission is attempting to impermissibly require them to speak a third party's message against their will by requiring them to create photographs that express other people's messages about religion. The Commission is also attempting to impermissibly compel them to expressively associate with customers to express particular messages. By producing the photographs the Commission demands, the petitioner and his company will express positive messages about religion—messages which observers will believe they support—and they will become part of associations that express positive messages about religion. This is compelled speech and compelled expressive association. At a minimum, Taylor's Photographic Solutions is a conduit of its customers' speech. Accordingly, it has the First Amendment right to choose which messages to transmit, including the right not to transmit messages about religion. Regardless, the actions are unconstitutional because they fail both strict scrutiny, since they are not narrowly tailored, and intermediate scrutiny, since the government's goals are achieved as effectively without the Commission's actions as they are with the Commission's actions.

The Commission also violated Mr. Taylor's free exercise rights and the Establishment Clause when it fined him for not providing his photography services for religious ceremonies. Mr. Taylor and his business can assert both free exercise and establishment clause claims, given Supreme Court precedent concerning

for-profit corporate organizations' First Amendment rights. Regarding the Establishment Clause, the Commission imposed heavy monetary penalties on Mr. Taylor and his business, essentially forcing him to provide services for and passively participate in a religious ceremony. The use of state government power to coerce any individual or organization to participate or involve themselves—even passively—in religious ceremonies violates the Establishment Clause.

The Commission also violated Mr. Taylor's free exercise rights through its application of the public accommodations law. While the law may be neutral and generally applicable, Mr. Taylor's claim involves hybrid rights, which the Supreme Court has recognized trigger strict scrutiny of his free exercise claims.

The Commission's application of the public accommodations law fails strict scrutiny because it does not serve a compelling government interest, nor is it narrowly tailored to achieve its core interest. Mr. Taylor's case involves public accommodations discriminating in the types of events and services they offer to all customers, rather than discriminating in the types of customers they serve. Preventing public accommodations from discriminating in the types of events and services they offer is not a compelling government interest. Furthermore, the public accommodations law is not narrowly tailored because it is not the least restrictive means to achieve its goal of preventing discrimination against customers based on protected characteristics. Therefore, the Commission's application of the public accommodations law fails strict scrutiny analysis.

ARGUMENT

I. The Commission's Enforcement Action Violated Jason Adam Taylor's and Taylor's Photographic Solutions' Right to Freedom of Speech

Despite the state of Madison's interest in prohibiting discrimination in places of public accommodation, the lower court must be reversed because the Commission's enforcement action violates Jason Adam Taylor's and Taylor's Photographic Solutions' right to freedom of speech by compelling them to speak a third party's message and to engage in expressive association.

A. The Comission Impermissibly Compelled Jason Adam Taylor And His Business To Speak A Third Party's Message

1. Both Mr. Taylor And His Business Have Free Speech Rights Under The First Amendment, And The Photographs Produced By Mr. Taylor Are Their Speech.

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech . . ." U.S. CONST., amend. I. The Supreme Court has held that the First Amendment prohibits the federal government from compelling anyone to either speak a particular message with which they disagree, or to refrain from speaking a message of their own choosing. *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995)*; see also Wooley v. Maynard*, 430 U.S. 705 (1977). This protection also covers business entities. *See Pac. Gas and Elec. Co. v. Pub. Utils. Comm'n of California*, 475 U.S. 1 (1986) (holding that businesses have a First Amendment right not to help spread a message with which they disagree); *see also Citizens United v. FEC*, 558 U.S. 310 (2010); *Miami Herald Publ'g. Co. v. Tornillo*, 418 U.S. 241 (1974). Due to the Fourteenth Amendment, state governments are also obligated to respect individuals' and businesses' First Amendment right of speech. *See Edwards v. South Carolina,* 83 S.Ct. 680 (1963). Thus, the petitioner and his closely-held business possess the right of free speech, and the First Amendment protects them from the Commission's attempt, as a state actor, to compel them to speak a message with which they disagree (R. at 2.)

Mr. Taylor's right to free speech protects more than just his verbal statements. Speech is any activity that is "sufficiently imbued with elements of communication." *Texas v. Johnson*, 491 U.S. 397, 404 (1989). Activities are so imbued if they express an intent to communicate and there is a great likelihood that the audience understands what is being communicated. *Id*. Directly on point, the Supreme Court has held that photographs can constitute speech. *Kaplan v. California*, 93 S.Ct. 2680, 2684 (1973) (emphasizing Court's past application of First Amendment standards to photographs when determining whether constitutional protection applies). Taylor's Photographic Solutions' right to speak is similarly extensive since it can include its products when, as in the present case, such products are expressive. *See Hurley*, 515 U.S. at 569 (recognizing that artistic commodities, such as a Jackson Pollock painting and *Alice in Wonderland* are speech). The commercial nature of a product, as Pollack's paintings and *Alice in Wonderland* suggest, does not negate a business's right to speak through it. The Southern District of New York made this point clear in *Jian Zhang v. Baidu.com*, by drawing on Supreme Court precedent: "[T]he fact that Baidu has a 'profit motive' does not deprive it of the right to free speech any more than the profit motives of the newspapers in *Tornillo* and *New York Times* did." 10 F.Supp.3d 433, 443 (S.D.N.Y. 2014). Newspapers, as the court indicated, are the speech of their publishers.

Like newspapers and numerous other products, Mr. Taylor's and his company's photographs are commercial products are speech that express a message understood by its audience. The message expressed do not need to be particularized, especially cogent, or even communicative of the speaker's original thoughts. *See Baidu.com*, 10 F.Supp.3d at 438 ("[T]he First Amendment's protections apply whether or not a speaker articulates, or even has, a coherent or precise message, and whether or not the speaker generated the underlying content . . .."); *see also Hurley*, 515 U.S. at 557 (holding that a parade is the speech of its organizers even though the organizers did not create the displays that formed the parade, and that speech need not be particularized to constitute speech). Nor must such expression proclaim a particular value

judgment. Expressions of opinion, endorsement, and even fact are considered speech. *See Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 53–54 (2006).

While photographs express statements of fact, they can also express value judgments, opinions, and expressions of affirmation. By capturing an image of an actual person or event, a photograph states that the subject captured occurred or exists. Furthermore, photographs can present the subject captured in a positive light, thus expressing approval of the subject itself. This is the case with Mr. Taylor's photographs, which express a message—albeit a general one based on other people's subjects, and one that people understand. Thus, it is speech that is protected by the First Amendment. Consequently, Mr. Taylor has the right to choose the content of his business's photographs because they are his and the company's speech.

2. Requiring Taylor's Photographic Solutions To Produce A Certain Type Of Photograph Illegally Compels Mr. Taylor And The Company To Engage In Unwanted Speech.

The First Amendment also protects individuals and businesses' rights to refrain from speaking a third party's message. *Rumsfeld*, 547 U.S. at 47, 51 (2006). This protection is not forfeited when a speaker includes other entities in her speech. *See Hurley*, 515 U.S. at 569–70 ("[A] private speaker does not forfeit constitutional protection simply by combining multifarious voices . . ."). Therefore, Mr. Taylor and his business cannot be required to photograph religious events for their customers, who are third parties involved in their speech, because such an act would compel them to speak a third party's message.

The facts and holding in both *Hurley* and *Tornillo* are instructive. In *Hurley*, the Supreme Court recognized that a private parade expressing a general message that the audience should feel positively toward the city of Boston is itself speech protected by the First Amendment, and that the speech belonged to the parade organizers. The messages expressed by the photographs produced by Mr. Taylor and sold through Taylor's Photographic Solutions are no less particularized and coherent than this. If the parade organizers were forced to allow the Irish-American Gay, Lesbian, and Bisexual Group of Boston (GLIB) to simply walk in the parade behind a banner stating only the organization's name, the audience would

recognize that the parade organizers were expressing a belief in the existence and social acceptability of such individuals. *See Hurley*, 515 U.S. at 575. Similarly, by compelling Mr. Taylor to photograph religious events, the Commission is forcing Mr. Taylor and his company to express, at a minimum, the message that such events exist and are socially acceptable.

In *Tornillo*, a Florida statute required the *Miami Herald*, a for-profit newspaper, to print an op-ed by a Florida politician. The Supreme Court invalidated the statute because it required the newspaper to express a third party's speech and such speech could be misunderstood by the newspaper's readers to be the newspaper's speech. *Tornillo*, 418 U.S. at 253. *Tornillo* is a particularly apt guide because it demonstrates that people understand that expressive products are their creator's speech. Readers understand that newspapers are more than a "passive receptacle" for information, but are the product of the writers' perspective on events and, thus, are speech. *Id.* at 258. Similarly, there is a great likelihood that people understand that a photograph presents a specific and intentional message about the subject captured. Photographs, too then, are not passive receptacles of events, but are expressions regarding events. Thus, Mr. Taylor and his business will be understood as expressing support for religious events, despite their desire to refrain from communicating such a message. This is the definition of compelled speech.

The lower court missed a crucial point when it decided in favor of the respondents: religious events and secular events are fundamentally different. In *Elane Photography LLC v. Willock*, 209 P.3d 53 (N.M. 2013), the New Mexico Supreme Court held that the New Mexico Human Rights Commission could compel a private photography business that was a public accommodation to photograph a homosexual customer's wedding. The court reasoned that because Elane Photography was a public accommodation that advertised wedding photography services, it could not deny that service to customers based on their sexual orientation. However, the court was explicit that it could not mandate the *content* of the photographs, just equal access to the business's *services*, which included photographing weddings. Infusing religion into a

subject to be photographed, however, fundamentally alters the content of the photograph. Thus, Mr. Taylor did not deny a service to religious individuals that he provides for all others, rather he denied providing a service to religious individuals that he denies to everyone.

Religious events and secular events are not the same even though they can appear to be analogous. They are categorically different because religion fundamentally alters events by proclaiming that a deity is involved with and has mandated or permitted the activity. To believe otherwise is to miss the point of the religious event entirely. Therefore, although they look similar, a Bat Mitzvah and a Sweet Sixteen are not identical events nor are religious weddings and secular weddings. Accordingly, Mr. Taylor, unlike the petitioner in *Elane Photography*, does not discriminate against two different customers who want to express the same message. Rather, he chooses which message he wants to express, regardless of the speaker, which is a right explicitly recognized in *Elane Photography*.

B. Because Mr. Taylor And Taylor's Photographic Solutions Expressively Associate With Their Customers By Creating Photographs For Their Customers, Their Photographs Are Protected By The First Amendment.

1. Together, Mr. Taylor, Taylor's Photographic Solutions, And Their Customers Expressively Associate By Creating Speech That Communicates A Message That Is Understood By Both Themselves And Viewers Of The Photographs.

According to the Supreme Court, an association, simply by existing, "expressively associates" if it intends to communicate a message and that message is understood by those who receive it, including the association itself. *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000). In *Dale*, "[t]he Court found that the Boy Scouts engaged in expressive association when the adult leaders 'inculcate[d] [youth members] with the Boy Scouts' values—both expressly and by example.'" Jennifer S. Goldstein, *Freedom of Expressive Association and Discrimination on the Basis of Sexual Orientation*, 16 GEO. J. GENDER & L. 163, 170 (2015). Thus, the Boy Scouts are an expressive association because its participants express their collective values to each other, and this expression is understood by the Boy Scouts themselves.

Similarly, Mr. Taylor, his business, and his customers are an expressive association because they join together to express a message which they themselves and anyone who views their photographs understand. Mr. Taylor's customers provide the specific subject matter and their general desire for that subject matter to be captured in a positive light. Mr. Taylor employs his equipment and technique to create images which capture the subject matter just as his clients want. In so doing, he is able to express their thoughts through the photographs they join together to create. Just as the Boy Scouts express their shared message to each other and do so through their various collectively coordinated activities, so too do Mr. Taylor and his clients express a shared message to each and to others by making photographs together.

2. Expressive Association Is Protected Under The First Amendment And Such Associations Cannot Be Compelled To Speak Nor Can The Government Alter Their Message.

The First Amendment protects the right to expressive association, which includes the right to refuse to associate with others if such an association would force a person to speak a message she does not want to speak. *Dale* is laid on the foundations of the Court's free speech doctrine: "[T]he Court [in *Dale*] found *Hurle*y instructive because the presence of GLIB would have 'interfered with the parade organizers' choice not to propound a particular viewpoint,' just as the presence of a gay scoutmaster would interfere with the Scouts' choice not to espouse a particular viewpoint." Goldstein, *supra* at 170. In *Dale*, the Supreme Court held that the Boy Scouts could ban a gay individual because it would impede the association's message. *Dale*, 530 U.S. at 650. In light of *Dale* and *Hurley*, it is undeniable that the Supreme Court affords speakers the right not to engage in expressive association if, as in the present case, such an association would force a speaker to express a message she does not want to express.

Mr. Taylor and his company must be afforded the same protections the Boy Scouts received. They have been very clear that they do not photograph any religious content for any individual because they do not endorse religion. It is their right to express this view and to refrain from participating in expressive associations that express a positive message about religion. Just as the Boy Scouts can refuse to join others

who express positive messages about homosexuality, so too can Mr. Taylor and his business refuse to expressively associate with others who are expressing a positive message about religion.

Public accommodation status does not nullify Taylor's Photographic Solutions' right to expressive association. Public accommodations are organizations that hold their services out to the public. Since they hold themselves out to the public, they are required by law to serve the public, not just subsects of the population. Taylor's Photographic Solutions is a public accommodation because sit advertises its photography services to the public; it tells the world it is open to everyone for business. Thus, it has a duty to serve the public. Its willingness to serve the public, however, does not negate its First Amendment rights. In *Hurley*, the Supreme Court held that even if a parade is a public accommodation, the parade organizers could exclude an organization which sought to express a message with which it disagreed. *Hurley*, 515 U.S. at 581. If Mr. Taylor and his company are forced to expressively associate through their photography services with individuals who speak positive messages about religion, they will be compelled to endorse a message which they disagree. Furthermore, the Supreme Court gives deference to association's assertions regarding the nature of their expression, and to their view of what would impair its expression. *Turner Broad. Sys. v. FCC*, 114 S.Ct. 2445 (1994). The lower court did not grant such deference, even though Mr. Taylor has been clear that he and his company do not espouse religious messages, and that photographing religious events would compel him and his company to expressively associate with a positive message about religion. Taylor Aff. ¶ 15. He must be accorded proper deference, and such deference counsels this Court to reverse the lower court's decision.

C. At A Minimum, Taylor's Photographic Solutions Is A Conduit Of Speech, And Thus Mr. Taylor Engages In Speech When He Creates Photographs For His Customers.

At a minimum, Taylor's Photographic Solutions is a conduit of its customers' speech. Conduits, such as cable providers, are entities that express third parties' messages through their own mediums. *Turner Broad. Sys. v. FCC*, 114 S.Ct. 2445, 2452 (1994). Taylor's Photographic Solutions is a conduit because Mr.

Taylor captures and helps transmit his customers' content. Just as HBO transmits its shows through Comcast's cable network, Mr. Taylor's customers transmit their content through his photographs. In both cases, the firm's customers are paying the firm to transmit their messages and content through the medium the firm provides. Also like other conduits, Taylor's Photographic Solutions exercises editorial discretion by selecting the messages for which it wants to offer its services. It offers its services for a variety of events, but it is very clear that it does not offer its services for any religious events. This is equivalent to a cable provider offering its services to anyone but not for the distribution of pornography. Thus, its editorial discretion is not over who speaks, but over what is spoken. Conduits have First Amendment protection to choose what speech it transmits. In *Turner Broad. Sys.*, Turner Broadcasting System (TBS) was subject to a public accommodation law that required the company to set aside a specified number of channels for local programmers; it did not, however, set aside channels on the basis of content. 114 S.Ct. at 2449. TBS rendered its services to the chosen providers but maintained control over what content it agreed to broadcast. This editorial discretion, the Court held, is speech protected by the First Amendment. *Id.* at 2456, 2460. The present case is similar. Mr. Taylor chooses what events (e.g., content) he will photograph (e.g., transmit). Taylor's Photographic Solutions, as a conduit of its customers' speech, then, is allowed to choose the contents of its photographic services, and its decisions are protected by the First Amendment.

D. The Commission's Enforcement Action Fails The Proper Standard Of Review

1. Strict Scrutiny Is The Appropriate Standard Of Review Because The Commission Is Penalizing Mr. Taylor And His Business On The Basis Of Their Speech And Expressive Association.

Strict scrutiny is the appropriate standard because the Supreme Court applies "the most exacting scrutiny to regulations that . . . compel speakers to utter or distribute speech bearing a particular message. *Turner Broad. Sys.*, 114 S.Ct. at 2459. The Commission's enforcement action compels Mr. Taylor's and his business to express a third party's message. Therefore, strict scrutiny is required. Strict scrutiny is also the

appropriate standard for government infringement of expressive association. *See Roberts v. United States Jaycees*, 468 U.S. 609, 623–24 (1984). Since the Commission is compelling Mr. Taylor and his business to expressively associate with customers to speak a positive religious message, strict scrutiny is required.

2. The Enforcement Action Is Not Narrowly Tailored To Meet Its Stated Compelling Interest.

The Supreme Court has held that strict scrutiny is an "exacting" test that requires a "pressing public necessity" which must still "restrict as little speech as possible." *Turner Broad. Sys.*, 114 S.Ct. at 2478. To meet this standard, the government must show that its policy advances a compelling interest, and that its means are narrowly tailored to that interest. *Roberts*, 468 U.S. at 623–24. Narrow tailoring "demands that the fit between the government's action and its asserted purpose be as perfect as practicable…[it] means that legislation must be neither overinclusive nor underinclusive." Stephen A. Siegel, *The Origin of the Compelling State Interest Test and Strict Scrutiny*, 48 AM. J. LEGAL HIST. 355, 360–61 (2006). The Commission's enforcement action, however, is not narrowly tailored because it is over-inclusive.

The purpose of the Madison Human Rights Act is to ensure equal access to public accommodations for protected classes. The respondents claim they are executing this law by ensuring that Mr. Taylor and his business provide the same services to religious customers as they do to secular customers. However, Mr. Taylor and his company do provide the same services to religious patrons as they do to secular ones. What they do not do is express religious expression for anyone. The Meadows-Vaughn wedding is proof that the very individuals the Commission claims to protect are not in danger of discrimination. Taylor's Photographic Solutions offers to photograph weddings and two religious men were extended that very service. (R. at 15.) Rather than ensure that religious customers such as Messrs. Meadows and Vaughn receive equal service, the Commission is attempting to compel Mr. Taylor and his company to provide a service they do not offer and, in doing so, to speak a message against their will. Such an outcome is the very definition of an over-inclusive policy. Such an over-inclusive outcome is beyond the scope of the

Commission because it is an action antithetical to the First Amendment: "[T]he very idea that a noncommercial speech restriction be used to produce thoughts and statements acceptable to some groups or, indeed, all people, grates on the First Amendment . . . The Speech Clause has no more certain antithesis." *Hurley*, 515 U.S. at 579. Accordingly, the enforcement action is not narrowly tailored because it is over-inclusive: it achieves its stated goal by trampling on Mr. Taylor's and his company's free speech rights.

3. At A Minimum, Intermediate Scrutiny Is Required Because Taylor's Photographic Solutions Is At Least A Conduit Of Speech; The Commission's Enforcement Action Fails This Standard Of Review Because Its Stated Goal Is Just As Effectively Met Without It.

If the Court does not find that Mr. Taylor and Taylor's Photographic Solutions engage in their own speech or in expressive association, then intermediate scrutiny is the requisite standard because Taylor's Photographic Solutions is, at a minimum, a conduit of speech. Regulations over conduits' speech are subject to intermediate scrutiny. *See Turner Broad. Sys.*, 114 S.Ct. at 2459. To meet intermediate scrutiny, the government must show that the "substantial government interest . . . would be achieved less effectively absent the regulation." *Id*. The Commission's enforcement action fails to meet this standard because it does not promote a substantial government interest more effectively than if it were not implemented at all. The aforementioned wedding of Messrs. Meadows and Vaughn proves that religious citizens do have equal access to Taylor's Photographic Solutions' services absent the Commission's enforcement action. Consequently, Madison's substantial interest is as effectively promoted without the regulation as it is with it. Accordingly, this Court must reverse the ruling of the lower court because there exists, at least, a genuine issue of material fact because the Commission's enforcement action fails to meet either strict or intermediate scrutiny.

II. By Compelling Jason Adam Taylor And His Business To Attend And Passively Participate In Religious Ceremonies, The Commission Violated The Establishment Clause.

By compelling the petitioner's attendance and passive participation in religious services, the Commission transgresses the bright-line rule that the Court created in *Everson v. Board of Education*: the

government may not force a person to attend a religious service. 330 U.S. 115, 16 (1947). The lower court incorrectly ignored this rule and this Court should reverse its decision.

The Court's modern understanding of the Establishment Clause begins with *Everson v. Board of Education*, where it demarcated the basic boundaries of the doctrine. The Court stated:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church.…*Neither can force nor influence a person to go to or to remain away from church against his will* or force him to profess a belief or disbelief in any religion.

Id. (emphasis added). Since that case, the Court has presented a variety of formulations for examining whether or not government actions violate the Establishment Clause. First, in *Lemon v. Kurtzman*, the Court formulated a three-part test. To survive an establishment clause challenge, a law had to have a secular legislative purpose, neither advance nor inhibit religion as its principal purpose, and not foster an "excessive entanglement with religion." 403 U.S. 602, 613 (1971) (internal citation omitted). The Court refined that test in *Agostini v. Felton* by focusing on two prongs: the purpose of the law, and its effects. 521 U.S. 203, 204 (1997). Finally, and more recently, the Court has also used a coercion analysis to determine Establishment Clause violations. *See Lee v. Weisman*, 505 U.S. 577, 579 (1992); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 291 (2000); *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1815 (2014). In particular, the coercion analysis helps courts apply the "effects" prong of the *Lemon* and *Agostini* tests by providing general boundaries between permissible accommodation of religion, and impermissible endorsement of it.

In outlining this coercion analysis, the Court has remained faithful to the original boundaries stated in *Everson*: the government may not force participation in religious ceremonies. In *Lee*, the Court noted that "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'" 505 U.S. at 587. This impermissible coercion might come from direct or

indirect sources, which can include significant social pressure. *See Santa Fe*, 530 U.S. at 312 ("For the government may no more use social pressure to enforce orthodoxy than it may use more direct means.").

More recently, in *Town of Greece v. Galloway*, the Court outlined practices that might qualify as coercive. If government officials force individuals to participate in prayers or sanction dissenting individuals, the Court noted that this would violate the Establishment Clause. Crucially, the Court pointed out that "[N]othing in the [case] record suggests that members of the public are dissuaded from leaving the meeting room during the prayer…" *Galloway*, 134 S. Ct. at 1827. If individuals had been forced to attend and listen passively to the prayer portion of the meeting, this would violate the Establishment Clause. *Id.*

Federal courts have also made it clear that ordering individuals to attend programs with religious components in them, even if the overall program has a primarily secular purpose, violates the Establishment Clause. In *Kerr v. Farrey,* the Seventh Circuit found that compelling an agnostic inmate to attend a Narcotics Anonymous meeting violated the Establishment Clause, because the program emphasized the role of a higher being in its rehabilitation process. *Kerr v. Farrey*, 95 F.3d 472, 474–475 (7th Cir. 1996). Prison officials had threatened to take away the inmate's parole possibility or send him to a higher security prison if he didn't attend the meetings. Crucially, the court found an Establishment Clause violation had occurred even though the inmate was not required to *participate* in the meeting and its exercises, but merely was required to *attend*. *Id.* Additionally, the court rejected the government's argument that the program had a primarily secular purpose to rehabilitate drug offenders and help the inmate recover from his addiction. *Id.* Other circuits confronting similar cases have come to the same conclusion, and most of these courts (like the Seventh Circuit in *Kerr*) have allowed Section 1983 Claims by inmates against prison officials to proceed.[1]

[1] *See Inouye v. Kemna*, 504 F.3d 705, 707 (9th Cir. 2007); *Munson v. Norris*, 435 F.3d 877, 880 (8th Cir. 2006); *Bobko v. Lavan*, 157 Fed. Appx. 517, 518 (3rd Cir. 2005) (unpublished); *Warner v. Orange County Department of Probation*, 115 F.3d 1068, 1073 (2d Cir. 1997).

In this case, the state of Madison is coercing Mr. Taylor by using official sanctions and monetary penalties to induce him to photograph religious ceremonies. (R. at 2.) To provide these photography services, Mr. Taylor must not only enter religious establishments, but must also passively participate in religious services. *(R. at 2.)* Compelling Mr. Taylor to attend and witness these religious ceremonies violates the bright-line rule that "government may not coerce anyone to support or participate in religion or its exercise." *Lee*, 505 U.S. at 580. The lower courts ignored this rule, and incorrectly focused on Mr. Taylor's past involvement with religion. (R. at 12). But an individual's decision to involve himself in a religious ceremony, or witness a religious proceeding in a house of worship, does not permanently forfeit his Establishment Clause protections. The government is not free to force a person to attend a religious ceremony just because that person has attended a religious ceremony in the past. Such reasoning would impermissibly entangle government and religion by forcing courts to extensively delve into a person's past to determine whether or not religious coercion could be applied to that person. Such inquiry, however, is irrelevant to the Establishment Clause. Similarly, the lower courts incorrectly focused on Mr. Taylor's entry into various houses of worship as the key issue in this case. The circuit court argued Mr. Taylor's claims fail because he already "enters houses of worship for events at his own free will" and requiring him to enter these places to perform his business is hardly requiring him to adopt the religion." (R. at 43.) The Establishment Clause violation here is not forcing an individual to *enter* a religious establishment, but rather, forcing an individual *to witness and participate* (even passively) in a religious ceremony. The government cannot compel attendance at a religious function, yet the Commission attempted that very action. Thus, it violated Mr. Taylor's rights.

III. The Commission's Application Of Madison's Human Rights Act Violated Jason Adam Taylor's Free Exercise Rights.

The Madison Human Rights Act also violated Mr. Taylor's free exercise rights under the First Amendment. Precedent demonstrates that Mr. Taylor and his closely-held business possess free exercise

rights. Because he is presenting a viable free speech claim in addition to his free exercise claim, his suit involves hybrid rights, thus triggering a stricter level of scrutiny, even for neutral laws of general applicability. *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990). Under a strict scrutiny analysis, the Act as applied by the Commission is unconstitutional. Preventing Mr. Taylor from limiting the types of events he photographs is not a compelling interest. Furthermore, the Act is not narrowly tailored to prevent discrimination against people based on their religious affiliation.

A. Mr. Taylor And His Closely-Held Business Can Assert Free Exercise Rights.

Individuals can assert free exercise rights through a closely-held corporation. In *Burwell v. Hobby Lobby*, the Court addressed the application of federal statutory protections for religious exercise to closely-held corporations. While the Court's decision focused on the interpretation of "person" in the federal R.F.R.A. statute, the Court rejected the government's argument that Hobby Lobby "cannot exercise religion" because none of the Court's prior cases "squarely held that a for-profit corporation has free exercise rights." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2769, 2772 (2014). As the majority recognized, Court precedent demonstrates that neither the corporate form nor profit-making activity is necessarily dispositive of a free exercise claim.[2] Free exercise rights are open to businesses because "business practices that are compelled or limited by the tenets of a religious doctrine fall comfortably within" the First Amendment's scope. *Burwell*, 134 S. Ct. at 2769. As the Court noted in *Roberts v. United States Jaycees*, "an individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." 468 U.S. 609, 622 (1984).

[2] *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (holding that a incorporated entity organized under Florida law prevailed on its Free Exercise claim); *Braunfeld v. Brown*, 366 U.S. 599 (1961) (plurality opinion) (analyzing Free Exercise claim by merchants operating for-profit); *United States v. Lee*, 455 U.S. 252 (1982) (considering an Amish employer's Free Exercise claim).

B. Because Mr. Taylor Is Bringing A Hybrid Rights Claim, Strict Scrutiny Is The Appropriate Standard To Apply To The Commission's Actions.

Given that Mr. Taylor and his business can assert free exercise claims, the next step is to analyze whether these claims survive the Court's decision in *Employment Division v. Smith*. In that case, the Court held that neutral laws of general applicability are normally evaluated using rational basis scrutiny, even if they burden religious exercise. The lower courts correctly note that *Smith* greatly refined the previous test, from *Sherbert v. Verner*, for religious exemptions. *See Sherbert v. Verner*, 374 U.S. 398, 399 (1963). The lower courts ignored the fact, however, that *Smith* did not completely remove any possibility of applying strict scrutiny when analyzing neutral laws of general applicability. *The Best of A Bad Lot: Compromise and Hybrid Religious Exemptions*, 123 HARV. L. REV. 1494 (2010). In particular, this Court recognized that "the only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech . . .." *Smith*, 494 U.S. at 881 (1990).[3] With this language, the Court suggested that laws implicating free exercise rights *along with other constitutional rights* deserve stricter scrutiny than the rational basis analysis normally afforded to neutral, generally applicable laws.

The nature of the hybrid rights exemption has created a circuit split, though only one circuit has explicitly rejected this petitioner's interpretation. While the Second, Third, and Sixth Circuits have declined to recognize the exemption, the Third Circuit remains open to recognizing the exemption following additional guidance from this Court. Hope Lu, *Addressing the Hybrid-Rights Exception: How the Colorable-Plus Approach Can Revive the Free Exercise Clause*, 63 CASE W. RES. L. REV. 257, 267, 271, 282 (2012) (*citing Combs v. Homer Ctr. Sch. Dist.*, 540 F.3d 231, 246–47 (3d Cir. 2008) (per curiam)). In

[3] *See also Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Cantwell v. Connecticut*, 310 U.S. 304, 307 (1940); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

contrast, the First, Fifth, Seventh, Eighth, Ninth, Tenth, and D.C. Circuits have all recognized the hybrid rights exemption. *Id.* at 271. The Seventh Circuit, for example, found that "in cases implicating the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and freedom of association, the First Amendment may subject the application to religiously motivated action of a neutral, generally applicable law to a heightened level of scrutiny." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 764 (7th Cir. 2003). The recognition of this exemption does depend on some considerations. The more stringent considerations require that the non-free exercise claim be "independently viable," or at least "colorable," meaning, at the very least, the claim can survive summary judgment or has a "likelihood, but not a certitude, of success on the merits." *Thomas v. Anchorage Equal Rights Comm'n*, 165 F.3d 692, 703, 707 (9th Cir. 1999). In analyzing which cases can meet this hurdle, the Circuits have emphasized that the additional constitutional rights implicated need to be substantial, and have often recognized that claims involving free speech fit that category. Lu, *supra* at 270–75, 281–82.

Legal scholars and the Circuits already noted have provided strong reasons why this Court should reaffirm its commitment to the hybrid rights exemption laid out in *Smith*. Most notably, the exemption provides stronger protections for rights that are deeply intertwined with free exercise rights, and safeguards liberties that have long been defined and cherished in American society. Additionally, the standards laid out by the Circuits adequately prevent the fears raised by the majority in *Smith*. Requiring free exercise cases to implicate another colorable, substantive constitutional right or claim, is a strong barrier to insincere attempts by businesses to escape regulatory burdens through assertions of religious rights. Lu, *supra* at 279. Courts can also analyze these claims without necessarily having to depend solely on evaluating a person's religious beliefs. *Id.* Thus, the hybrid rights exemption in *Smith* provides a clear path for this Court to apply strict scrutiny when evaluating this case with respect to applicable constitutional provisions. Existing precedent and policy considerations advise in favor of following that path. Mr. Taylor has adequately advanced a claim

that implicates additional and substantive constitutional concerns. An application of the Court's analysis in *Smith* should, therefore, result in a higher level of scrutiny being applied to the Commission's actions. Mr. Taylor's free speech claims clearly meet the more stringent "colorable" standard noted above. The arguments in this brief (as well as this Court's decision to grant a writ of certiorari on the free speech or expression claim) demonstrate that the additional claims are certainly "colorable."[4]

C. The Commission's Application Of The Madison Human Rights Act Fails Strict Scrutiny

Since strict scrutiny analysis should be applied to Mr. Taylor's free exercise claim, this Court should reverse the decision of the lower court and hold that the Act's application violates the free exercise protections of the First Amendment because it fails that standard. To remain constitutional when subjected to strict scrutiny, laws must be "narrowly tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). The law in this case fails on both counts. The Act as applied by the Commission does not serve compelling government interests. Furthermore, the government's action is not narrowly tailored to serve any compelling interest the government does have.

1. The Instant Case Involves Public Accommodations Attempting To Discriminate In The Types Of Events Or Services They Offer To All Customers, Rather Than Public Accommodations Attempting To Discriminate In The Types Of Customers They Serve.

Respondents rightly argue that the government has a compelling interest in requiring public accommodations to serve customers without respect to their protected characteristics.[5] Each of these cases, however, can be distinguished from the instant case, on the simple grounds that the petitioner seeks to limit

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[4] The 10th Circuit's guidance on this standard is valuable here: "it makes no sense to adopt a strict standard that essentially requires a successful companion claim because such a test would make the free exercise claim unnecessary." *Axson–Flynn v. Johnson*, 356 F.3d 1277, 1295 (10th Cir. 2004).

[5] For example, *see Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska) (per curiam), *cert. denied*, 115 S. Ct. 460 (1994) (upholding ruling against landlord refusing to rent to unmarried couples or roommates of the opposite sex, based on landlord's religious beliefs); *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983) (upholding revocation of IRS tax exemptions to university that had racially discriminatory admissions policies, even though they were motivated by religious beliefs); *Newman v. Piggie Park Enterprises, Inc*., 377 F.2d 433 (4th Cir. 1967), *aff'd on other grounds*, 390 U.S. 400 (1968).

which types of services he offers to all customers, instead of limiting which types of customers he serves. The government has a compelling interest in forcing public accommodations to serve all customers, but it does not have a compelling interest in forcing public accommodations to provide all types of services. Importantly, Mr. Taylor is not blankly refusing to provide his photography services to religious individuals. Unlike many other discrimination cases, the business establishment in the instant case is not withholding the core service it offers–photography–from any protected class in the community. As the record shows, Mr. Taylor provides services for religious couples or individuals. (R. at 15.) In fact, the record is absolutely clear that Mr. Taylor is willing to provide services to anyone and everyone, *just not for every event. Id.* Therefore, Mr. Taylor's business, like any other business, chooses which events it will service.

2. Preventing Public Accommodations From Discriminating In The Types Of Events They Offer Services To Is Not A Compelling Government Interest.

This Court should find that the type of government regulation active in this case—forcing businesses to provide services or goods for certain types of events—does not meet the "compelling interest" standard, and thus fails the first prong of strict scrutiny analysis. First, Court precedent suggests that economic regulation similar to the instant case rarely serves as a compelling government interest. As this Court noted, "[B]ut freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds [rational basis]. They are susceptible of restrictions only to prevent grave and immediate danger to interests which the state may lawfully protect." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943). Accordingly, laws aimed at regulating business practices, taxes on businesses, or the provision of internal information by an organization have routinely failed strict scrutiny. *See, e.g.*, *NAACP v. Button*, 371 U.S. 415 (1963) (holding that state's interest in regulating the legal profession was not compelling enough to infringe on First Amendment rights).[6] When the Court has held

[6] *See also Bates v. Little Rock*, 361 U.S. 516 (1960) (invalidating a government tax regulation that required organizations to disclose their membership lists); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449

that the government had a compelling interest in infringing free exercise rights, the regulations in question usually implicated worker safety and substantive societal welfare goals.[7] Any interest Madison has in ensuring that businesses serve all types of events, including religious ceremonies, does not reach the stringent definition of "compelling interest" as indicated by precedent. *See Sherbert*, 374 U.S. at 406. [8] Second, taken to its logical conclusion, the government's position would severely curtail the ability of businesses to provide some services to the public, but not others; the overly-broad provisions of the Madison Human Rights Act could easily be read to punish a Jewish party planner who specializes in Jewish religious ceremonies. Allowing religious individuals to be served by public accommodations is a compelling interest. Ensuring an adequate supply of photography services for religious ceremonies is not.

3. The MHRA Is Neither Narrowly Tailored Nor The Least Restrictive Means, And Is Therefore, Unconstitutionally Overbroad.

The Madison Human Rights Act fails to further a compelling interest through a narrowly tailored approach. Thus, this Court should find the application of this Act unconstitutional because it fails to pass the second prong of strict scrutiny analysis. Narrow tailoring "demands that the fit between the government's action and its asserted purpose be as perfect as practicable…[it] means that legislation must be neither overinclusive nor underinclusive." Stephen A. Siegel, *The Origin of the Compelling State Interest Test and Strict Scrutiny*, 48 AM. J. LEGAL HIST. 355, 360–61 (2006). Importantly, this Court and others have held

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(1958); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (no compelling interest in prohibiting sacramental use of controlled substance).

[7] *See, e.g.*, *Prince v. Massachusetts*, 321 U.S. 158 (1944*)* (affirming government's compelling interest in the safety of children in enforcing child welfare laws which burdened certain religious groups); *Braunfeld,* 366 U.S. at 612 (affirming Sunday closing laws and the government's compelling interest in ensuring a day of rest for workers).

[8] "[I]n this highly sensitive constitutional area, 'only the gravest abuses [by religious adherents], endangering paramount interests, give occasion for permissible limitation [on the exercise of religion]."

repeatedly that laws which do not achieve the government's compelling interest in the least restrictive manner run afoul of strict scrutiny. *See, e.g.*, *Cutter v. Wilkinson*, 544 U.S. 709 (2005).[9]

The goal of the Madison Human Rights Act is to "maki[ng] sure all members of the public are served, regardless of religion or other class." (R. at 9.) This goal is best achieved by a less restrictive law that directly prohibits public accommodations from refusing to provide any service to protected groups. Importantly, only this type of focused regulation is necessary to achieve the government's compelling interest. What the Madison Human Rights Act does, however, is use a broad interpretation of its prohibition on discrimination to regulate the types of events that businesses must service. This broader ban on discrimination does prevent public accommodations from refusing to serve any religious community member, but it also burdens Mr. Taylor's free exercise rights, and unnecessarily so. The lower courts suggest that petitioner's burden is indirect, only applying because Mr. Taylor chooses to operate a public accommodation. But as this court held in *Sherbert*, if the "effect of a law is to impede the observance of one or all religions . . . that law is constitutionally invalid even though the burden may be characterized as being only indirect." 374 U.S. at 404. Forcing Mr. Taylor to follow this broad interpretation of the law forces him to live in contradiction to his personal beliefs. 135 A.L.R. Fed. 121 (Originally published in 1996). Absent a narrowly tailored law to achieve a compelling interest, as is presently the case, the government cannot force Mr. Taylor into that situation. Thus, by not choosing the least restrictive means to advance the government's compelling interest, the Madison Human Rights Act fails strict scrutiny.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court reverse the judgments of the United States Court of Appeals for the Fifteenth Circuit.

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[9] *See also United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803 (2000) (holding that a statute violated the First Amendment because the law was not the least restrictive means for addressing the problem).

APPENDIX A

Constitutional Provision

U.S. Const. amend. I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

APPENDIX B

Statutory Provisions

Madison Human Rights Act of 1967, Mad. Code Ann. § 42-501

a) The legislature of Madison and any Commission or Agency it lawfully grants enforcement powers, shall not through law show preference to

1. any religious sect, society or denomination;
2. nor to any particular creed or method of performing or engaging in worship or system of ecclesiastical polity.

(b) The legislature of Madison and any Commission or Agency it lawfully grants enforcement powers, shall not, under the color of law, compel any person to attend any place of worship for the purposes of

1. engaging in any form of religious worship or practice;
2. or promoting the continued financial or reputational success of such institution.

(c) Neither the legislature of Madison, nor any Commission or Agency it lawfully grants enforcement or rulemaking powers shall control or interfere with the rights of conscience of any person.

(d) Under this section, the right of any person to act or refuse to act in a manner motivated by a sincerely held religious belief may not be substantially burdened unless:

1. the government proves by clear and convincing evidence that the law targets a secular purpose;
2. the government proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act;
3. and has used the least restrictive means to further that interest.

(e) Nothing in this section shall be construed to permit unlawful discrimination in any form by:

1. any government agency or actor;
2. any place of public accommodation as defined by Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, et seq., or Title II of the Madison Human Rights Act of 1967, Mad. Code Ann. § 42-101-2a, et seq.

Madison Human Rights Act of 1967, Mad. Code Ann. § 101a

a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of "race, color, religion, national origin, sex, disability, sexual orientation, gender identity or expression, socioeconomic status, political affiliation, or other protected classes.

Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a

a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, religion, or national origin.

Certificate

1. All of the work product contained in all copies of our brief is in fact the work product of our team members.

2. We have fully complied with our law school's governing honor code.

3. We have fully complied with all Rules of the Competition.

Respectfully submitted,

Team I

Counsel for the Petitioner