



Written by [Bob Adelman](#) on December 6, 2022

## SCOTUS Appears Favorable to Web Developer in Lawsuit Against Colorado Anti-discrimination Law

Liberal media watching the two-and-a-half-hour oral arguments in *303 Creative LLC v. Elenis* on Monday concluded that Lorie Smith is likely to prevail in her preemptive lawsuit against Colorado's anti-discrimination law and the state agency attempting to enforce it.

[Reuters concluded](#) that the high court "leans toward web designer" while Colorado's liberal [CPR News headlined](#): "Supreme Court seems poised to side with Colorado web Designer in 303 Creative case." CPR reluctantly added that the high court is likely to rule "that creative businesses [like Lorie Smith's] would be protected by the 1st Amendment."



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[As \*The New American\* noted earlier](#), this case should never have been filed on an issue that never should have been raised, but Smith saw what was coming. Back in 2016, when Colorado's Democrat-controlled legislature amended the "Colorado Anti-Discrimination Act", Smith saw that her business would likely be targeted because of her Christian beliefs. That law prohibits businesses that are open to the public from denying the sale of goods or services to people based on race, gender, sexual orientation, disability, race, creed, color, sex, age, national origin, ancestry, or religion.

On her website, Smith makes clear her position:

As a Christian who believes that God gave me the creative gifts that are expressed through this business, I have always strived to honor Him in how I operate it....

Because of my faith ... I am selective about the messages that I create or promote — while I will serve anyone, I am always careful to avoid communicating ideas or messages, or promoting events, products, services, or organizations, that are inconsistent with my religious beliefs.

After lower courts rebuffed her complaint, the Supreme Court agreed to take the case. The issue before the high court is "whether applying a public-accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment."

A lower court ruled that Colorado's civil rights commission may force Smith to develop wedding-themed websites for same-sex couples, while at the same time denying her the freedom to explain her beliefs on her own website. The lone dissenter in that ruling, the 10th Circuit Court's Chief Judge Timothy Tymkovich, called the three-judge panel's ruling "remarkable," adding that somehow "Colorado has a compelling interest in forcing Ms. Smith to speak a government-approved message against her religious beliefs.... No case has ever gone so far."



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The problem, wrote Kaelan Deese for the *Washington Examiner*,

isn't the law itself. It's how Colorado was applying the law to Lorie and to other artists by trying to compel their expression, and that's simply not the way these public accommodation laws are meant to be enforced.

The "problem," then, isn't the law but how the civil rights commission is using it to quash her religious expression on her own website. Simply put, this is the "separation of church and state" canard taken to its logical extreme: The government is free to banish all religious expression from the culture. Lorie Smith was just the most recent example of the commission's pursuit of that outcome.

When Colorado Solicitor General Eric Olson tried to differentiate Smith's business from that of a freelance speech writer, Justice Neil Gorsuch took Smith's position:

What she has said [is] I will not sell to anyone a message that I disagree with as a matter of my religious faith, just as a speech writer says or a free-lance writer says, I will not sell to anyone a speech that offends my religious beliefs.

The clash between the culture and religion, expressed during the oral arguments on Monday, appeared in stark relief among those who took sides. On Lorie's side are the Americans for Prosperity Foundation and the Cato Institute, while those taking Colorado's side included the Biden administration, the American Civil Liberties Union, and the NAACP Legal Defense Fund.

Outside the Supreme Court building, the clash was even starker. On one side advocates for Smith carried blue and white balloons that read "Create Freely 303 Creative" while those on the other side were members of the American Atheists and the Satanic church carrying signs that read "Racist, Sexist, Anti-Gay, Christian Fascists go Away!"

The high court will issue its ruling in *303 Creative LLC v. Elenis* next June.

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