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14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
15 **IN AND FOR THE COUNTY OF MARICOPA**

17 BRUSH & NIB STUDIO, LC, a limited  
18 liability company; BREANNA KOSKI; and  
19 JOANNA DUKA,

20 Plaintiffs,

21 v.

22 CITY OF PHOENIX,

23 Defendant.

Case No. CV2016-052251

**SECOND AMENDED VERIFIED  
COMPLAINT**



1           12.     Over the next few months, Joanna and Breanna committed to starting a calligraphy and  
2 hand-painting business together and discussed and implemented their plans to do so.

3           13.     In April 2015, they picked the name Brush & Nib Studio for their company to reflect its  
4 artistic nature and their equal artistic contributions to the company.

5           14.     In April 2015, they launched Brush & Nib's Instagram account  
6 (<http://www.instagram.com/brushandnib/>) and website (<http://www.brushandnib.com/>).

7           15.     And on May 21, 2015, Brush & Nib began to formally accept orders from the general  
8 public, fill orders, and do business in Phoenix and has done business in Phoenix ever since.

9 Eight days a week: Brush & Nib creates, sells, and promotes art

10          16.     Brush & Nib is an upscale hand-painting, hand-lettering, and calligraphy company that  
11 specializes in hand-painting, hand-lettering, and calligraphy for weddings, events, special occasions,  
12 business, home decor, and everyday moments.

13          17.     Brush & Nib offers all its artwork and artistic services for a price to the general public.

14          18.     Brush & Nib creates and sells custom and pre-made works.

15          19.     As for these custom works, Joanna and Breanna know how they will be used; Joanna or  
16 Breanna design these works with a particular event or use in mind; Joanna or Breanna collaborate with  
17 the client before creating these works; and Joanna or Breanna add unique elements to each custom work,  
18 and these elements reflect a particular event or usage.

19          20.     Joanna and Breanna design these custom elements to convey a particular message about  
20 each client's event or requested usage.

21          21.     By their very nature, all of Brush & Nib's wedding creations contain a large custom  
22 component because each wedding has a different bride or groom, different location, different date, and  
23 different artistic scheme.

24          22.     Brush & Nib's wedding creations always reflect, contain content about, and convey  
25 messages about a particular engaged couple, their upcoming marriage, their upcoming marriage  
26 ceremony, and the celebration of that marriage.

27          23.     The content and meaning of Brush & Nib's wedding creations change for each wedding.

1           24.     Besides its wedding artwork, Brush & Nib also creates artwork for businesses and non-  
2 profit organizations, including business cards, logos, stationary, letterhead, and signs.

3           25.     Because organizations differ by name, location, services, branding, and purpose, Brush &  
4 Nib's organization-related works always contain a large custom component.

5 The portfolio: Brush & Nib's painting, hand-lettering, and calligraphy

6           26.     Brush & Nib creates artwork containing hand-drawn and handwritten paintings,  
7 drawings, decorative letters, or words through processes known as lettering and hand-painting.

8           27.     Most Brush & Nib works contain both lettering (calligraphy or hand-lettering) and hand-  
9 painting.

10          28.     Calligraphy is the visual art of writing decorative letters.

11          29.     Hand-lettering is the visual art of drawing letters.

12          30.     Hand-painting is the visual art of painting by hand.

13          31.     Joanna and Breanna create calligraphy, hand-lettering, and paintings that uniquely reflect  
14 their respective techniques, tastes, and inspirations.

15 The process: Brush & Nib creates and customizes art for client events

16          32.     When a customer requests Brush & Nib to create custom artwork, Joanna or Breanna  
17 typically works closely with the customer because Brush & Nib creates a unique work customized for  
18 each client and for each client's event.

19          33.     During this process, clients usually have a very general idea of what they want, they  
20 convey that idea to Joanna or Breanna, and they then rely heavily on Joanna and Breanna – their  
21 suggestions, judgment, talent, and discretion – to imagine a plan and vision for the requested work.

22          34.     During conversations with clients, Joanna or Breanna educate the clients about what will  
23 look good, offer their own suggestions about how to make the requested work look as beautiful as  
24 possible, provide advice about what text, phrasing, and words to use (if the requested work contains  
25 words), and propose their vision for what the requested work should look like and convey.

26          35.     For example, when customers request custom wedding invitations, Joanna or Breanna  
27 frequently suggest the particular words to use on that invitation to convey the appropriate celebratory

1 message through that invitation.

2 36. Brush & Nib also obtains information about the client's event because that information  
3 affects what and how Joanna and Breanna create.

4 37. Brush & Nib tailors its custom artwork for each individual client and for each client's  
5 particular event and to convey particular messages about each client's particular event or usage.

6 38. When Brush & Nib creates a custom work for a particular event, that event, that event's  
7 context, and that event's substance always impact the form Brush & Nib uses and the message Brush &  
8 Nib attempts to convey in its custom artwork.

9 39. In fact, Joanna and Breanna view their clients' tastes and events as part of the raw  
10 materials that they then reshape to convey their artistic vision in each work.

11 40. During the creation process, Joanna and Breanna collaborate with each other and discuss  
12 their artistic vision for the work in light of the work's use and context.

13 41. During this process, Joanna and Breanna often discuss and evaluate how numerous  
14 artistic elements work together in the final work, and they use these elements to create artwork with the  
15 appropriate aesthetic and message and artwork distinctive of their style.

16 42. Joanna and Breanna's process for creating custom works requires great concentration,  
17 focus, attention to detail, and artistry.

18 43. Although clients sometimes propose a general idea of what they want and typically  
19 collaborate with Joanna and Breanna, Joanna and Breanna ultimately create the artistic vision, the  
20 artistic message, and the finalized artwork.

21 44. Joanna and Breanna retain complete artistic freedom and control over the artistic process  
22 and reserve the right to reject any suggestion, demand, or request clients make for custom works.

23 The property: Brush & Nib authors and owns its art

24 45. Brush & Nib authors, owns, and speaks through its custom art.

25 46. Brush & Nib's clients do not author Brush & Nib's custom artwork or negate the  
26 message Brush & Nib expresses through its artwork.

27 47. Every Brush & Nib artwork constitutes a pictorial and/or graphic work and involves a

1 high degree of originality and creativity.

2 48. According to the contract Brush & Nib signs with its customers, Brush & Nib reserves  
3 the right to control how it creates its custom artwork, its clients hire Brush & Nib as an independent  
4 contractor, and Brush & Nib's custom artwork does not constitute a work for hire.

5 49. Brush & Nib clients do not own designs created by Brush & Nib, and Brush & Nib  
6 retains ownership of its design even after clients buy a work.

7 50. Since mid-February 2016, Brush & Nib has placed a self-identifying mark on its custom  
8 works.

9 51. Brush & Nib will continue to place this mark on its custom works because, in Joanna and  
10 Breanna's artistic judgment, they want Brush & Nib to identify with and be identified with its custom  
11 artwork and to promote its artistic talent.

12 52. This mark identifies Brush & Nib as the owner, author, and speaker for its custom works.

13 53. But this mark is not necessary to identify Brush & Nib as the creator of its custom  
14 artwork. Wedding invitees commonly ask the bride, groom, or other members of the wedding party to  
15 identify who created the wedding save-the-dates, wedding invitations, wedding programs, wedding  
16 place cards, wedding escort cards, or wedding menus.

17 54. Brush & Nib places this mark on every custom wedding invitation.

18 55. Every Brush & Nib custom work speaks for Brush & Nib, Joanna, or Breanna and  
19 reflects their vision of beauty, artistic skill, commitment to excellence, and numerous hours of planning,  
20 writing, drawing, or painting.

21 The passion: Joanna & Breanna's religious beliefs fuel Brush & Nib's art

22 56. Joanna and Breanna are evangelical Christians who hold to historic Christian beliefs.

23 57. Joanna and Breanna believe that God calls, equips, and commands them to work and they  
24 therefore cannot separate their religious duties, identity, or beliefs into work and non-work, secular and  
25 sacred, private and public.

26 58. As a result, Joanna and Breanna cannot do anything in their business that violates their  
27 religious beliefs or dishonors God.

1           59.     Joanna and Breanna also believe that they reflect God in the way they create and that God  
2 has called them to be artists and equipped them with special talents to create art through calligraphy,  
3 hand-painting, and hand-lettering.

4           60.     Because God has called and equipped them to be artists, Joanna and Breanna believe that  
5 they must honor, worship, and glorify God with their artistic talents and their artwork.

6           61.     Joanna and Breanna also believe that God’s character provides the absolute standard for  
7 defining goodness, truth, and beauty; that all art should reflect, incarnate, cohere with, and promote  
8 goodness, truth, and beauty; and that God demands art to reflect, incarnate, cohere with, and promote  
9 goodness, truth, and beauty.

10          62.     For Joanna and Breanna, the very purpose of art – theirs included – is to glorify God and  
11 to enchant the viewer with an image of goodness, truth, and beauty that in turn points the viewer to God.

12          63.     As a result, Joanna and Breanna seek to create art that promotes and conveys a message  
13 that the beauty around us reflects a true and perfect beauty worthy of praise, namely the true and perfect  
14 beauty that is and reflects God.

15          64.     Joanna and Breanna would violate their religious beliefs, violate their conscience,  
16 dishonor their artistic calling and talents, and dishonor God if they used their artistic talents to create  
17 artwork that is or promotes anything that is immoral, idolatrous, or dishonorable to God.

18          65.     Joanna and Breanna believe that they cannot rejoice in, condone, participate in, or  
19 promote anything dishonorable to God.

20          66.     Because of this religious belief and their religious beliefs about art and work, Joanna and  
21 Breanna believe they cannot use their artistic talents or their business activities to rejoice in, condone,  
22 participate in, or promote anything dishonorable to God.

23          67.     Joanna and Breanna believe that God created two distinct genders in His image, that God  
24 ordained marriage to be between one man and one woman, that God intends for all sexual activity to  
25 occur within this one-man/one-woman marriage covenant, and that all sexual acts outside this one-  
26 man/one-woman marriage covenant – including adulterous, polygamous, or homosexual behavior –  
27 violate God’s will.

1           68.     Joanna and Breanna believe that when they create custom wedding-related artwork they  
2 participate in, celebrate, and promote those wedding ceremonies and the marriages celebrated at those  
3 ceremonies and they convey celebratory, affirming, and promotional messages about those marriages  
4 and wedding ceremonies.

5           69.     For this reason, Joanna and Breanna cannot create custom artwork for any wedding  
6 ceremony not between one man and one woman (like a same-sex wedding ceremony). To do so would  
7 violate their religious beliefs, promote activities contrary to their religious beliefs, and express messages  
8 contradicting their religious beliefs.

9           70.     Likewise, Joanna and Breanna cannot create custom business logos, signs, business  
10 cards, or any other custom work for organizations that promote sexual activity outside of one-man/one-  
11 woman marriage (like same-sex marriage). To do so would violate their religious beliefs, promote  
12 activities contrary to their religious beliefs, and express messages contradicting their religious beliefs.

13          71.     Joanna and Breanna also believe they must love their neighbor and everyone deserves to  
14 be treated with dignity and respect regardless of their race, religion, age, sex, sexual orientation, or  
15 political beliefs.

16          72.     Joanna and Breanna believe they must be upfront and honest with their customers and  
17 respectful toward their customers and their customers' time.

18          73.     For these reasons, Joanna and Breanna would violate their religious duties if they lied to  
19 customers about what Brush & Nib could create or if they let their customers falsely assume that they  
20 will create art when they cannot do so.

21          74.     Likewise, to love others and to be upfront and honest with their customers, Joanna and  
22 Breanna cannot hide the religious inspiration behind their art. Joanna and Breanna must tell others about  
23 how their faith impacts their art and their artistic message.

24          75.     To fulfill their religious obligations, Joanna and Breanna want to acknowledge and  
25 explain their religious beliefs and their artistic vision on Brush & Nib's website.

26          76.     Joanna and Breanna do not object to and will happily create custom artwork for lesbian,  
27 gay, bisexual, or transgender clients or for organizations run by lesbian, gay, bisexual, or transgender



1 persons so long as that artwork does not violate Joanna and Breanna’s artistic and religious beliefs, as is  
2 the case for all of their customers.

3 77. Joanna and Breanna do not consider customers’ sexual orientations when they decide  
4 whether to create artwork for customers.

5 78. Likewise, Joanna and Breanna do not object to and will happily sell their pre-made works  
6 to anyone, to any organization, and for any event, but Joanna and Breanna cannot create custom artwork  
7 that conveys messages condoning, supporting, or participating in activities or ideas that violate their  
8 religious beliefs, such as custom artwork for same-sex wedding ceremonies.

9 Walking the line: Brush & Nib conveys Joanna & Breanna’s beliefs

10 79. As artists and entrepreneurs, Joanna and Breanna attempt to tell the general public about  
11 their art, their business, and their artistic message through Brush & Nib’s media platforms.

12 80. On many of its media platforms, Brush & Nib displays examples of and discusses and  
13 explains its art.

14 81. Because of its art’s visual nature, Brush & Nib must display and explain its art to the  
15 public to effectively communicate its artistic message and to effectively tell people about its business.

16 82. Without the freedom to display and explain its art to the general public, Brush & Nib  
17 could not compete in the marketplace and could not convey its artistic message.

18 83. Because Brush & Nib informs the public about its artwork through the internet, Brush &  
19 Nib receives requests for custom artwork from customers across the United States.

20 84. Brush & Nib can also ship its artwork to customers across the United States.

21 85. Calligraphy and hand-lettering businesses like Brush & Nib typically serve clients across  
22 the country and world because these businesses can easily ship their works almost anywhere.

23 86. Joanna and Breanna describe their artistic vision and skills and their religious inspiration  
24 on Brush & Nib’s media platforms. For example, Brush & Nib’s website contains statements indicating  
25 and promoting Joanna and Breanna’s religious and artistic beliefs.

26 Bad moon rising: the threat to Joanna and Breanna’s artistic and religious freedom

27 87. Because of events they attended and news reports they saw and because they discuss their

1 faith on Brush & Nib’s media platforms, Joanna and Breanna became concerned about their ability to  
2 create artwork consistent with their faith on the topic of marriage.

3 88. In April 2015, Breanna and Joanna began discussing this issue, they looked at Bible  
4 passages that discussed marriage, homosexuality, and how Christians should respond to those who  
5 disagreed with them, and they discussed how these passages applied to them and their business.

6 89. Breanna and Joanna agreed that they and their business could not create custom art  
7 celebrating and promoting events, like same-sex wedding ceremonies, that violate their religious beliefs.

8 90. Joanna also decided that she should seek legal advice to learn about her company’s  
9 potential liability and her right to create artwork consistent with her religious beliefs.

10 91. Then, on June 26, 2015, the Supreme Court issued its *Obergefell v. Hodges* decision  
11 creating a constitutional right to same-sex marriage.

12 92. During the next few days, Breanna and Joanna noticed the outpouring of support on  
13 social media in favor of the *Obergefell* decision and noticed that many artists and artistic businesses  
14 expressed support for *Obergefell* and even created artwork to show support for same-sex marriage.

15 93. In light of this outpouring of support, Breanna and Joanna felt an even stronger urgency  
16 to learn about their rights and potential liability.

17 94. But after Breanna and Joanna sought legal advice, they learned about an ordinance that  
18 restricted their freedom to speak and to create – Phoenix City Code § 18.

19 Brave new world: Phoenix amends City Code § 18, restricts artistic and religious freedom

20 95. On February 26, 2013, the Phoenix City Council amended its Human Relations  
21 Ordinance (Phoenix City Code Chapter 18) by a 5-3 vote and prohibited public accommodations from  
22 discriminating on the basis of sexual orientation.

23 96. This amendment was controversial. The February 26 vote occurred immediately after a  
24 public hearing in Orpheum Theatre, around 500 people attended this hearing that lasted around five  
25 hours, and people spoke for and against the proposed amendment at this hearing. Some said the  
26 amendment would violate the freedoms and rights of Phoenix citizens.

27 97. Brush & Nib qualifies as a “public accommodation” under City Code § 18.

1           98.     Accordingly, the § 18-4(B)(1-2) prohibition on sexual orientation discrimination applies  
2 to Brush & Nib and its operations.

3           99.     Phoenix interprets § 18-4(B)(1-2) to bar public accommodations from declining to  
4 provide a service to same-sex couples that it would provide to opposite-sex couples.

5           100.    Phoenix interprets § 18-4(B)(1-2) to require public accommodations to provide any  
6 service to same-sex couples that public accommodations would also provide to opposite-sex couples.

7           101.    The § 18-4(B)(3) prohibition on publicizing statements applies to Brush & Nib and its  
8 operations.

9           102.    Phoenix interprets § 18-4(B)(3) to bar public accommodations and their owners from  
10 publicizing statements indicating an intent to decline to provide services in the same-sex marriage  
11 context that the public accommodation would provide in the opposite-sex marriage context.

12           103.    Phoenix interprets § 18-4(B)(3) to bar public accommodations and their owners from  
13 publicizing statements exclusively supporting one-man/one-woman marriage or statements opposing  
14 same-sex marriage.

15           104.    City Code § 18 empowers the Phoenix Equal Opportunity Department (the Department)  
16 and the Phoenix City Attorney to enforce § 18.

17           105.    A member of the Department or a private citizen can file a complaint with the  
18 Department alleging a violation of City Code § 18-4(B).

19           106.    The Department may also initiate enforcement action under City Code § 18.

20           107.    Once someone files a complaint or the Department initiates enforcement, the Department  
21 begins to investigate the matter, then issues a report of its findings, and then seeks to resolve the matter  
22 through informal means.

23           108.    If these informal means do not stop the alleged discrimination, the Department refers the  
24 case to the City Attorney for criminal prosecution.

25           109.    City Code § 18-7 imposes a Class 1 misdemeanor for violating § 18-4. City Code § 1-5  
26 specifies the penalties for a Class 1 misdemeanor, and those penalties include fines not exceeding \$2500  
27 or imprisonment not exceeding six months or probation not exceeding three years or any combination of

1 these for each day a person commits a violation.

2 110. Accordingly, Brush & Nib, Joanna, and Breanna commit a separate and distinct  
3 misdemeanor each day they follow their religious beliefs and a) decline to create art for a same-sex  
4 wedding ceremony or b) publicize a statement indicating their intent to decline to create artwork for a  
5 same-sex wedding ceremony or c) publicize a statement that states or implies same-sex couples are  
6 unwelcome, objectionable, unacceptable, undesirable or not solicited.

7 111. City Code § 18-4 uses criminal penalties to prohibit four things that Brush & Nib,  
8 Joanna, and Breanna want and feel compelled to do because of their artistic and religious beliefs:

- 9 • Decline requests to create custom artwork that violates Joanna and Breanna’s religious and artistic  
10 beliefs, including any custom artwork for or supporting same-sex wedding ceremonies.
- 11 • Publicize a statement on Brush & Nib’s website that explains Joanna and Breanna’s religious beliefs  
12 in favor of one-man/one-woman marriage exclusively.
- 13 • Publicize a statement on Brush & Nib’s website that states an intent to decline to create custom  
14 artwork for or supporting same-sex wedding ceremonies.
- 15 • Publicize a statement on Brush & Nib’s website that explains why Joanna and Breanna cannot create  
16 custom artwork that violates their artistic and religious beliefs, including any custom artwork for or  
17 supporting same-sex wedding ceremonies.

18 Worst fears confirmed: Phoenix interprets City Code § 18 to restrict artistic and religious freedom

19 112. Through a public records request, Brush & Nib, Joanna, and Breanna learned of  
20 documents indicating how Phoenix interprets and applies City Code § 18-4.

21 113. According to these documents, a same-sex couple complained to the Department in 2015  
22 about a for-profit business that allegedly discriminated against them when that business’s owner  
23 declined to provide services to them because of the owner’s religious beliefs against same-sex marriage.

24 114. An ordained minister operated that wedding business, this business offered ministerial  
25 services, photography services, tables, and chairs for weddings, and this business advertises and solicits  
26 to the general public through a website.

27 115. Upon information and belief, this wedding business does not have a physical storefront.

1           116. After receiving the complaint, the Department investigated and issued a final  
2 investigative report finding that the wedding business engaged in a denial of service based on protected  
3 status and that the business did not qualify for City Code § 18-4’s religious organization exemption.

4           117. Despite these conclusions, the report found insufficient evidence of discrimination  
5 because clergy have federal protections and because complainants could not prove that “they were only  
6 seeking tables, chairs, or photography services” as opposed to ministerial services.

7           118. Neither Joanna nor Breanna is an ordained minister, and Brush & Nib does not offer  
8 ministerial services.

9           119. According to the final investigative report, City Code § 18 requires for-profit businesses  
10 – regardless of their owners’ religious beliefs – to offer photography services to same-sex couples for  
11 their wedding ceremonies if businesses offer the same services to opposite-sex couples, and City Code  
12 § 18 requires for-profit businesses to create artwork like photography for same-sex wedding ceremonies  
13 if businesses offer to create the same artwork for opposite-sex wedding ceremonies.

14           120. The final investigative report’s logic and conclusions demonstrate that Phoenix interprets  
15 City Code § 18 to require Brush & Nib, Joanna, and Breanna to create custom artwork for same-sex  
16 wedding ceremonies and to prohibit Brush & Nib, Joanna, and Breanna from publicizing their desired  
17 statements on Brush & Nib’s website or to Brush & Nib customers.

18           121. The Department affirmed and adopted the final investigative report’s logic, conclusions,  
19 and ruling in an order signed by the Department’s Director.

20           122. The Department has only received two complaints of public accommodations  
21 discriminating on the basis of sexual orientation, and the Department did not find a for-cause showing of  
22 discrimination in either case.

23           123. The Department has never received or investigated a complaint of a public  
24 accommodation publishing a statement declining to serve someone based on sexual orientation.

25 The dotted line: Joanna & Breanna codify their beliefs in Brush & Nib’s documents

26           124. After discussing their artistic and religious beliefs in the spring of 2015 and learning  
27 about City Code § 18-4, Joanna and Breanna amended Brush & Nib’s business documents.

1           125. These amendments did not change how Brush & Nib operated with respect to their  
2 beliefs; they merely confirmed and codified Brush & Nib's pre-existing beliefs in a joint statement that  
3 would formally bind their business.

4           126. Brush & Nib's Operating Agreement accurately identifies Brush & Nib's, Joanna's, and  
5 Breanna's core beliefs, values, goals, and operating procedures for Brush & Nib.

6           127. Brush & Nib abides by its Operating Agreement.

7           128. Brush & Nib's purpose is to create authentic artwork that echoes God's perfect and true  
8 beauty, Brush & Nib reserves the right to decline requests for any custom artwork that violates its  
9 owners' artistic or religious beliefs, and Brush & Nib's policy is to decline to create or sell any custom  
10 artwork that violates its owners' artistic or religious beliefs, such as artwork for same-sex wedding  
11 ceremonies.

12 Pledge allegiance: City Code § 18 compels artists to create objectionable art

13           129. Because § 18-4(B)(1-2) requires Brush & Nib, Joanna, and Breanna to create artwork that  
14 violates their religious and artistic beliefs, Brush & Nib, Joanna, and Breanna face an impossible choice  
15 between three options.

16           130. First, they could receive and decline a request to create artwork that violates their artistic  
17 and religious beliefs, such as custom artwork for same-sex wedding ceremonies.

18           131. But if Brush & Nib, Joanna, and Breanna declined such a request or if they even delayed  
19 in responding to such a request because of their artistic and religious beliefs about one-man/one-woman  
20 marriage, Brush & Nib, Joanna, and Breanna would violate the law.

21           132. In fact, on May 20, 2016, Brush & Nib received a request to create custom, wedding-  
22 related artwork for and promoting a wedding ceremony between two women.

23           133. To avoid violating their artistic and religious beliefs and the law, Brush & Nib, Joanna,  
24 and Breanna will not respond to this request until their constitutional and statutory rights are clarified.

25           134. Brush & Nib, Joanna, and Breanna are reasonably sure to receive additional requests in  
26 the future to create custom art for same-sex wedding ceremonies.

27           135. Second, Brush & Nib, Joanna, and Breanna could stop creating art for all weddings,

1 businesses, and non-profit entities and close their business.

2 136. But this option would violate God’s call to Joanna and Breanna to use their artistic talents  
3 and gifts, and they do not want to close their business, stop creating art, or leave the calligraphy/hand-  
4 painting industry merely because they follow their artistic and religious beliefs.

5 137. Third, Brush & Nib, Joanna, and Breanna could create custom artwork that violates their  
6 artistic and religious beliefs. But Joanna and Breanna will not choose this third option because they will  
7 not compromise or violate their artistic and religious beliefs by creating art that is inconsistent with  
8 God’s design for marriage.

9 138. Thus, Brush & Nib, Joanna, and Breanna cannot take any of the three options discussed  
10 above without suffering severe harm.

11 139. Because Joanna and Breanna cannot follow any of these options, they cannot presently  
12 plan ahead for their business and do not know if and how they can operate their business in the future.

13 140. Faced with the three impossible options described above, Joanna and Breanna would  
14 rather close their business or violate the law than violate their artistic and religious beliefs.

15 141. When customers request Brush & Nib to create custom art that violates Joanna or  
16 Breanna’s artistic and religious beliefs, Joanna and Breanna desire to send those customers a statement  
17 explaining their artistic and religious beliefs and explaining why Brush & Nib cannot create such art.  
18 But Joanna and Breanna will not send this statement for fear of violating City Code § 18-4.

19 Ignorance is strength: City Code § 18 silences statements supporting traditional marriage

20 142. Because § 18-4(B)(3) prohibits Brush & Nib, Joanna, and Breanna from publishing  
21 statements about what they can and cannot create, Brush & Nib, Joanna, and Breanna face an impossible  
22 choice between two options.

23 143. First, Joanna and Breanna could hide their artistic and religious beliefs from their  
24 customers and the public. But Joanna and Breanna want and are religiously compelled to be upfront and  
25 authentic about their business and about their religious and artistic beliefs.

26 144. Breanna and Joanna believe they must be upfront with their customers about what they  
27 can and cannot do and how their faith affects their artistic vision, including what art they can create.

1 Joanna and Breanna cannot mislead customers into believing that Brush & Nib offers to create artwork it  
2 does not or holds beliefs it does not.

3 145. If customers ask Brush & Nib to create custom art for events promoting same-sex  
4 marriage, such as same-sex wedding ceremonies, Joanna or Breanna must answer that inquiry and  
5 decline to create the custom art.

6 146. Nor can Joanna and Breanna hide their religious identity or the religious inspiration  
7 behind their artwork. To honor and acknowledge God, Joanna and Breanna must explain their religious  
8 beliefs about their art, about marriage, and about what they can and cannot create.

9 147. After Joanna and Breanna saw the outpouring of support from other artists in favor of the  
10 *Obergefell* decision, they further appreciated the value of their artistic freedom, the significance of their  
11 beliefs about marriage, and the increasing need to discuss those beliefs in a public setting.

12 148. Breanna and Joanna therefore see the need and have a religious obligation for their  
13 business to publicly explain how their religious beliefs shape their business decisions about art and  
14 artistic freedom and to explain their religious beliefs about marriage.

15 149. For all these reasons, Joanna and Breanna want to publish a particular statement on Brush  
16 & Nib's website that will explain their artistic and religious beliefs as they relate to Brush & Nib and  
17 Brush & Nib's art, decline to create custom artwork for certain events including same-sex wedding  
18 ceremonies, explain Joanna and Breanna's artistic and religious reasons for not creating custom artwork  
19 for certain events including same-sex wedding ceremonies, and explain Joanna and Breanna's beliefs in  
20 support of one-man/one-woman marriage exclusively.

21 150. A true and correct copy of the exact statement Joanna and Breanna want to publish on  
22 Brush & Nib's website is attached to this Complaint as Exhibit 1. This statement contains the words  
23 "click here" that link to an article (available here: [http://www.desiringgod.org/articles/the-surpassing-  
24 goal-marriage-lived-for-the-glory-of-god](http://www.desiringgod.org/articles/the-surpassing-<br/>24 goal-marriage-lived-for-the-glory-of-god)) that further explains Joanna and Breanna's religious beliefs.

25 Joanna and Breanna also wish to make similar statements to Brush & Nib customers.

26 151. But if Joanna and Breanna publish these statements on Brush & Nib's website or to  
27 customers, Joanna and Breanna would encounter the second option of their dilemma: they would violate



1 § 18-4(B)(3).

2 152. For fear of violating § 18-4(B)(3), for fear of being investigated, and for fear of suffering  
3 criminal penalties, Brush & Nib, Joanna, and Breanna have not and will not publish the statement  
4 mentioned in ¶¶ 149-50 on Brush & Nib’s website or make similar statements to customers. If not for  
5 § 18-4(B)(3), Brush & Nib, Joanna, and Breanna would immediately publish the statement mentioned in  
6 ¶¶ 149-50 on Brush & Nib’s website and make similar statements to customers.

7 153. Thus, Brush & Nib, Joanna, and Breanna must choose between a) violating the law,  
8 undergoing investigation, and suffering fines and jail time or b) staying silent about their beliefs on art,  
9 religion, and marriage. Joanna and Breanna cannot accept either choice.

10 Picking sides: City Code § 18 allows others to create art and speak in favor of same-sex marriage

11 154. While Brush & Nib wants to create art and publish statements consistent with Joanna and  
12 Breanna’s artistic and religious beliefs about marriage, many other artists and invitation businesses in  
13 Arizona and in other states hold different religious and artistic beliefs than Joanna and Breanna.

14 155. Therefore, many other invitation businesses and artists in Arizona and in other states can  
15 create art for events that Brush & Nib cannot, such as same-sex wedding ceremonies.

16 156. One such business is Sundance Invitations, which is based in Phoenix, does business in  
17 Phoenix, offers to create invitations for same-sex wedding ceremonies, and has a website that promotes  
18 acceptance of same-sex marriage and indicates a willingness to create art promoting same-sex marriage.

19 157. Many other Arizona calligraphy and invitation companies advertise in gay friendly  
20 publications.

21 158. Gayweddings.com contains a vendor list of “LGBTQ-Friendly Wedding Vendors” and  
22 lists 55 calligraphy and invitation companies that serve Arizona.

23 159. Upon information and belief, these 55 calligraphy and invitation companies will create  
24 artwork and invitations for same-sex wedding ceremonies in Arizona.

25 160. Besides these 55 calligraphy and invitation companies, gayweddings.com lists other  
26 calligraphy and invitation companies that do business outside of Arizona.

27 161. Upon information and belief, these calligraphy and invitation companies will also create

1 artwork and invitations for same-sex wedding ceremonies.

2 162. Because calligraphy and invitation companies can ship their artwork throughout the  
3 United States, many of these companies that do business outside of Arizona will also create artwork for  
4 weddings in Arizona.

5 163. In light of the options listed above, same-sex couples in Arizona can find multiple  
6 calligraphy and invitation companies willing to create artwork for same-sex wedding ceremonies.

7 164. If Joanna or Breanna believes a potential customer has requested Brush & Nib to create  
8 custom artwork for a same-sex wedding ceremony, Joanna and Breanna want to send to that customer a  
9 statement that explains their artistic and religious beliefs, that explains why Brush & Nib cannot create  
10 the requested work, and that provides information where the customer can obtain the requested work.

11 165. Although Brush & Nib wants to send this response to anyone requesting custom artwork  
12 for same-sex wedding ceremonies, Brush & Nib will not do so for fear of violating City Code § 18.

13 166. Besides calligraphy and invitation companies, many other Arizona businesses serve  
14 same-sex wedding ceremonies and same-sex couples and many of these businesses even promote the  
15 acceptance of same-sex marriage.

16 167. For example, many Fortune 500 companies do business in Phoenix and, according to the  
17 Human Rights Campaign 2016 Corporate Equality Index, 93% of Fortune 500 businesses have policies  
18 providing special protections for LGBT employees.

19 168. City Code § 18-4(B)(3) does not prohibit artists and expressive businesses from  
20 publishing statements explaining their beliefs supporting same-sex marriage.

21 169. In fact, many Phoenix artists currently publish statements in support of same-sex  
22 marriage, such as Sundance Invitations.

23 170. And across the country, many artists and artistic businesses – such as 14 Stories,  
24 Ladyfingers Letterpress, and Design with Heart Studio – connect their art to their beliefs about same-sex  
25 marriage, explain how their art supports same-sex marriage, and seek to promote same-sex marriage  
26 through their art.

27 171. Indeed, many artists create and sell artwork – including wedding invitations, cards, and

1 prints – supporting same-sex marriage; many artists sell art and publish statements explaining their art,  
2 their artistic motivations, and their artistic beliefs; many artists sell art and publish statements explaining  
3 their beliefs about marriage and about same-sex marriage; many artists sell art and publish statements  
4 supporting same-sex marriage; many artists sell art and publish statements connecting their artistic  
5 inspirations to their beliefs about equality, marriage, and politics; and many artists sell their art and  
6 reserve the right to decline to create artwork that violates their beliefs.

7 172. Brush & Nib, Joanna, and Breanna whole-heartedly support the rights of these and other  
8 artists to create and sell art consistent with their beliefs; to decline to create art inconsistent with their  
9 beliefs; to publish statements explaining their beliefs about art, marriage, religion, and politics; to  
10 publish statements reserving their right to decline to create art inconsistent with their beliefs; and to  
11 publish statements expressing support for same-sex marriage.

12 173. Brush & Nib, Joanna, and Breanna merely want to exercise the same rights these other  
13 artists have exercised. But § 18-4 prohibits Brush & Nib, Joanna, and Breanna from doing so because of  
14 the content and viewpoint of Joanna and Breanna’s religious and artistic beliefs and message.

15 All in: this lawsuit raises important questions about the public’s right to create and speak

16 174. This lawsuit raises issues of great public interest, including the scope of religious and  
17 artistic freedom; the proper relationship between anti-discrimination laws, freedom of speech, and  
18 religious freedom; the meaning of free speech and religious liberty; the ability of governments to target  
19 particular viewpoints; and the ability of the government to silence dissent.

20 175. These issues have garnered nationwide news coverage, and the news media has  
21 frequently covered the attempts of governments to require Christian business owners to create items for  
22 same-sex wedding ceremonies.

23 176. The news coverage about these religious liberty issues underscores the important issues  
24 raised in this case and the need for the judiciary to decide these important issues.

### **Allegations of Law**

#### **First Cause of Action**

25  
26  
27 177. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–176 of this Complaint.



1 owning and operating an expressive business, and prevents Joanna, Breanna, Brush & Nib, and third  
2 parties from speaking their religiously-desired and required messages, from not speaking in ways  
3 required by their faith, and from adhering to key aspects of their faith.

4 189. Section 18-4(B)(1-3) and Phoenix's enforcement of it impose severe coercive pressure on  
5 Joanna, Breanna, Brush & Nib, and third parties to change or violate their religious beliefs.

6 190. Phoenix does not serve any compelling or even valid interest in a narrowly tailored way  
7 by infringing on the FERA rights of Joanna, Breanna, Brush & Nib, or third parties.

8 191. Accordingly, as applied to Joanna, Breanna, and Brush & Nib, § 18-4(B)(1-2) violates  
9 their right to freely exercise their religion as guaranteed by FERA.

10 192. Accordingly, facially and as applied to Joanna, Breanna, Brush & Nib, and third parties,  
11 § 18-4(B)(3) violates their right to freely exercise their religion as guaranteed FERA.

### 12 **Third Cause of Action**

13 193. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–176 of this Complaint.

14 194. Art. 20, ¶ 1 of the Arizona Constitution protects Joanna, Breanna, Brush & Nib, and third  
15 parties' rights to operate, to create artwork, to speak, and to not speak in accordance with their religious  
16 beliefs.

17 195. Section 18-4(B)(1-3) effectively prevents Joanna, Breanna, and third parties from owning  
18 and operating an expressive business, and prevents Joanna, Breanna, Brush & Nib, and third parties  
19 from speaking their religiously-desired and required messages, from not speaking in ways required by  
20 their faith, and from adhering to key aspects of their faith.

21 196. Section 18-4(B)(1-3) and Phoenix's enforcement of it impose severe coercive pressure on  
22 Joanna, Breanna, Brush & Nib, and third parties to change or violate their religious beliefs.

23 197. Phoenix does not serve any compelling or even valid interest in a narrowly tailored way  
24 by infringing on the Art. 20, ¶ 1 rights of Joanna, Breanna, Brush & Nib, or third parties.

25 198. Accordingly, as applied to Joanna, Breanna, and Brush & Nib, § 18-4(B)(1-2) violates  
26 their right to freely exercise their religion as guaranteed by Art. 20, ¶ 1.

27 199. Accordingly, facially and as applied to Joanna, Breanna, Brush & Nib, and third parties,

1 § 18-4(B)(3) violates their right to freely exercise their religion as guaranteed by Art. 20, ¶ 1.

2 **Fourth Cause of Action**

3 200. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–176 of this Complaint.

4 201. Art. 2, § 13 of the Arizona Constitution guarantees the equal protection of the laws.

5 202. Section 18-4(B)(1-3) and Phoenix’s enforcement of it treat Plaintiffs’ religious and  
6 artistic speech and religious exercise differently from those similarly situated to Plaintiffs.

7 203. Phoenix’s discriminatory enforcement of § 18-4(B)(1-3) violates Joanna, Breanna, and  
8 Brush & Nib’s fundamental rights, such as their freedom of speech, due process, and religious exercise.

9 204. Phoenix does not serve any compelling or even valid interest in a narrowly tailored way  
10 by infringing on the Art. 2, § 13 rights of Joanna, Breanna, or Brush & Nib.

11 205. As applied to Joanna, Breanna, and Brush & Nib, § 18-4(B)(1-3) violates their right to  
12 equal protection of the laws as guaranteed by Art. 2, § 13.

13 **Fifth Cause of Action**

14 206. Plaintiffs repeat and reallege each allegation contained in ¶¶ 1–176 of this Complaint.

15 207. Art. 2, § 4 of the Arizona Constitution guarantees persons the right to due process of law,  
16 which includes the right to own and operate a business, earn a livelihood free from unreasonable  
17 governmental interference, and not be subject to vague guidelines granting officials unbridled discretion.

18 208. Section 18-4(B)(1-2) unreasonably interferes with Joanna, Breanna, and Brush & Nib’s  
19 due process rights by threatening them with criminal penalties if they continue to operate their business  
20 in accordance with their religious and artistic convictions and by containing vague language granting  
21 unbridled discretion to enforcement officials.

22 209. If not for the vagueness in § 18-4(B)(3), Joanna, Breanna, Brush & Nib, and third parties  
23 would immediately speak their desired messages.

24 210. Phoenix does not serve any compelling or even valid interest in a narrowly tailored way  
25 by infringing on the Art. 2, § 4 rights of Joanna, Breanna, Brush & Nib, or third parties.

26 211. Accordingly, as applied to Joanna, Breanna, and Brush & Nib, § 18-4(B)(1-2) violates  
27 their right to due process as guaranteed by Art. 2, § 4.

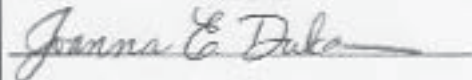


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Verification

I, Joanna Duka, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct, except for the matters stated on information and belief, and I believe these matters to be true.

Executed this 1st day of July 2016.

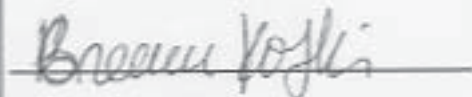


Joanna Duka

Verification

I, Breanna Koski, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct, except for the matters stated on information and belief, and I believe these matters to be true.

Executed this 1st day of July 2016.



Breanna Koski



1 **Respectfully submitted** this 1st day of July, 2016.

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11 **ORIGINAL** e-filed this 1st day of July,  
12 2016 with the Clerk of the Court.

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