

FILED

United States Court of Appeals  
Tenth Circuit

PUBLISH

July 26, 2021

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

Christopher M. Wolpert  
Clerk of Court

303 CREATIVE LLC, a limited liability  
company; LORIE SMITH,

Plaintiffs - Appellants,

v.

No. 19-1413

AUBREY ELENIS; CHARLES GARCIA;  
AJAY MENON; MIGUEL RENE ELIAS;  
RICHARD LEWIS; KENDRA  
ANDERSON; SERGIO CORDOVA;  
JESSICA POCOCK; PHIL WEISER,

Defendants - Appellees.

-----  
FOUNDATION FOR MORAL LAW;  
CATO INSTITUTE; CENTER FOR  
RELIGIOUS EXPRESSION;  
CATHOLICVOTE.ORG EDUCATION  
FUND; LAW AND ECONOMIC  
SCHOLARS; TYNDALE HOUSE  
PUBLISHERS; CROSSROADS  
PRODUCTIONS, INC., d/b/a Catholic  
Creatives; WHITAKER PORTRAIT  
DESIGN, INC., d/b/a Christian  
Professional Photographers; THE BRINER  
INSTITUTE, INC.; STATE OF  
ARIZONA; STATE OF ALABAMA;  
STATE OF ALASKA; STATE OF  
ARKANSAS; STATE OF KENTUCKY;  
STATE OF LOUISIANA; STATE OF  
MISSOURI; STATE OF MONTANA;  
STATE OF NEBRASKA; STATE OF  
OKLAHOMA; STATE OF SOUTH

CAROLINA; STATE OF TENNESSEE;  
STATE OF TEXAS; STATE OF WEST  
VIRGINIA; ROBERT P. GEORGE,  
Professor; AMERICAN CIVIL  
LIBERTIES UNION OF COLORADO;  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION; AMERICANS UNITED  
FOR SEPARATION OF CHURCH AND  
STATE; ANTI-DEFAMATION LEAGUE;  
BEND THE ARC: A JEWISH  
PARTNERSHIP FOR JUSTICE;  
CENTRAL CONFERENCE OF  
AMERICAN RABBIS; GLOBAL  
JUSTICE INSTITUTE, METROPOLITAN  
COMMUNITY CHURCHES;  
HADASSAH, THE WOMEN'S ZIONIST  
ORGANIZATION OF AMERICA, INC.;  
HINDU AMERICAN FOUNDATION;  
INTERFAITH ALLIANCE  
FOUNDATION; INTERFAITH  
ALLIANCE OF COLORADO; MEN OF  
REFORM JUDAISM; PEOPLE FOR THE  
AMERICAN WAY FOUNDATION;  
RECONSTRUCTIONIST RABBINICAL  
ASSOCIATION; SIKH COALITION;  
WOMEN OF REFORM JUDAISM;  
UNION FOR REFORM JUDAISM;  
STATE OF MASSACHUSETTS; STATE  
OF CALIFORNIA; STATE OF  
CONNECTICUT; STATE OF  
DELAWARE; DISTRICT OF  
COLUMBIA; STATE OF HAWAII;  
STATE OF ILLINOIS; STATE OF  
MAINE; STATE OF MARYLAND;  
STATE OF MINNESOTA; STATE OF  
NEVADA; STATE OF NEW JERSEY;  
STATE OF NEW MEXICO; STATE OF  
NEW YORK; STATE OF NORTH  
CAROLINA; STATE OF OREGON;  
STATE OF PENNSYLVANIA; STATE  
OF RHODE ISLAND; STATE OF  
VERMONT; STATE OF VIRGINIA;  
STATE OF WASHINGTON; LAW

PROFESSORS OF THE STATE OF COLORADO; LAW PROFESSORS FROM THE STATE OF KANSAS; LAW PROFESSORS FROM THE STATE OF NEW MEXICO; LAW PROFESSORS FROM THE STATE OF OKLAHOMA; LAW PROFESSORS FROM THE STATE OF UTAH; LAW PROFESSORS FROM THE STATE OF WYOMING; LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; SOUTHERN POVERTY LAW CENTER; ASIAN AMERICAN LEGAL DEFENSE & EDUCATION FUND; LATINOJUSTICE PRLDEF; LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS; NATIONAL ACTION NETWORK; THE CENTER FOR CONSTITUTIONAL RIGHTS; CENTER FOR CONSTITUTIONAL RIGHTS; FLOYD ABRAMS; ERWIN CHEMERINSKY; WALTER DELLINGER; KERMIT ROOSEVELT; AMANDA SHANOR; REBECCA TUSHNET; MAX H. BAZERMAN; MONICA C. BELL; ISSA KOHLER-HAUSMANN; DAVID LAIBSON; ADAM J. LEVITIN; MARY-HUNTER MCDONNELL; NEERU PAHARIA; NINA STROHMINGER; TOM R. TYLER; LAUREN E. WILLIS; LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.,

Amici Curiae.

---

**Appeal from the United States District Court  
for the District of Colorado  
(D.C. No. 1:16-CV-02372-MSK-CBS)**

---

Kristin K. Waggoner (Jonathan A. Scruggs and Katherine L. Anderson, Alliance Defending Freedom, Scottsdale, Arizona; David A. Cortman and John J. Bursch, Alliance

Defending Freedom, Washington, DC, with her on the briefs), Alliance Defending Freedom, Scottsdale, Arizona, appearing for Plaintiffs-Appellants.

Eric R. Olson, Solicitor General (Phillip J. Weiser, Colorado Attorney General; Billy Lee Seiber, First Assistant Attorney General; Jack D. Patten, III, Senior Assistant Attorney General; Vincent E. Morscher and Skippere S. Spear, with him on the brief), Colorado Department of Law, Denver, Colorado, appearing for Defendants-Appellees.

---

Before **TYMKOVICH**, Chief Judge, **BRISCOE**, and **MURPHY**, Circuit Judges.

---

**BRISCOE**, Circuit Judge.

---

## I. Introduction

Appellants Lorie Smith and her website design company 303 Creative, LLC (collectively, “Appellants”) appeal the district court’s grant of summary judgment in favor of Appellees Aubrey Elenis, Director of the Colorado Civil Rights Division (the “Director”), Anthony Aragon, Ulysses J. Chaney, Miguel Rene Elias, Carol Fabrizio, Heidi Hess, Rita Lewis, and Jessica Pocock, members of the Colorado Civil Rights Commission (the “Commission”), and Phil Weiser, Colorado Attorney General (collectively, “Colorado”). Appellants challenge Colorado’s Anti-Discrimination Act (“CADA”) on free speech, free exercise, and vagueness and overbreadth grounds.

As to our jurisdiction, we hold that Appellants have standing to challenge CADA. As to the merits, we hold that CADA satisfies strict scrutiny, and thus permissibly compels Appellants’ speech. We also hold that CADA is a neutral law of general applicability, and that it is not unconstitutionally vague or overbroad.

Accordingly, exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court’s grant of summary judgment in favor of Colorado.

## II. Background

### A. Factual Background

#### 1. CADA

CADA restricts a public accommodation’s ability to refuse to provide services based on a customer’s identity. Specifically, CADA defines a public accommodation as “any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public.” Colo. Rev. Stat. § 24-34-601(1). Exempted from CADA’s definition of public accommodations are places that are “principally used for religious purposes.” *Id.*

Under CADA’s “Accommodation Clause,” a public accommodation may not:

directly or indirectly . . . refuse . . . to an individual or a group, because of . . . sexual orientation . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation . . . .

Colo. Rev. Stat. § 24-34-601(2)(a).

Under CADA’s “Communication Clause,” a public accommodation also may not:

directly or indirectly . . . publish . . . any . . . communication . . . that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused . . . or that an individual’s patronage . . . is unwelcome, objectionable, unacceptable, or undesirable because of . . . sexual orientation . . . .

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.