

Arizona Artists Face Jail Time for Refusing to Make Gay Wedding Invitations

Nearly two years, after meeting at a Bible study where they learned about their mutual passion for art, Joanna Duka and Breanna Koski started up a business, Brush & Nib Studio, to use their God-given talents to create “beautiful hand-drawn invitations and paintings for weddings, businesses, and everyday moments.”

One impediment stood in their way: in Phoenix, Arizona, where they both reside, city ordinance would require Brush & Nib to create and speak according to the city’s definition of marriage, not God’s as found in the Bible.

Seeing the near-daily news reports about Christians being forced by government authorities to promote same-sex “marriage,” as well as the social media frenzy over the U.S. Supreme Court’s *Obergefell v. Hodges* decision, they quickly realized they may not have the freedom to create art consistent with their artistic and religious beliefs. But it was far worse than they imagined.

Not only did the Phoenix ordinance require Brush & Nib—or any artist—to create their artwork for same-sex weddings, they were prohibited from even explaining why doing so is not consistent with their Christian beliefs. Failing to comply with the ordinance is a Class 1 Misdemeanor.

For each *day* they were in violation of the ordinance, they could be incarcerated up to six months and fined up to \$2,500.

The artists are unable even to speak publicly about the matter. Doing so could also be a violation of the Phoenix ordinance.

In May, with assistance from the Alliance Defending Freedom, they proceeded with a pre-enforcement lawsuit to have the ordinance ruled an unconstitutional infringement upon their First Amendment-protected rights of expression and religious freedom. The lawsuit asked the Arizona court to give Joanna, Breanna and Brush & Nib the freedom to create artwork consistent with their artistic and religious beliefs and to explain these beliefs to others.

The answer they got was not what they had been hoping for.

In September, Arizona Superior Court Judge Karen Mullins wrote in an opinion denying Brush & Nib's request for a declaratory ruling that they had "misconstrued" what the ordinance is prohibiting. She further wrote:

"The ordinance first pronounces that discrimination in places of public accommodation against any person because of sexual orientation is prohibited. The ordinance then prohibits the denial or withholding of services and sales of goods, or any distinction in price or quality of those services and sales of goods because of sexual orientation. The ordinance further prohibits advertising or communicating that a service would be refused or restricted because of sexual orientation, or advertising or communicating that persons would be unwelcome because of sexual orientation.

"Thus, the plain language of the ordinance prohibits only the conduct of refusing to sell and the conduct of publishing that refusal to sell. Conversely, the only thing compelled by the ordinance is the sale of goods and services to persons regardless of their sexual orientation. There is nothing about the ordinance that prohibits free speech or compels undesired speech."

She also wrote:

"The purpose of a wedding invitation is simply to convey the details of the date, time and place of the wedding and to

identify the persons getting married. The printing of the names of a same-sex couple on an invitation or thank-you note does not compel plaintiffs to convey a government-mandated message, such as an endorsement or pledge in favor of same-sex marriages, nor does it convey any message concerning same-sex marriage.

“Indeed any conceivable endorsement of same-sex marriage that might be conveyed would be conveyed by the act of the marriage itself, and not by the creator or printer of the physical invitation. It is absurd to think the fabricator of a wedding invitation for a same-sex couple has endorsed same-sex marriage merely by creating or printing that invitation.

“Moreover, there is nothing about the creative process itself, such as a flower or vine or the choice of a particular font or color, that conveys any pledge, endorsement, celebration or other substantive mandated message by plaintiffs in regard to same-sex marriage. Thus, the creation of custom lettering or artwork displayed on plaintiffs’ wedding invitations and related wedding products does not constitute expressive speech.”

Crystal Wagner, senior counsel for the ADF, appeared recently on Fox News to discuss the upcoming appeal of the artists’ case (see the video above). During the interview, she took issue with the notion that ordinances like the one in Phoenix were merely “the cost of being a citizen.”

“Americans don’t give up their constitutional rights because they want to earn a living and feed their children, nor do artists,” she said. “The suggestion that you would not be able to create art and sell it and be protected under the First Amendment is not supported by Supreme Court precedent. The First Amendment protects this kind of expression.”

Wagner said she was confident the appeal will be in Brush & Nib’s favor, because they have “hundreds of years of court

precedent” on their side. {eoa}