



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Office of the Governor
COMMISSION FOR HUMAN RIGHTS

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RESOLUTION 2023-07

**Requesting the Alaska Legislature to codify *303 Creative LLC v. Elenis*
as it applies to the Alaska Human Rights Act**

WHEREAS, the Alaska State Commission for Human Rights is the State of Alaska’s civil rights enforcement agency; and,

WHEREAS, the Alaska State Commission for Human Rights enforces the Alaska Human Rights Act, AS 18.80 *et seq.*, which includes AS 18.80.230, proscribing unlawful practices in places of public accommodation; and,

WHEREAS, the Supreme Court issued its opinion in *303 Creative LLC v. Elenis*, 600 U.S. ____ (2023), on June 30, 2023, wherein Lorie Smith sought to prevent the State of Colorado from enforcing the Colorado Anti-Discrimination Act against her in such a manner that may cause her to create expressions that contradict her own religious views—namely the creation of websites celebrating same-sex marriages that she does not endorse; and,

WHEREAS, the Colorado Commission on Civil Rights enforcing its public accommodation statute in the Colorado Anti-Discrimination Act is the equivalent of the Alaska State Commission for Human Rights enforcing its public accommodation statute in the Alaska Human Rights Act; and,

WHEREAS, the Supreme Court stated that creating wedding websites qualifies as pure speech protected by the First Amendment, *id.* at 9 (citation omitted), and that the websites Lorie Smith sought to create involve *her* speech because they are to contain her words and her original artworks, *id.* at 10; and,

WHEREAS, the Supreme Court went on to compare the issue to an unwilling Muslim director being forced to make a Zionist film, an atheist artist being forced to paint an Evangelical mural, or a male website designer married to another man being forced to design websites for an organization opposed to same-sex marriage, *id.* at 12 (citations omitted); and,

WHEREAS, “no public accommodations law is immune from the demands of the Constitution. . . . [P]ublic accommodations statues can sweep too broadly when deployed to compel speech.” *id.* at 14; and,

WHEREAS, “religion” is a class protected throughout the Alaska Human Rights Act, AS 18.80 *et seq.*; and,

WHEREAS, the Alaska State Commission for Human Rights desires the Alaska Legislature to amend the public accommodation statute, AS 18.80.230, to codify *303 Creative LLC* so as to avoid any public confusion about enforcing that law against a public accommodation respondent being compelled to create speech that violates the respondent’s sincerely held religious belief.

THEREFORE, BE IT RESOLVED that the Alaska State Commission for Human Rights calls on the Alaska Legislature to amend AS 18.80.230 to codify the United States Supreme Court’s opinion in *303 Creative LLC v. Elenis* to clarify in state law the First Amendment protection granted to public accommodation entities who could otherwise be compelled to create speech against their sincerely held religious beliefs.

BE IT FURTHER RESOLVED, that the Commission suggests the following language for legislative discussion in amending AS 18.80.230:

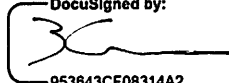
AS 18.80.230 is amended by adding a new section to read:

(c) It is an affirmative defense to a complaint filed under (a) of this section that the service sought by the complainant involves pure speech that violates the respondent’s sincerely held religious belief.

Copies of this resolution shall be forwarded to the Alaska Legislature and the Governor.

ADOPTED in Anchorage, Alaska, this 22nd day of August, 2023.

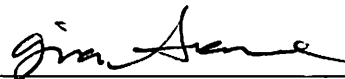
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Zackary Gottshall
Chairperson
Alaska State Commission for Human Rights

I hereby certify that the foregoing Resolution 2023-07 is a true and accurate copy of the language adopted by the Commission on August 22, 2023.



Gina Aumuvae
Secretary
Alaska State Commission for Human Rights