

# KGB Anti-Discrimination

Why I vetoed the resolution

# Issue that led to the resolution

A local business denied a request to provide an artistic display for a same sex event.

No other instances of recent, verifiable discrimination against the LGBTQ community in Ketchikan are known. Includes health care, housing, employment, etc. Not a dispute regarding general goods and services, but a case of artistic expression.

## Requested action

Requesting that the Legislature outlaw discrimination based on sexual orientation or gender identity or expression, and to amend A.S. 18.80.200(b) to include “sexual orientation or gender identity or expression” to the specifically prohibited grounds for discrimination.

# Why I vetoed the Resolution

- Gender identity or expression not defined.
- Creates Constitutional conflicts
- Diminishes the fundamental right of Freedom of Speech and Religion
- Allows a mechanism in which some could use the law to persecute those who they disagree with.
- Would amount to forced governmental artistic expression.

# Gender Identity / Expression not defined

- Some claim over 100 genders, how many are you seeking to provide protections to? Since you seek to outlaw discrimination based upon gender identity, but provide no limits to what that is, can someone make up a gender and receive legal protections if this resolution is passed into law?
- You seek provide protections to gender expression, but also provide no limits to what that is. What if that expression is not appropriate in a specific business such as a school, daycare, or some other business in which it would be a distraction and/or detriment.
- There has been no discussion regarding how your proposal could impact businesses.

# Constitutional Conflicts

- Asking for the Legislature to address this issue is not unconstitutional
- The State Legislature passing this request into law is not unconstitutional
- Constitutional conflicts occur with implementation

*"The hypothetical necessary to bring the effect of the legislation nearer the line of constitutionality would involve signed legislation, a regulatory scheme administering the legislation, and a shopkeeper wanting to refuse service to a protected individual on religious grounds, but being barred from doing so due to a defect in the administration of the law. It would not likely require actual enforcement action against the shopkeeper since, the mere threat of legal penalties based on religious practice would likely be viewed by a Court as being violative of the First Amendment by prohibiting the free exercise of religion."*

# California judge backs Christian baker's conscience rights

**FIRST AMENDMENT** | Forcing business owners to participate in same-sex weddings 'does violence' to free speech protections, judge rules

by [Bonnie Pritchett](#)

Posted 2/13/18, 03:15 pm

A California judge has denied a state agency's request to punish a baker who declined to make a cake for a lesbian couple's wedding reception, delivering a rare win for a Christian business owner caught in the culture war crossfire.

In [denying](#) the injunction Feb. 5, Judge David Lampe of the Kern County Superior Court in Bakersfield said the state's case against Cathy Miller, owner of Tastries Bakery, "cannot succeed on the facts presented as a matter of law." The complaint, filed in October with the Department of Fair Employment and Housing (DFEH), alleges Miller violated California's Unruh Civil Rights Act, which prohibits discrimination based on sexual orientation.

DFEH attorneys in December asked the court to impose the injunction against Miller while they investigated the case and prepared a formal complaint. The injunction demanded Miller stop making all wedding cakes if she continued to refuse to make them for same-sex weddings. But Lampe, in his [decision](#), noted what religious liberty attorneys have said for years: "The right to freedom of speech under the First Amendment outweighs the state's interest in ensuring a freely accessible marketplace."



Freedom of Conscience Defense Fund

Cathy Miller at Tastries Bakery



# Christian artists who refuse LGBTQ customers win discrimination suit

By Associated Press

September 17, 2019 | 10:27am | Updated



**PHOENIX — The free speech rights of two Christian artists who make wedding invitations were violated by an anti-discrimination ordinance in Phoenix that makes it illegal to refuse service to same-sex couples for religious reasons, the Arizona Supreme Court ruled Monday.**

**The 4-3 decision reversed lower-court rulings favoring the city.**

Christian artists Joanna Duka (left) and Breanna Koski outside the Arizona Supreme Court. AP

**The artists, who believe a marriage should be between only a man and woman, had argued that the ordinance would violate their religious beliefs by forcing them to custom-make products for same-sex marriage ceremonies.**

**The high court said the city can't force them to make same-sex wedding invitations.**



**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 17-3352

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Telescope Media Group, a Minnesota corporation; Carl Larsen; Angel Larsen, the  
founders and owners of Telescope Media Group

*Plaintiffs - Appellants*

v.

Rebecca Lucero, in her official capacity as Commissioner of the Minnesota  
Department of Human Rights; Keith Ellison, in his official capacity as Attorney  
General of Minnesota

*Defendants - Appellees*

The 8th Circuit, affirmed that the government has no power to force  
people to express messages that violate their deepest convictions.

The First Amendment, which applies to the states through the Fourteenth Amendment, prohibits laws “abridging the freedom of speech.” U.S. Const. amend. I. It promotes the free exchange of ideas by allowing people to speak in many forms and convey a variety of messages, including those that “invite dispute” and are “provocative and challenging.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). It also prevents the government from “[c]ompelling individuals to mouth support for views they find objectionable.” *Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463 (2018).

*"The Larsens' videos are a form of speech that is entitled to First Amendment protection"*

*"Regulating speech because it is discriminatory or offensive is not a compelling state interest, however hurtful the speech may be. It is a "bedrock principle . . . that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Texas v. Johnson, 491 U.S. 397, 414 (1989); see also Masterpiece Cakeshop, 138 S. Ct. at 1731 "*

"If Minnesota were correct, there is no reason it would have to stop with the Larsens. In theory, it could use the MHRA to require a Muslim tattoo artist to inscribe "My religion is the only true religion" on the body of a Christian if he or she would do the same for a fellow Muslim, or it could demand that an atheist musician perform at an evangelical church service. In fact, if Minnesota were to do what other jurisdictions have done and declare political affiliation or ideology to be a protected characteristic, then it could force a Democratic speechwriter to provide the same services to a Republican, or it could require a professional entertainer to perform at rallies for both the Republican and Democratic candidates for the same office."

Free speech and the free exercise of religion are fundamental constitutional rights.

See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 570–71 (1942); *Cantwell v. Connecticut*, 310 U.S. 296, 303, 307 (1940).

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*We have little doubt that Minnesota had powerful reasons for extending the MHRA to protect its citizens against sexual-orientation discrimination. But that is not the point. Even antidiscrimination laws, as critically important as they are, must yield to the Constitution. And as compelling as the interest in preventing discriminatory conduct may be, speech is treated differently under the First Amendment. See Hurley, 515 U.S. at 579 (“While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.”).*



# Unintended consequences

## Encourages lawsuits.

- Sweet Cakes bakery in Portland ordered to pay \$135,000 in damages for declining to participate in a same-sex wedding. The Oregon Court of Appeals affirmed that ruling in 2017, but last June the U.S. Supreme Court vacated that ruling and directed the Oregon court to review its decision in light of the Supreme Court's 2018 ruling in favor of a Colorado baker in [Masterpiece Cakeshop v. Colorado Civil Rights Commission](#). **Pending lawsuits since 2015**

[Masterpiece Cakeshop v. Colorado Civil Rights Commission](#).

In that decision, the Supreme Court overturned a Colorado ruling against a baker who refused to serve a gay couple. The court said the state government had exhibited anti-religious bias by concluding that the baker violated Colorado's non-discrimination law. **Now on third lawsuit**

# A florist caught between faith and financial ruin



Bob Brawdy/Tri-City Herald/File

Barronelle Stutzman, owner of Arlene's Flowers in Richland, Wash., was found guilty of discrimination under Washington State law after she refused to provide flowers for a gay couple's wedding, citing her religious beliefs. She's appealing the ruling.

**“The point was to ruin her, (said)”  
Stutzman’s lawyer, Kristen Waggoner”**

**“Rob was asking me to choose between my affection for him and my commitment to Christ,” she would later write in a Seattle Times essay. “As deeply fond as I am of Rob, my relationship with Jesus is everything to me.”**

**Now, three years after the brief meeting in her flower shop, the 71-year-old florist is facing the prospect of financial ruin.**

**Washington State Attorney General Bob Ferguson and the American Civil Liberties Union (ACLU) of Washington have filed discrimination lawsuits.**

**In addition to targeting her business, Arlene’s Flowers, Inc., they sued Stutzman personally, ensuring that any assets she might own beyond the flower shop could be taken from her to pay their own legal fees if she lost.**



## Office of the Attorney General

Washington, D.C. 20530

October 6, 2017

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

### Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion “is in its nature an unalienable right” because the duty owed to one’s Creator “is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.”<sup>1</sup> Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. The following twenty principles should guide administrative agencies and executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

Latest direction from  
the U.S. Attorney  
General's office

20 Principles for  
Religious Liberty

The freedom of religion is a fundamental right of paramount importance, expressly protected by federal law. In the United States, the free exercise of religion is not a mere policy preference to be traded against other policy preferences. It is a fundamental right.

The free exercise of religion includes the right to act or abstain from action in accordance with one's religious beliefs.

Americans do not give up their freedom of religion by participating in the marketplace, partaking of the public square, or interacting with government.

Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.

A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.

The people, acting through their Constitution, have singled out religious liberty as deserving of unique protection. The Constitution's protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government. Smith, 494 U.S. at 877; Sherbert, 374 U.S. at 402; see also West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943)



# Would you do anything?

- The resolution is vague and does not limit what the government could force business owners to do.

*The question to faith-based business owners who produce an artistic product... are you willing to do anything asked? Is there anything you would refuse to do because it would be too offensive to your faith?*



If you were a baker, would you bake this cake?

# The Satanic Temple wants bakers to make cakes for Satan



By Andrea Berry

Thursday, September 28, 2017



the Satanic temple is using Denver's anti-discrimination law to attempt to force Jack Phillips of Denver's Masterpiece Cakeshop to bake a birthday cake for Satan. A representative of The Satanic Temple, a Salem, Massachusetts-based organization that's been encouraging folks to make just such a request of Phillips and other bakers who feel they should be allowed to refuse service to gay customers because of their Christian faith.

# BTW currently the most persecuted group in America is...

- Being refused service in restaurants, coffee houses, businesses
- Having food adulterated
- Being assaulted (daily)
- Being persecuted by many groups, including local government







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FAITH & VALUES · Published February 27, 2019

# Christian persecution not just happening overseas -- many in US targeted for their faith, too



World Africa Americas Asia Australia China Europe India Middle East United Kingdom

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Edition

## Christian persecution reached record high in 2015, report says

By William J. Cadigan, CNN

Updated 1:58 PM ET, Sun January 17, 2016

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HOME NEWS NATIONAL

## Persecution of Christians is on the rise, Americans say





# Anti-Semitic Incidents Reach 40-Year High With Most Cases In New York, New Jersey

May 12, 2020 at 6:28 pm Filed Under: Anti-Defamation, Anti-Semitism, Hate crimes, Kean Dhillon, Local TV, New Jersey, New York



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**NEW YORK (CBSNewYork) – A new report found a record number of anti-Semitic incidents take place in the United States in 2019, a level not seen in 40 years. “Anti-Semitism is worse in the United States than it has been in four decades,” said Jonathan Greenblatt of the Anti-Defamation League. A new report by the Anti-Defamation League has found there were more than 2,100 antisemitic incidents nationwide in 2019, the highest number since the group started tracking data in 1979. That number is up 12% since the year before. The incidents took place in houses of worship, on the street and in businesses.**

**5/12/20**

## U.S.

# White Jesus Statues Should Be Torn Down, Activist Shaun King Says

BY AILA SLISCO ON 6/22/20 AT 10:40 PM EDT

## THE DEBATE



Americans' Very Right to Keep and Bear Arms Is on the Ballot This Election

BY JOHN R. LOTT, JR.

**W**riter and activist Shaun King announced Monday that he supports the destruction of statues that depict a white Jesus.

King, who has been an outspoken supporter of the Black Lives Matter movement, tweeted his remarks on Monday.

He also remarked that stained glass windows and other images of a white Jesus, his white mother and "their white friends" should all be destroyed, insisting they are "racist propaganda" and "a gross form of white supremacy."

**6/22/20**



## Arson arrest made in connection to Metro Christian Centre Church fire

The Rockford Fire Department was initially sent to a fire at 6:24 p.m. at the Metro Christian Centre Church at 607 Walnut Street.



**2 days ago**

## Another arson attack on Boston church

August 12, 2020

By Jim Smith



## Arraignment rescheduled in Dow church arson

Marco Cartolano reporting Published 12:20 pm CDT, Friday, September 4, 2020



**3 days ago**

# Pastor turning cheek after church sign vandalized



A church sign at First Baptist Church Bronston was vandalized over the weekend. It has since been cleaned up with several stepping up to help, said Pastor Tony Hall.

## Reported Today

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JASON RANTZ

### Rantz: Seattle closes park for religious rally, but allows anti-cop protests

BY JASON RANTZ  
SEPTEMBER 7, 2020 AT 3:22 PM

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CHRISTIANITY · Published 1 hour ago

## Seattle closing park to Christian rally amid Antifa riots is 'height of hypocrisy': Let Us Worship organizer

'It was obviously a targeting and discrimination towards believers in the city,' pastor said

# My concerns

The proposed resolution amounts to governmental endorsement of one group over the other. Picking winners and losers.

There is no way to offer the protections requested in the resolution without diminishing the fundamental rights of speech and religion.

Could result in the Constitutional rights of our citizens being violated.

Numerous unintended consequences.

Not our wheelhouse... this issue must be decided by the Supreme Court.