

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**August 31, 2023**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

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

Plaintiffs - Appellants,

v.

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

Defendants - Appellees.

No. 19-1413  
(D.C. No. 1:16-CV-02372-MSK-CBS)  
(D. Colo.)

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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 CONSITUTIONAL 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.

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**ORDER AND JUDGMENT\***

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\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

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

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This case comes before the court on remand from the Supreme Court of the United States. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2322 (2023). Having reviewed the Supreme Court’s decision, we conclude that the proper course of action is to remand the case to the district court for further proceedings.

Plaintiffs have filed a motion for appellate attorneys’ fees. Defendants are directed to file a substantive response to that motion within fourteen (14) days of the date of this order.

The case is REMANDED to the district court for further proceedings consistent with the Supreme Court’s decision. Pursuant to Fed. R. App. P. 39(a)(3) and (e)(4), costs are taxed against the defendants in the amount of \$1692.45.

Entered for the Court

Mary Beck Briscoe  
Circuit Judge