Written by **Selwyn Duke** on December 4, 2018

Americans Can Now be Jailed for Not Servicing Same-sex "Weddings"

It's not yet like the Romans throwing Christians to the lions for practicing their faith, but the Phoenix government may be throwing them in jail — for refusing to service same-sex "weddings." It's a shocking reality that inspired two Arizona Christian artists to sue the city in 2016, and now their case will be taken up by their state's supreme court.

Breanna Koski and Joanna Duka are the owners of Brush & Nib Studio, a business born of the goal to recreate "the beauty God placed all around us and to share that beauty with others. And this goal made it natural for Joanna and Breanna to focus on artwork for weddings, one of the most beautiful days in someone's life," relates the Alliance Defending Freedom (ADF), which is representing the artists.

While the women's case is preemptive — they haven't yet had a complaint filed against them — history informs that it's only a matter of time. Christian bakers and other businessmen in certain states have been already fined exorbitant sums, $135,000 in one case, and have even put out of business for refusing to be party to faux weddings.

Yet when the artists investigated what could befall them in their locality, what "they found was worse than they imagined. A Phoenix law required Brush & Nib to create invitations and other artwork for same-sex wedding ceremonies. It also prevented Brush & Nib from explaining to customers and the public why they could only create art consistent with their beliefs about marriage. And this law did all this through criminal penalties," according to the ADF.

In fact, the ADF claims, "***For each day*** Joanna and Breanna followed their religious beliefs and disobeyed the law, they would each be penalized up to $2500 and six months in jail." (Emphasis in original.)

But attorney Eric Fraser, who is the outside counsel representing Phoenix, disputes this. He related to me via e-mail that the "maximum penalty for violating the public accommodations ordinance is 6 months in jail, a $2,500 fine, and up to 3 years of probation"; he also claims that "Brush & Nib is free to post its owners' views about marriage, including expressing the view that marriage is limited to one man and one woman."

Either way, Koski and Duka took action because, as their ADF attorney Kristen Waggoner put it,

"Americans shouldn't have to wait to be thrown in jail before they can challenge an unjust law," *Fox News Insider* relates.

The Arizona Court of Appeals already ruled against the artists in June, and the state's supreme court is expected to take up their case next year.

When it does, it will hear arguments such as that put forth by Fraser, who "said the women want the court system to 'give them a blank check to refuse service' to same-sex couples," *Fox News Insider* also reports. Frankly, this is a lie.

The artists' position is the same as that of all the other Christian businessmen targeted by government sexual devolutionaries. They've not erected a sign stating "No shirt, no shoes, no heterosexuality, no service"; there is no straightness test at the door. They're not refusing to serve a type of people.

They're refusing to *service* a type of *event*.

Koski and Duka would create the same art for homosexuals that they would for anyone else, and they would not create same-sex-oriented art for heterosexuals any more than they would for homosexuals. Thus, they are not discriminating against people — *by definition*.

(Note: Though it's irrelevant to the above reasoning, it's conceivable that heterosexual left-wing activists might want same-sex-oriented art for use as displays or promotional material.)

This means the government sexual devolutionaries are breaking new ground. Question: When before, in all of American history, did the state ever punish business owners for refusing to service *events* they found morally objectionable? Is this a bridge we should cross?

But since we now have, we should wonder: Would we compel a Jewish or black businessman to service, respectively, a Nazi or KKK affair? Of course, Nazis and Klansmen aren't legally "protected classes," and this gets at a relevant issue. Establishing protected classes means there also are unprotected classes (in a country born of classism's rejection). Whatever happened to equal protection under the law?

The kicker is that, as in segregation days, it's the government discriminating among groups and deciding who will enjoy privileged status.

An ADF lawyer made a similar point, citing "protected" groups. As *Cronkite News* reports, "'The rules should go the same way for other people,' said attorney Jonathan Scruggs of the Alliance. 'The government should not be forcing an LGBT web designer to create a website criticizing same-sex marriage for a church, or to force a Muslim printer to design and create pamphlets promoting a synagogue's religious service.'"

True — and the government probably won't. Christians and observant Jews generally don't target businesses unwilling to service their events with an eye toward filing a complaint and destroying them. This is, however, precisely what many sexual devolutionary activists do.

The Arizona ordinance does offer an exemption for "bona fide religious organizations." But consider: Would we accept infringement upon freedom of speech as long as an exemption was offered for bona fide media organizations? I mean, c'mon, it's not as if speech is most people's actual business.

Freedom of religion is the first right mentioned in the First Amendment, which is notable here for what it does not say. It does not say that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof *in church*." It states that this shall not be done, *period*.

Convictions don't cease being convictions because you exit a place of worship or enter your place of business.

(Note: The preceding and following are predicated on the courts having applied the Bill of Rights to the states, done based on the "Theory of Incorporation.")

The First Amendment also does not guarantee merely "free belief" vis-à-vis religion, but the free *exercise* of it — and exercise is *action*. Thus, any religious action that the government may not prohibit within a house of worship also may not be prohibited outside of it.

Of course, at issue in Koski's and Duka's case wouldn't be prohibited action but forced action (creating same-sex-oriented art). Yet forced exercise is not free exercise.

Related to this is that art involves speech, written or symbolic, the latter of which also enjoys First Amendment protection according to the courts — and forced speech is not free speech.

Addressing the significance of the artists' case, ADF attorney Waggoner said that they "do not want to be 'banished from the marketplace' because they don't share 'the government's view,'" *Fox News Insider* also informs. Yet this has happened before. It's precisely how the Hungarian communists dealt with the faithful: "You could either be a Christian," they would say, "or you could be successful."

So to paraphrase George Santayana, he who forgets the mistakes of the past is doomed to repeat them. The problem?

There are those among us who fancy old mistakes new ideas and apparently want to repeat them.