

IN THE NEW MEXICO SUPREME COURT

Case No. 33, 687

ELANE PHOTOGRAPHY, LLC,

Appellant-Petitioner,

v.

VANESSA WILLOCK,

Appellee-Respondent.

AMICI CURIAE BRIEF OF NEW MEXICO SMALL BUSINESSES
IN SUPPORT APPELLEE VANESSA WILLOCK

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CERTIFICATION

In accordance with Rule 12-215 NMRA (2012), counsel for *Amici Curiae* provided timely notice to all parties of intent to file this brief.

INTRODUCTION

Throughout the course of this dispute, Plaintiff-Appellant Elane Photography, LLC (“the Company”) has put forth numerous and varied rationales to excuse its violation of the New Mexico Human Rights Act, NMSA 1978, § 28-1-7(F) (“NMHRA”). This brief is concerned with the Company’s efforts to narrow the scope and application of the NMHRA and addresses those issues only. Specifically, the Company has unsuccessfully argued that: (1) the NMHRA should not apply under these circumstances because of the expressive quality of the Company’s products and services [NMSC BIC at 10-12, 18-21; NMCA BIC at 21-34]; (2) The Company did not refuse to photograph Vanessa Willock’s and her partner’s commitment ceremony because of their sexual orientation [NMSC BIC at 10-12; NMCA BIC at 15-21], and (3) the NMHRA should not apply because the Company is not a traditional or historically recognized public accommodation [NMCA BIC at 10-15].

The New Mexico Court of Appeals correctly analyzed and dismissed each of these rationales for avoiding compliance with the NMHRA and concluded that broad and uniform application of the NMHRA is appropriate. *Elane Photography*,

LLC v. Willock, 2012-NMCA-086, ¶¶ 7-23. Indeed, broad and uniform application of the NMHRA to all commercial enterprises is the only rule that will ensure the continued viability of the NMHRA and enable its remedial purpose of ending discrimination in the provision of goods and services in New Mexico. Such interpretation favors diversity and non-discrimination, which are good economic policies for small businesses and New Mexico as a whole.

Amici Curiae New Mexico Small Businesses are twenty-one (21) small businesses owned and operated in the state of New Mexico (“the *Amici*”). The *Amici* provide a diverse array of goods and services to primarily New Mexico consumers, including goods and services of a unique, artistic, and expressive nature. The *Amici* are:

Ellipsis Web is a husband-and-wife enterprise that has been creating websites and performing online marketing since 1998, providing high-end graphic design, copywriting, and other custom services.

Dennis R. Holloway is an architect and urban designer practicing in Albuquerque, Santa Fe, and Taos, New Mexico and in Colorado and Arizona. His professional career includes his pioneering work in passive solar sustainable architecture, ground-breaking architecture for Native American Tribes and Pueblos done in traditional native idioms, and virtual reality reconstructions of archaeological Ancestral Puebloan sites in the Southwest.

Peony Events is a full service event planning firm started in 1998 that serves clients in the Albuquerque and Santa Fe area. Peony Events provides services such as event production, event management and coordination for all levels of social events including weddings, birthday parties, bat/bar mitzvahs and corporate gatherings.

Kyle Zimmerman Photography's mission is to create fresh and enduring proof that all of our lives are art—whether sharing the small moments or the milestones of life, it is in capturing the laughter, love and courage that the true spirit of humanity is revealed.

PJ's East Mountain Animal Care provides personalized care for cats, dogs, birds, exotic animals, reptiles, livestock, and farm animals.

Law Office of Lynn Perls is a boutique law firm in Albuquerque, providing family law services, including adoptions and guardianships, donor and parenting agreements, estate planning and probate, divorces and dissolutions custody, visitation, and restraining orders. Her focus is creating and enforcing legal protections for all kinds of families.

Maggie Macnab of Macnab Design is a designer, educator and author. She is known for her unique approach to integrating symbolic information into design to create effective and accessible visual communications that translate into any language and any culture.

Marble Street Studio is an Albuquerque photography studio that prides itself on having the depth of skills and wide variety of equipment necessary to best serve its clients. Marble Street Studio brings enormous heart, focus, competence, vision, imagination, esthetics and commercial drive to every project they undertake.

Eleganza String Quartet is a member of New Mexico Wedding Professionals. It has enhanced countless ceremonies and receptions, including those of same-sex couples.

CAP Dance is a company featuring dance instructor and competitor Cristel Pike. Ms. Pike specializes in ballroom and Latin dance styles. Her students range from novice to expert. She teaches private and group classes at all levels to singles and couples of all kinds.

Tom Ross Gallery is a Santa Fe gallery owned and operated by children's book illustrator Tom Ross. It specializes in colorful contemporary art. The gallery currently represents over twenty painters and sculptors, most of whom would be classified as non-traditional in their approach, with much of their art rooted in dreams and fantasy.

Graphic Bliss Graphic Design is a one-stop provider of graphic and logo design services in Albuquerque New Mexico. It provides high level graphic layout and design services.

Sendero Wellness LLC dba Change is Yours specializes in providing workplace wellness services. Through services that are empowering, strength-based and individualized, Change is Yours improves businesses by bringing out the best in employees.

Teresa Cutler-Broyles, owner of Inkwell International LLC & TLC Cultural Writing Tours, works as an editor, ghost writer, co-writer, and writing coach for authors around the world.

Tierra Alta Guardianship Services provides a wide variety of guardianship services throughout the state of New Mexico.

Griffin and Associates is a leading Albuquerque-based marketing company. It focuses on crafting unique media approaches that advance the awareness of its clients' businesses, products, and services.

Betty's Bath and Day Spa is one-of-a-kind Albuquerque day spa, created to enhance the well-being of local residents and visitors. Founded in 2000, Betty's prides itself on top-notch, replenishing services, a professional and friendly staff, and a clean and welcoming environment.

Green Sweep is a locally-owned cleaning business which provides professional eco-friendly "green" cleaning services in residential and commercial settings and strives to provide the highest quality environmentally-responsible green cleaning. Green Sweep is a value-based company, which means making places and spaces clean without compromising the health of its clients or staff, paying a living wage, and being a positive and involved community partner.

Q Financial Planning is a comprehensive financial services firm committed to helping its clients improve their long-term financial success. Q Financial Planning's customized programs are designed to

help grow and conserve the wealth of its clients by delivering an unprecedented level of personalized service.

The Standard Diner updates traditional diner classics with modern flair. In February 2009, it was featured on the popular Food Network show *Diners, Drive-ins, and Dives* with Guy Fieri, who said, “There’s nothin’ standard about The Standard Diner!”

The Range Café has three locations and is a New Mexico favorite. Its menu features award winning breakfasts and a variety of New Mexican and Southwest favorites.

The *Amici* support a broad and uniform application of the NMHRA.

ARGUMENT

I. New Mexico Small Businesses Support Broad Uniform Application of the New Mexico Human Rights Act Public Accommodation Provision.

“The NMHRA was enacted in 1969 to eliminate ‘unlawful discriminatory practice’ based on ‘race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition.’” *Sabella v. Manor Care, Inc.*, 1996-NMSC-014, ¶ 18, 121 N.M. 596, 915 P.2d 901. The legislature has since expanded the protections of the NMHRA to eliminate discrimination on the basis of sexual orientation, gender identity, and spousal affiliation. *See* § 28-1-7(F). This Court has recognized that “the NMHRA has broad social, political, and economic implications.” *Sabella*, 1996-NMSC-014, ¶ 18. Indeed, “the law against discrimination ‘seeks to remedy an evil that threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.’” *Id.* (quoting *Reese v. Sears, Roebuck & Co.*, 107 Wash. 2d

563, 731 P.2d 497, 501 (Wash. 1987)); *see also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250, 85 S.Ct. 348, 354 (1964) (acknowledging that “the fundamental object of Title II was to vindicate the deprivation of personal dignity that surely accompanies denials of equal access to public establishments”).

The NMHRA provides in relevant part: “It is an unlawful discriminatory practice for: . . . any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person because of . . . sexual orientation” Section 28-1-7(F). The NMHRA broadly defines “person” as “one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions[.]” NMSA 1978, § 28-1-2(A). It also broadly defines “public accommodation” as “any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bono fide private club or other place or establishment that is by its nature and use distinctly private.” NMSA 1978, §28-1-2(H).

The Company continues to urge the Court to construe the NMHRA in such a way as to avoid constitutional questions arising from its owners’ religiously-based viewpoint in opposition to same-sex marriage. [NMSC BIC at 11.] The rules the

Company suggests, however, ignore the text of the statute and are unworkable as a practical matter.

A. The Company Should Not Be Permitted to Avoid the Reach of the NMHRA Based Upon the Unique or Expressive Nature of Its Service or Products

The Company continues to stress the unique and expressive quality of its products and services as a basis for avoiding liability under the NMHRA. [NMSC BIC at 10-12; 18-21.] Regardless of the nonessential, artistic, unique, or discretionary nature of the goods or services offered by the Company, the Court of Appeals correctly emphasized that the Company offers these “goods or services to the general public as part of a modern commercial activity.” *Elane Photography*, 2012-NMCA-86, ¶ 17. The Company’s commercial activities fall well within the plain meaning of the NMHRA’s definition of “any establishment that provides or offers its services, facilities, accommodations or goods to the public.” Section 28-1-7(F). The Court of Appeals decision is in step with the many other jurisdictions that “acknowledge the changing landscape of modern commerce and that the definition of a public accommodation has been expanded over the years.” *Elane Photography*, 2012-NMCA-86, ¶ 17.

Significantly, the Company does not cite to any authority limiting the scope of an anti-discrimination law based upon the unique, artistic, or expressive characteristics of the goods or services provided by a commercial enterprise. [See

NMCA BIC at 11-15; NMCA Reply at 1-2.] The only other authority the Company has ever relied upon for this proposition is *Wazzeerud-Din v. Goodwill Home and Missions, Inc.*, 737 A.2d 683 (N.J. 1999), a case that they no longer assert, and for good reason. That decision has nothing to do with the unique, artistic, or expressive nature of the goods or services offered. Rather, the New Jersey Supreme Court held that the program offered by Goodwill Home and Missions qualified for the express exception under the applicable statute for an “educational facility operated or maintained by a bona fide religious or sectarian institution.” *Id.* at 686.

This lack of supportive authority is not surprising. As a practical matter, the rule the Company suggests is subjective, unfair, and unworkable. Determining which services, facilities, accommodations or goods are sufficiently unique, artistic, or expressive so as to allow commercial enterprises to avoid the prohibitions of the NMHRA would be an impossible standard for New Mexico courts to apply. Indeed, these concepts do not lend themselves to precise definition and are inherently ambiguous and subjective. Should the multi-national, generic coffee franchises be subject to the provisions of the NMHRA, while the local, independent coffee house with the eclectic décor, unique menu, and weekly open-mic night avoid their reach? Would the NMHRA apply to the big box electronic stores, but not the corner, mom-and-pop computer store that builds custom

computers and boasts unique and customer individualized service? Would the photography studio at the national-chain department store that produces cookie-cutter family portraits have to comply with the NMHRA, while the Company does not? These few examples handily demonstrate that such a rule is arbitrary and unpredictable, and does not promote the NMHRA's purpose of eliminating discrimination.

Another issue in this case that the Company ignores is the fact that it is a secular, for-profit, commercial enterprise. *See Elane Photography*, 2012-NMCA-086, ¶ 17 (“Elane Photography avoids addressing the critical factor that a photography business does offer its goods or services to the general public as part of modern commercial activity.”) That distinction is critical. Notwithstanding the expressive quality of the photography or its owners’ personal views about same-sex unions, the Company has made the informed and voluntary choice to offer its products for sale to the public at large. Having made that choice, it must follow the same generally applicable rules as every other commercial entity doing business in New Mexico.

As photographers, graphic designers, architects, lawyers, musicians, artists, dancers, and writers, the *Amici* all use their creativity and expressive skills to create the goods or services that the *Amici* are selling. The *Amici* also all have viewpoints about the various social issues of the day. The *Amici* recognize,

however, that when clients hire them to create a product or provide a service, for a price, their creative expression is no longer their own act of expression. *See id.*, ¶ 24 (“However, the fact that some photography qualifies as expressive conduct entitled to First Amendment protection does not mean that any commercial activity that involves photography falls under the umbrella of the First Amendment.”) (quoting *State v. Chepilko*, 965 A.2d 190, 199 (N.J. Super. Ct. App. Div.2009)). While the *Amici* may use their expressive and creative talents to enhance or record their clients’ life events, the *Amici* recognize that their clients’ stories are their own acts of expression, not those of the *Amici*. Accordingly, the *Amici* request that this Court apply the NMHRA in a broad and uniform manner to all commercial enterprises doing business in New Mexico. Indeed, it is the only workable rule.

B. The Company Violated the NMHRA by Refusing to Offer Its Services to Ms. Willock and Her Partner Because of Their Sexual Orientation.

There can be no question that the Company made a distinction in refusing to offer its services or goods to Ms. Willock and her partner because of their sexual orientation. Nonetheless, the Company argues that it did not discriminate based upon sexual orientation, but rather refused the engagement because it involved photographing a same-sex ceremony, which conflicts with the owners’ religious beliefs about marriage. [NMSC BIC at 10-12.] The Company further contends that its policy against photographing same-sex ceremonies applies equally to heterosexuals. To illustrate this point, the Company asserts that it “would have

declined the request even if the ceremony was part of a movie and the actors playing the same-sex couple were heterosexual.” [NMSC BIC at 11.] The Company has also argued before the Court of Appeals that it would photograph homosexuals in a wedding so long as they were marrying someone of the opposite sex. [NMCA BIC at 19.]

The Court of Appeals correctly rejected these rationales and determined that the Company’s “categorical refusal constitutes direct evidence of impermissible discrimination based upon Willock’s sexual orientation and is a violation of the NMHRA.” *Elane Photography*, 2012-NMCA-089, ¶ 22. Indeed, the United States Supreme Court has rejected the distinction the Company attempts to make between Ms. Willock’s conduct (participating in a same-sex commitment ceremony) and her status as a member of a protected class. *See Christian Legal Soc’y v. Martinez*, 561 U.S. ___, ___ 130 S. Ct. 2971, 2990 (2010) (“Our decisions have declined to distinguish between status and conduct in this context.”); *see also Lawrence v. Texas*, 539 U.S. 558, 575 (2003) (“When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination.”); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993) (“A tax on wearing yarmulkes is a tax on Jews.”) Also, the United States Supreme Court long ago rejected the notion that the equal application of a policy is sufficient to avoid a finding of unlawful discrimination.

See Loving v. Virginia, 388 U.S. 1 (1967) (holding that the prohibition against interracial marriage is an unlawful distinction based upon race).

More importantly, the NMHRA also prohibits *indirect* distinctions in refusing to offer services or goods based upon sexual orientation. Section 28-1-7(F). To the extent the Company's refusal to offer services or goods based upon its disapproval of same-sex marriage is not a direct distinction based upon sexual orientation, it most certainly must be an *indirect* distinction based upon sexual orientation. New Mexico Courts have recognized that indirect discrimination, known as disparate impact theory, falls within the scope of the NMHRA's prohibition on discrimination in the employment context. *See Gonzales v. New Mexico Dep't of Health*, 2000-NMSC-029, ¶ 30, 129 N.M. 586, 11 P.3d 550 (recognizing that a disparate impact claim addresses "those situations when an apparently neutral employment policy has a discriminatory effect."); *see also Hill v. Community of Damien of Molokai*, 1996-NMSC-008, ¶ 34, 121 N.M. 353, 911 P.2d 861 ("To demonstrate a violation of the FHA under the disparate-impact analysis, a plaintiff need only prove that the defendant's conduct actually or predictably results in discrimination or has a discriminatory effect."). Other jurisdictions apply disparate-impact analysis to similar public accommodation provisions. *Murray v. Framingham Country Club*, 2005 WL 2009681, * 6 (Mass. Super. Ct. June 20, 2005); *Miller v. Grubers Value World, Inc.*, 1999 WL

33451711, * 1 (Ct. App. Mich. March 30, 1999). The NMHRA's prohibition on *indirect* distinctions invites this approach as well.

Accordingly, whether or not the Company refused to photograph the commitment ceremony because of its opposition to same-sex unions does not settle the matter. Because indirect distinctions are also prohibited, the Company's motivations are not determinative. Rather, under the plain meaning of an "indirect distinction," the impact or effect of the Company's restriction against photographing same-sex ceremonies is the touchstone. *See Hill*, 1996-NMSC-008, ¶ 34. Such a restriction, which is based upon a defining characteristic of the protected class—entering into and celebrating same-sex relationships—obviously has an adverse impact on gay and lesbian couples seeking the Company's services and falls well within the NMHRA's prohibition on indirect discrimination because of sexual orientation.

C. The Company Is a Public Accommodation as Defined under the NMHRA.

Relying primarily on *Human Rights Comm'n of New Mexico v. Bd. of Regents of the Univ. of New Mexico*, 95 N.M. 576, 624 P.2d 518 (1981), the Company has incorrectly sought to limit the applicability of the NMHRA to "historical and traditional" meaning of a public accommodations [NMCA BIC at 11-14] and a prior and obsolete definition of public accommodation. [NMCA BIC at 14-15]. The Company appears to have abandoned this issue in its appeal to this

Court. *State v. Aragon*, 109 N.M. 632, 634, 788 P.2d 932 (Ct. App. 1990) (issues not briefed deemed abandoned). Nonetheless, the *Amici* provide this analysis in hopes it will be helpful to the Court in its interpretation of the NMHRA.

The Court of Appeals correctly held that the Company's reliance on *Board of Regents* was misplaced. See *Elane Photography*, 2012-NMCA-086, ¶¶ 10-13. In *Board of Regents*, the Court was narrowly focused on determining whether the University of New Mexico College of Nursing had violated the NMHRA when it gave a black nursing student a failing grade in a nursing course and refused to let her immediately retake the class. *Board of Regents*, 95 N.M. at 576. The New Mexico Supreme Court held that the University of New Mexico's manner and method of administering its nursing program did not constitute a "public accommodation" under the Act. *Id.* at 578.

It so held because: 1) the previous statute which explicitly enumerated what establishments were public accommodations did not include universities within that list, *id.*; and 2) universities "are not public accommodations in the ordinary course and usual sense of the words" *Id.* Confronted with the broad reach of the current statute, however, the Court warned that its "opinion should be construed narrowly and is limited to the University's manner and method of administering its academic program." *Id.* Recognizing that the Legislature incorporated "a general, inclusive clause" in the current statute, the Court

concluded that it would “reserve the question of whether in a different set of circumstances the University would be a ‘public accommodation’ and subject to the jurisdiction of the Human Rights Commission.” *Id.* In short, *Board of Regents* serves as a signal to courts to recognize the general, inclusive clause of the statute and to base any conclusion on that breadth. Of course, if it is possible that the non-commercial University of New Mexico could be a public accommodation under a different set of circumstances, it must be the case here that the Company is a public accommodation because it exactly fits the statutory definition: it is an establishment that provides or offers its services and facilities to the public. *See Elane Photography*, 2012-NMCA-086, ¶¶ 13-18.

II. The Broad and Uniform Application of the New Mexico Human Rights Act Public Accommodation Provision Is Good Economic Policy.

The New Mexico legislature has already made the correct policy decision by broadly defining public accommodation and extending protections to certain protected classifications, including sexual orientation. *See* NMSA 1978, § 28-1-7. The Company seeks to undermine this policy and balkanize the New Mexico economy so that New Mexico public accommodations may only do business with those they like—regardless of whether such likes and dislikes discriminate against a protected class. Such a radical policy change would render New Mexico a less attractive place for commercial enterprises to do business.

Today more and more United States businesses are recognizing that a diverse workforce and consumer base give them business advantages. “Increasingly, retailers and consumer goods companies must embrace diversity as a market force, and that includes diversifying their workforces—not only to do what is right, but because they know that a diverse employee base will drive affinity with and understanding of the customer.” Alison Kenny Paul, Thom McElroy and Tonie Leatherberry, *Diversity as an Engine of Innovation*, Deloitte Review, Issue 8, 108 (2011) available at http://www.deloitte.com/assets/DcomUnitedStates/Local%20Assets/Documents/Deloitte%20Review/Deloitte%20Review%20%20Winter%202011/US_deloitterevie w Diversity as an Engine of Innovation Jan11.pdf. The growth of minority buying power is greatly outpacing that of white consumers. *Id.* at 110. Sources estimate that the buying power of the lesbian, gay, bisexual, and transgender (LGBT) market is approaching \$800 billion dollars. *Id.* at 110-111. *See also* Karen Talley, *Retailers Look to Market to Gay Consumers*, MarketWatch, July 9, 2012, available at <http://www.marketwatch.com/story/retailers-look-to-market-to-gay-consumers-2012-07-09>. From a business and economic development perspective, the LGBT market has many attractive qualities:

Recent studies regarding the LGBT market’s buying power and purchasing characteristics indicate that a high percentage of gay consumers are college-educated, shop online and purchase the latest technology. Among other traits cited, gay and lesbian consumers tend

to be more optimistic than other Americans about the overall direction of the country and the economic recovery, an observation that has led industry analysts to anticipate that this group's spending may increase, despite the country's slow progress in regaining its financial health. In addition, LGBT consumers are typically loyal to LGBT-friendly brands and those that speak to them directly. Consumer data indicate that 78 percent of gay online users prefer to buy from companies that specifically advertise to the gay market.

Diversity as an Engine of Innovation, at 116.

Just as diversifying creates economic opportunity, discrimination comes with an economic cost. One study estimates the annual cost of workplace discrimination to be \$64 billion. Crosby Burns, *The Costly Business of Discrimination*, Center for American Progress, 1 (March 2012), *available at* http://www.americanprogress.org/wpcontent/uploads/issues/2012/03/pdf/lgbt_biz_discrimination.pdf. Discriminatory practices negatively impact business in many areas, including recruitment, retention, job performance and productivity, marketing to consumers, and litigation costs. *See id.* at 2-3, 8-17.

Given the advantages of diversity, the costs of discrimination, and the buying power and characteristics of the LGBT market, it is not surprising that company policies aimed at including the LGBT community have become extremely commonplace among companies. Eighty-eight percent (88%) of Fortune 500 companies include sexual orientation in their non-discrimination policies and fifty-seven percent (57%) include gender identity. *Corporate Equality Index 2013*, Human Rights Campaign Foundation, *available at* www.hrc.org/cei

(hereinafter “*CEI 2013*”). Employers with such policies include: Dell Inc., Goldman Sachs Group, Inc., Johnson & Johnson, IBM, JP Morgan Chase & Co., Lockheed Martin Corp., CVS Caremark, Ford Motor Company, Microsoft Corp., Bank of America Corp., J.P. Morgan Chase & Co., Pepsico, IBM, General Electric, General Motors Corp., Morgan Stanley, the United States federal government, and the State of New Mexico. *Id.* at 7, 9-14, 18-20, 23-24, 27-30, 34, 37; *see also* § 28-1-2(A); N.M. Exec. Order 2003-010 (Apr. 9, 2003) (Gov. Bill Richardson). Smaller companies have embraced this trend as well. Crosby Burns and Jeff Krehely, *Ensuring Workplace Fairness is not Expensive*, Center for American Progress, October 12, 2011, available at <http://www.americanprogress.org/issues/lgbt/news/2011/10/12/10465/ensuring-workplace-fairness-is-not-expensive/>. These companies recognize the connection between a diverse workforce and a diverse consumer base. Indeed, “[o]ne of the most important reasons businesses look to hire from a diverse pool of applicants is that the diversity of a workforce must reflect the diversity of consumers in order to most effectively tap into those consumer markets.” Burns, at 14 (citing Gail Robinson and Kathleen Dechant, *Building a Business Case for Diversity*, Academy of Management Executive 11 (3) (1997) 21-31).

Same-sex marriage itself has had a significant and positive impact on economic development. In a 2009 article Forbes magazine estimated that

nationwide legalization of same-sex marriage would result in \$9.5 billion windfall in wedding-related revenues. Miriam Marcus, *The \$9.5 Billion Gay Marriage Windfall*, Forbes, June 16, 2009 available at <http://www.forbes.com/2009/06/15/same-sex-marriage-entrepreneurs-finance-windfall.html>. A study published by the Williams Institute indicates significant spending by same-sex couples in the first year states extended the right to marry:

New Hampshire	\$5 million
Vermont	\$5 million
Iowa	\$8 million
Massachusetts	\$60 million
New York	\$155 million

Spending on Weddings of Same-Sex Couples in the United States, Williams Institute, July 2011, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Konnoth-First-YearWedding-Spending-Jul-2011.pdf>. These figures only include the amount resident and non-resident same-sex couples spent on their weddings and the money spent by their guests on travel to attend. Other spending, including wedding gifts and honeymoon expenditures would be in addition to these numbers. *Id.*

New Mexico's current economic climate only underscores the need for a broad application of the NMHRA. Forbes magazine has recently reported that New Mexico is on the brink of facing significant economic challenges. William Baldwin, *Do You Live in a Death Spiral State?*, Forbes (Nov. 25, 2012), available

at <http://www.forbes.com/sites/baldwin/2012/11/25/do-you-live-in-a-death-spiral-state/>. These challenges stem from New Mexico's relatively high level of dependence on government jobs and support and its relatively low credit-worthiness score. *See id.* The New Mexico Economic Development Department is predicting that New Mexico could lose approximately 20,000 jobs over the next year due to federal budget cuts. *See New Century Jobs Agenda, available at http://www.gonm.biz/*.

New Mexico is currently one of 21 states with nondiscrimination laws that include sexual orientation. *CEI 2013* at 22-23. The Company advocates limiting the scope of the NMHRA in such a way as to avoid constitutional issues based upon its owners' viewpoint and religious convictions about same-sex marriage. [NMSC BIC 11-12.] Limiting the scope of the NMHRA, however, would not only be contrary to the overall business trends toward diversity and nondiscrimination outlined above, but also set a policy contrary to New Mexico's own economic interests.

Significantly, the Company offers no basis upon which its construction of the statute would not apply to allow discriminatory treatment of other protected classifications, such as race or national origin, or other provisions of the NMHRA, such as employment protections. Under the Company's reasoning, retailers and employers with negative views of interracial marriage or particular minority

groups, with or without religious justification, would also have to be excluded from the NMHRA's coverage. In sum, the NMHRA would be eviscerated. Such a shift in policy would likely have negative economic consequences at a time when New Mexico can ill afford additional economic pressures.

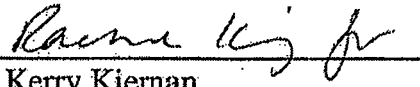
Accordingly, the *Amici* support broad and uniform application of the NMHRA to all commercial enterprises offering their goods and services to the general public in New Mexico.

CONCLUSION

The *Amici* stand ready, able, and very willing to serve all New Mexico customers, regardless of their race, color, age, religion, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual orientation, gender identity, or spousal affiliation. The *Amici* encourage the Court to uphold the continued viability of the NMHRA by applying it broadly and uniformly to all commercial enterprises offering their goods and services to the general public in New Mexico.

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