

COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
NO. 2017-SC-00278

LEXINGTON-FAYETTE URBAN COUNTY  
HUMAN RIGHTS COMMISSION

APPELLANT

vs.

HANDS ON ORIGINALS, INC.

APPELLEE

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On Discretionary Review from  
Court of Appeals, No. 2015-CA-00745  
Fayette Circuit Court, No. 14-CI-04474

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**BRIEF OF AMICI CURIAE ETHICS AND RELIGIOUS LIBERTY COMMISSION,  
JEWS FOR RELIGIOUS LIBERTY, AND KENTUCKY BAPTIST CONVENTION  
IN SUPPORT OF APPELLEE HANDS ON ORIGINALS**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of February, 2018, true and accurate copies of this brief were served by first-class U.S. Mail, postage prepaid, upon the Honorable James D. Ishmael, Jr., Fayette Circuit Court Judge, 120 North Limestone, Lexington, KY 40507; Clerk of Court of Appeals, 360 Democrat Dr., Frankfort, KY 40601; Edward E. Dove, 201 W. Short St., Ste. 300, Lexington, KY 40507; Bryan H. Beauman, Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Ste. 1500, Lexington, KY 40507.

  
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**STATEMENT OF POINTS AND AUTHORITIES**

Statement of Points and Authorities ..... i

Introduction.....1

Counterstatement of the Case .....3

*Lexington-Fayette Urban County Human Rights Comm’n v. Hands on  
Originals, Inc.*, 2017 WL 2211371 (Ky. App. 2017) .....3

Argument .....3

I. Exercising one’s faith does not stop at the doorstep of one’s home or place of  
worship.....4

*Abela, et al., A Catechism for Business: Tough Ethical Questions &  
Insights from Catholic Teaching* (2014) .....5

*Ayub, Understanding Islamic Finance* (2007) .....8

Babylonian Talmud: Avodah Zarah 6a.....8

Babylonian Talmud: Hullin 113b .....7

Babylonian Talmud: Hullin 115b .....7

Babylonian Talmud: Yevamoth 23a .....7

Catechism of the Catholic Church ¶ 898 (1997).....4

Catechism of the Catholic Church ¶ 2434 (1997).....5

*Christifideles Laici*, ¶ 15 (1988).....5

Code of Jewish Law: Yoreh De’ah 148:1 .....8

Deuteronomy 7:3 .....7

Deuteronomy 14:21 .....7

Deuteronomy 22:9-11 .....8

Exodus 23:19 .....7

Exodus 34:26 .....7

<i>Gaudium et Spes</i> , ¶ 43 (1965).....	4
Kolden, <i>Luther on Vocation</i> , 3 <i>Word &amp; World</i> 382 (Oct. 1, 2001).....	5
Leviticus 19:19.....	8
The Lutheran Church—Missouri Synod, <i>Life Library—Vocation</i> .....	5, 6
Luzzato, Derech Ha-Shem §§ 1:2:1-5 .....	7
McGrath, <i>Calvin and the Christian Calling</i> , 1999 <i>First Things</i> 94 (July 1999) .....	6
Menuge, <i>The secular state’s interest in religious liberty</i> , <i>Religious Liberty and the Law: Theistic and Non-Theistic Perspectives</i> 89 (2017) .....	9
Oxford Islamic Information Center, <i>Five Pillars of Islam</i> .....	8
Psalm 11:7.....	4
St. Pope John XXIII, <i>Mater et magistra</i> , #77 (1961) .....	5
St. Pope John XXIII, <i>Rerum novarum</i> (1891) .....	5
St. Pope John Paul II, <i>Centesimus annus</i> , #8 (1991) .....	5
St. Pope John Paul II, <i>Centesimus annus</i> , #36 (1991) .....	5
<i>Shatnez-Free Clothing</i> , Chabad.org.....	8
Southern Baptist Convention, Ethics & Religious Liberty Comm’n, <i>The Gospel at Work: A Conversation with Greg Gilbert and Sebastian Traeger</i> (Jan. 15, 2014).....	6
Southern Baptist Convention, Ethics & Religious Liberty Comm’n, <i>SBC’s Richard Land Testifies in Support of Workplace Religious Freedom Act</i> (Nov. 10, 2005).....	7
Talmud, Makkos 23b .....	7
Volf, <i>Flourishing: Why We Need Religion in a Globalized World</i> 113 (2015).....	9
<i>Why Not Milk and Meat</i> , Aish.com.....	7

II.	The government should not be allowed to punish Hands on Originals for its owners' faith beliefs here.....	9
	<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 137 S. Ct. 2012 (2017).....	15
	Aquinas, <i>Summa Theologica</i> Suppl., Q. 41, art. 1 (Tr. 1920).....	9
	Aquinas, <i>Summa Theologica</i> Suppl., Q. 44, art. 1 (Tr. 1920).....	9
	Aquinas, <i>Summa Theologica II-II</i> , Q. 154, art. 12 (Tr. 1920) .....	9
	<i>Amoris Laetitia</i> (The Joy of Love), ¶ 52 (Mar. 19, 2016) .....	10
	<i>Amoris Laetitia</i> (The Joy of Love), ¶ 250 (Mar. 19, 2016) .....	11
	Amsel, <i>Homosexuality in Orthodox Judaism</i> 5 .....	11
	Catechism of the Catholic Church ¶ 2357 (1997).....	9
	Catechism of the Catholic Church ¶ 2358 (1997).....	11
	Church of Jesus Christ of Latter-day Saints, <i>The Divine Institution of Marriage</i> , Newsroom (Aug. 13, 2008) .....	10, 14
	Evangelicals and Catholics Together, <i>The Two Shall Become One Flesh: Reclaiming Marriage</i> , First Things (Mar. 2015) .....	12, 14
	<i>Islamic Perspective on Same-Sex Marriage</i> (Jul. 7, 2015).....	10, 12, 14
	Luther, 3 Luther's Works 255 (1961) .....	9
	The Lutheran Church—Missouri Synod, <i>LCMS Views—Marriage/Human Sexuality</i> .....	10, 11
	Moore, <i>Man, Woman, and the Mystery of Christ: An Evangelical Protestant Perspective</i> , Touchstone (Nov. 18, 2014) .....	13
	National Ass'n of Evangelicals, <i>God Defined Marriage</i> (Jun. 26, 2015).....	10, 12, 13
	Sacks, <i>Humanum Colloquium on Complementarity</i> (nov. 17, 2014).....	13
	Weinreb, <i>Orthodox Response to Same-Sex Marriage</i> (Jun. 5, 2006) ....	9, 11
	Conclusion .....	15

## INTRODUCTION

The United States includes millions of individuals in faith communities who believe in an afterlife and that our conduct matters toward eternal salvation. The government has never felt it necessary to deny such citizens the ability to exercise their beliefs or to force them to be complicit in what they consider to be sin. Yet that foundational principle of our pluralistic society is precisely what is at stake in this case.

Appellee Hands on Originals is a screen printer in Lexington, Kentucky, that expresses messages on clothing, clothing accessories, and other products. The service it offers is the promotion of pure speech. And because Hands on Originals is not a government entity or a public forum of any sort, it has the right to choose the messages it is willing to promote.

Hands on Originals' owners are Christians who operate their business consistent with what the Bible teaches. As a result, they regularly decline to print messages that conflict with those teachings, such as messages containing violence, or a message promoting a strip club. The company has never refused a customer simply because of who they are; such a refusal would itself be contrary to the owners' beliefs. And to make this distinction clear (serving all people, but declining to promote all messages), the company explains these policies on its website.

The whole purpose of this lawsuit by the Lexington-Fayette Urban County Human Rights Commission is to force Hands on Originals to print messages that conflict with the company's owners' beliefs and to compel the company's owners to attend "diversity training," so that the owners can be reeducated as to why their Christian beliefs are wrong. The Commission takes these positions even while acknowledging that Hands on Originals "acts as a speaker" when it "prints a promotional item" for customers, and that "this act of

speaking is constitutionally protected.” Comm’n Order at 13–14, 16. Both the trial court and the Court of Appeals rejected the Commission’s position, concluding that there is no evidence in the record that Hands on Originals declined to print messages based on the status of any individual customer, and holding that the government cannot compel a private business to promote messages with which it disagrees.

This Court should affirm. It used to be a common American value that everyone has the freedom to live out one’s faith without government coercion. But that value apparently does not extend to a person of faith who respectfully exercises her beliefs in the public square. Based on the Commission’s position, Hands on Originals’ owners would be forced to express the government’s message and be re-educated about their faith beliefs or shutter their business. That is a stunning result for the millions of business owners and workers who believe they have the responsibility to practice their faith in their business vocation by refraining from activities that violate their religious beliefs.

This *amici* brief will focus on the obligations of a person of faith to integrate his or her beliefs and business practices. It is these obligations—not any hostility or animus—that motivate individuals like Hands on Originals’ owners to follow Biblical teachings in the way they conduct their business. As a result, Hands on Originals will sometimes decline to promote certain messages. But the company will also serve its customers and its employees with love and a respect for the dignity of the human person that is often lacking in other businesses. Such faith-based business practices should be encouraged, not stifled, particularly by the government. Accordingly, this Court should affirm the well-reasoned decision of the Court of Appeals.

## COUNTERSTATEMENT OF THE CASE

Hands on Originals “is in the business of promoting messages.” *Lexington Fayette Urban County Human Rights Commission v. Hands on Originals, Inc.*, 2017 WL 2211371, at \*1 (Ky. App. 2017). In so doing, Hands on Originals treats all customers and employees with love and respect, but it will not agree to promote all messages. The Commission alleges that Hands on Originals violated a “fairness ordinance” by declining to print t-shirts for the Lexington Pride Festival 2012. *Id.* Despite the company’s clear distinction between individuals and messages, the Commission found that Hands on Originals had declined the order because it was discriminating based on sexual orientation. *Id.* at \*3. The trial court reversed, holding that Hands on Originals had not violated the fairness ordinance, and even if it had, the ordinance was unconstitutional as applied. *Id.* at \*3. The Court of Appeals affirmed, because “conveying a message in support of a cause or belief” is not conduct based on “protected status. It is a *point of view* and form of *speech* that could belong to any person, regardless of classification.” *Id.*

## ARGUMENT

Individuals and religious organizations have never limited the way they express their faith to activities that take place in the home or a place of worship. To the contrary, one of the most fundamental ways to exercise religion is to live out one’s faith in the public square, including at work and while running a business. And courts have never conditioned an individual’s constitutional rights to free expression and free exercise on that person’s willingness to keep her faith beliefs under a bushel basket and not engage in commerce. And that condition is precisely what the Commission seeks to impose on Hands on Originals: promote messages that violate your faith and conscience, or else.

It cannot be the case that the government, over a religious objection, can force a Muslim grocer to serve pork, a Jewish website designer to develop a website for pornography, or a Christian screen printer to promote messages that conflict with the printer's owners' deeply-held religious beliefs. Yet that is the clear aim of the Commission's litigation here. This Court should use this case as an opportunity to recognize and reaffirm the fundamental role that faith plays in the workplace.

**I. Exercising one's faith does not stop at the doorstep of one's home or place of worship.**

The practice of faith does not end when a religious believer leaves her home or place of worship. Rather, she is called to live out her faith—including fundamental beliefs about sex, marriage, and the family—in every aspect of her life, including work. To do otherwise is hypocritical and risks eternal damnation. *E.g.*, Psalm 11:7 (NASB): “For the Lord is righteous, He loves righteousness. The upright will behold His face.”

Christian, Jewish, and Muslim teachers have all emphasized the instruction that one's faith beliefs should be fully integrated in every aspect of one's life. For example, the Catechism of the Catholic Church instructs that “[b]y reason of their special vocation it belongs to the laity to seek the kingdom of God by engaging in temporal affairs and directing them according to God's will.” Catechism of the Catholic Church ¶ 898 (1997). Lay believers are called “to illuminate and order all temporal things with which they are closely associated” considering the Catholic faith. *Id.*

The Catholic Catechism's teaching on this point echoes a dominant theme of the Second Vatican Council of 1962-65. The Council's Pastoral Constitution of the Church in the Modern World instructed that “[t]he split between the faith which many profess and their daily lives deserves to be counted among the more serious errors of our age. . . . The



Christian who neglects his temporal duties, neglects his duties toward his neighbor and even God, and jeopardizes his eternal salvation.” *Gaudium et Spes*, ¶ 43 (1965).<sup>1</sup> Catholics are called to bring their faith in Christ “to all their earthly activities and to their humane, domestic, professional, social and technical enterprises,” by “gathering them into one *vital synthesis* with religious values, under whose supreme direction all things are harmonized unto God’s glory.” *Id.* (emphasis added). The goal of this synthesis of religious values with work is to “contribute to the sanctification of the world by fulfilling their own particular duties” in personal and professional life. *Christifideles Laici*, ¶ 15 (1988).<sup>2</sup>

This synthesis is not limited to teachings regarding marriage and sexuality. The Catholic Church offers specific directives for how believers should act in the market with respect to advertising, *e.g.*, Saint Pope John Paul II, *Centesimus annus*, #36 (1991), fair wages, *e.g.*, Saint Pope John Paul II, *Centesimus annus*, #8 (1991), Catechism of the Catholic Church, ¶ 2434, employee ownership of companies, *e.g.*, Saint Pope John XXIII, *Mater et magistra*, #77 (1961), and workplace hours, *e.g.*, Saint Pope John XXIII, *Rerum novarum*, #42 (1891). See generally *A Catechism for Business: Tough Ethical Questions & Insights from Catholic Teaching* (Andrew V. Abela, Joseph E. Capizzi, ed. 2014).

Great teachers of the Protestant tradition agree. Martin Luther “often speaks about specific occupations, but the purpose in doing so is not to restrict vocation to occupation but to affirm that even the most mundane stations are places in which Christians ought to live out their faith.” Marc Kolden, *Luther on Vocation*, 3 *Word & World* 382 (Oct. 1, 2001).<sup>3</sup> Thus, as The Lutheran Church-Missouri Synod summarizes Luther, “Vocations are

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1 <https://goo.gl/k1zvkv>

2 <https://goo.gl/xsvKm7>

3 <https://goo.gl/oSQ1S9>

‘masks of God.’ On the surface, we see an ordinary human face – our mother, the doctor, the teacher, the waitress, our pastor – but, beneath the appearances, God is ministering to us through them. God is hidden in human vocations.” The Lutheran Church-Missouri Synod, *Life Library – Vocation*.<sup>4</sup> “With the doctrine of vocation, everyday life is transfigured. We realize that the way to serve God is not by some extraordinary act of mystical devotion, but by serving our neighbors in the daily circumstances of life—in our families, our jobs, our church and our involvement in the community.” *Id.*

John Calvin likewise “regarded vocation as a calling into the everyday world. The idea of a calling or vocation is first and foremost about being called by God, to serve Him within his world.” Alister McGrath, *Calvin and the Christian Calling*, 1999 First Things 94 (July 1999).<sup>5</sup> One’s daily occupations, including one’s work, are part of a fully integrated synthesis of one’s faith life: “Work was thus seen as an activity by which Christians could deepen their faith, leading it on to new qualities of commitment to God. Activity within the world, motivated, informed, and sanctioned by Christian faith, was the supreme means by which the believer could demonstrate his or her commitment and thankfulness to God.” *Id.*

Contemporary Protestant teachers continue to emphasize this doctrine. A prominent Baptist preacher aptly stated, “Our work, our jobs, our careers—those things are not just incidentals or necessary evils that we tack on to our spiritual lives. Our jobs are a massive arena in which God matures us as Christians and brings glory to himself.” Southern Baptist Convention, Ethics & Religious Liberty Commission, *The Gospel at Work: A Conversation*

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4 <https://goo.gl/b7vx9r>

5 <https://goo.gl/aEaFft>

with Greg Gilbert and Sebastian Traeger (Jan. 15, 2014).<sup>6</sup> Similarly, a former President of the ERLC stated: “As Southern Baptists, we believe God has endowed all people with the freedom to believe and express religious faith. . . . Americans should not have to check the freedom to exercise their faith at the door of their workplace.” Southern Baptist Convention, Ethics and Religious Liberty Commission, *SBC’s Richard Land Testifies in Support of Workplace Religious Freedom Act* (Nov. 10, 2005).<sup>7</sup>

The doctrine that one’s faith should be fully integrated into a believer’s daily life—including her job, occupation, and profession—has deep roots in non-Christian religions as well. For example, it is a central tenet of Judaism that, throughout one’s daily life, one should accept and act upon the great multitude of opportunities to improve one’s thoughts and behavior. Talmud, Makkos 23b; see also Rabbi Moshe Chaim Luzzato, *Derech Ha-Shem* §§ 1:2:1–5. These opportunities are “mitzvot,” or commandments, which constitute a complete set of civil and criminal laws that govern literally all aspects of Jewish life. The mitzvot apply as equally to commercial transactions as to a believer’s personal life:

- Because many Jews believe themselves prohibited from deriving any benefit from a cooked mixture of dairy and meat, such a Jewish store owner cannot sell a cheeseburger to any customer, Jewish or Gentile, and would not be allowed to profit from allowing one of his employees to cook meat and dairy together. *Why Not Milk and Meat*, Aish.com<sup>8</sup>; Exodus 23:19, 34:26, Deuteronomy 14:21, and Babylonian Talmud: Hullin 113b, 115b.
- Likewise, while a Jewish florist could contribute to a wedding between two Christians or two Muslims, or a Muslim and a Christian, many such florists would consider it inconsistent with their faith to contribute to an intermarriage between a Jew and a member of another religion. Deuteronomy 7:3; Babylonian Talmud: Yevamoth 23a.

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6 <https://goo.gl/n7SXtK>

7 <https://goo.gl/GMFwPG>

8 <https://goo.gl/ymSYnr>