



## **Fact Sheet for *Kleins v. Oregon Bureau of Labor and Industries*** *February 2017*

### **What is the status of the case?**

The Oregon Bureau of Labor and Industries – a state administrative agency – issued a Final Order against the Kleins on July 2, 2015. On April 25, 2016, First Liberty Institute and Boyden Gray appealed the case to the Oregon Court of Appeals. The case will be heard before the Oregon Court of Appeals on March 2, 2017.

### **What is the case background?**

Aaron and Melissa Klein owned and operated a family bakery, “Sweet Cakes by Melissa,” in Gresham, Oregon. In 2013, a woman asked the Kleins to make a cake for her same-sex wedding. As devout Christians, the Kleins believed that participating in the wedding celebration would violate their faith, so they declined to make the cake. The Oregon Bureau of Labor and Industries punished the Kleins with a \$135,000 penalty and placed a gag order on them, forbidding them from discussing aspects of their faith in public. As a result, the Kleins were forced to shut down their bakery. The Kleins appealed the BOLI ruling to the Oregon Court of Appeals in April 2016. Read more at [KleinFacts.com](http://KleinFacts.com).

### **What is this case about?**

This case is about whether the government has authority to (1) force people to say things that go against their personal beliefs, (2) force people to create art that violates their personal faith, and (3) rule against people before even hearing their side of the story, and (4) shut down businesses of those who want to operate their businesses in accordance with their beliefs.

### **Why does this case matter?**

- Americans should be free to run their lives and businesses according to their conscience without government interference.
- The First Amendment guarantees the right to free speech and the free exercise of religion.
- The government should not force small business owners to violate their conscience or pay \$135,000 for being true to their personal beliefs and conscience.
- No court or tribunal should be able to decide the outcome of a legal proceeding before both sides have had the opportunity to make their case.
- In order for America to remain a tolerant and diverse society, we must ensure people with different opinions can peacefully coexist.

### **Who represents the Kleins?**

The Kleins are represented by:

- First Liberty Institute, the largest law firm in the nation focused exclusively on religious freedom for all Americans
- Boyden Gray, former White House Counsel for President George H.W. Bush, former Ambassador to the U.N., and founding partner of Boyden Gray & Associates
- Tyler Smith and Herbert Grey of Rural Business Associates

# Summary of Brief Filed on Behalf of Aaron & Melissa Klein at the Oregon Court of Appeals

View PDF of the Kleins' brief and additional legal documents at [KleinFacts.com](http://KleinFacts.com)

## Summary of Arguments

- **Rights Violated:** The Oregon Bureau of Labor and Industries (BOLI)'s order violated the Kleins' constitutional rights to religious freedom, free speech, and due process before an impartial tribunal.
  - **Free Speech:** The order violates the Kleins' right to free speech by forcing the Kleins as cake artists to convey a message that they do not believe in because it violates their personal faith. Ordering the Kleins not to discuss aspects of their faith in public separately violates the Kleins' free speech rights.
  - **Religious Freedom:** By forcing the Kleins to participate in a wedding that violates their faith, the Oregon government violates the Kleins' right to freely practice their faith without government interference (the "free exercise" of religion).
  - **Due Process:** Before hearing the Kleins' case, BOLI Commissioner Avakian made multiple public comments on Facebook and in media interviews showing he had already judged the Kleins guilty of violating the law. By failing to recuse himself from the case, Commissioner Avakian deprived the Kleins of their right to due process with a fair hearing before an impartial judge.
- **Excessive Penalties:** The \$135,000 that the state ordered the Kleins to pay to the same-sex couple was excessive. Commissioner Avakian ordered the Kleins to pay "emotional damages" caused by one of the women (1) hearing someone decline to celebrate her wedding, and (2) hearing her mother tell her that Aaron Klein quoted a Bible verse to her regarding his biblical beliefs about marriage. BOLI failed to provide substantial justification or evidence for such an exorbitant fee.
- **Law Applied:** The BOLI order is not justified under Oregon law, the Oregon Constitution, or the U.S. Constitution.

## Outline of Brief

- A. The Kleins Did Not Violate ORS 659A.403.
- B. The Final Order Violates The Free Speech Clause Of The United States Constitution.
  1. Custom-Designed Wedding Cakes Are Fully Protected Speech.
  2. The Final Order Violates The Right Not To Speak At All.
  3. The Final Order Violates The Right Not To Host Or Accommodate Others' Messages.
  4. The Final Order Violates The Right Against Compelled Association With Others' Expression.
  5. The Final Order Violates The Right Against Compelled Contributions To Support Others' Speech.
  6. The Final Order Violates The Right Against Compelled Expressive Conduct.
- C. The Final Order Violates The Free Speech Clause Of The Oregon Constitution.
- D. The Final Order Violates The Free Exercise Clause Of The United States Constitution.
  1. The Final Order Burdens Hybrid Rights.
  2. The Final Order Targets Religious Conduct For Disfavored Treatment.
  3. The Final Order Fails Strict Scrutiny.
- E. The Final Order Should Have Exempted The Kleins From ORS 659A.403, As Permitted By The Oregon Constitution's Worship And Conscience Clauses.

**About First Liberty Institute**

[First Liberty Institute](#) is the largest legal organization in the nation dedicated exclusively to defending religious freedom for all Americans.

*To arrange an interview, contact Kassie Dulin, Chief Communications Office for First Liberty Institute. Email: [kdulin@firstliberty.org](mailto:kdulin@firstliberty.org), Direct: 972-941-4575, Cell: 214-542-4334.*