



Fact Sheet for *Kleins v. Oregon Bureau of Labor and Industries*
April 25, 2016

What is the status of the case?

An administrative agency in the State of Oregon issued a Final Order against the Kleins on July 2, 2015. On April 25, 2016, First Liberty Institute and Boyden Gray filed a brief with the Oregon Court of Appeals.

What is the case background?

First Liberty, Boyden Gray (former White House Counsel for President George H.W. Bush), Tyler Smith, Anna Harmon, and Herbert Grey represent Aaron and Melissa Klein, who formerly operated a bakery called "Sweet Cakes by Melissa," in a legal case centering on the Oregon couple's religious freedom. 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 government responded by punishing them with a \$135,000 penalty and ordered the Kleins never again to say certain things about their religious faith. The Kleins were forced to shut down the bakery and later appealed the ruling to the Oregon Court of Appeals on April 25, 2016. Oral arguments are expected later this year. Read more at FirstLiberty.org/Kleins.

What is this case about?

This case is about whether the government has authority to force people to (1) say things that go against their personal beliefs, (2) create art that violates their personal faith, and (3) rule against people before even hearing their side of the story, and shut down businesses of those who do not want to betray their beliefs.

Why does this case matter?

- Americans should be free to run their lives and business according to their conscience without government interference.
- We must protect our First Amendment freedoms of free speech and the free exercise of religion.
- The government should not force small business owners to violate their conscience or pay \$135,000 as the price 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.

About First Liberty Institute

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

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Summary of Arguments Made in the Brief

- **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, (2) hearing her mother describe a later conversation with Aaron Klein regarding his biblical beliefs about marriage, even though the judge ruled that the mother was not credible on this issue, and (3) media attention given to the incident long after the date in question. 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 Filed with the Court of Appeals for the State of Oregon on behalf of Aaron and Melissa Klein

- 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.

Key Excerpts from Summary of Argument

- BOLI's misapplication of Oregon law **violates both the Oregon and United States constitutions**. It unlawfully compels two law-abiding Oregon citizens, the Kleins, to devote their time and talents to create art destined for use in an expressive event conveying messages that contradict their deeply and sincerely held religious beliefs.
- [This case] is about the state forcing business owners to publicly facilitate ceremonies, rituals, and other expressive events with which they have fundamental and often, as in this case, religious disagreements.
- [BOLI's] Final Order sends a clear message that...[the Kleins] cannot operate a business in Oregon unless they facilitate same-sex weddings.
- [T]he Final Order **cannot withstand constitutional scrutiny for at least two reasons**.
 - **First**, it conflicts with the Speech Clauses of the constitutions of Oregon and the United States. Those clauses protect people and businesses from state compulsions to speak or to carry, contribute to, or associate with others' expression...State action that forces the creation of art or that requires artists to carry, contribute to, or associate with others' expression is unconstitutional.
 - **Second**, BOLI's interpretation of the law will often conflict with the constitutions' Religion Clauses, which guarantee freedom from state interference with the exercise of religion.
- BOLI's Final Order also suffers from **three additional defects**.
 - **First**, it is the product of a biased adjudication that violated the Kleins' Due Process right to an impartial tribunal. Having publicly commented on the facts and probable legal outcome of the case before hearing it, Due Process required BOLI's Commissioner to recuse himself.
 - **Second**, the Final Order's \$135,000 damage award lacks substantial evidence and reason: it failed to account for mitigating evidence and Complainants' discovery abuses, lacks internal consistency, and bears no relationship to awards in comparable cases.
 - **Finally**, the Final Order incorrectly concludes that the Kleins violated ORS 659A.409, which makes it unlawful for public accommodations to convey a future intent to engage in unlawful discrimination. But the Kleins have only described the facts of this case, establishing their view of the law, and vowed to vindicate that view through litigation. Their statements never threatened future violations of the law and are constitutionally protected.
- One of America's founding principles is that state action "compel[ling] a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors" is "tyrannical." Thomas Jefferson, A Bill for Establishing Religious Freedom (June 12, 1779). It is at least as **tyrannical to compel people to use their time and talent to speak, or to carry, contribute to, or affiliate with others' expressions to which they do not ascribe and to which their religion forbids them from adhering**. It is irrelevant that today's case involves politically-favored ceremonies like same-sex weddings. Tomorrow's case may involve expressive events that are less politically palatable—celebrations of male exclusivity, white exclusivity, Wiccan practices, or abortions. The law cannot and does not turn on the nature of the expressive event.

Key Excerpts from Summary of Due Process Arguments

- BOLI's Commissioner, the ultimate decisionmaker in this case, **violated the Kleins' Due Process rights by failing to recuse himself** despite numerous public comments revealing his intent to rule against them.
- Here, several pre-hearing public comments demonstrate the Commissioner's unconstitutional bias against the Kleins.
- [T]he Commissioner did far more than announce a preconceived view of the law. His statements that the Kleins had "disobey[ed]" Oregon law and needed to be "rehabilitate[d]," for example, reflect determinations about the merits of the Kleins' constitutional defenses. And his statements about the need for "one set of rules" and the need for businesses to sell their goods and services to everybody "regardless of [their] religious belief" demonstrate determinations not to exercise his authority under the Worship and Conscience Clauses of the Oregon Constitution to exempt the Kleins from ORS 659A.403.
- The Commissioner's statements...reveal that **before the Kleins had any opportunity to create a factual record or argue their view of the law, the Commissioner had already decided** that the Kleins had denied service to the Complainants, that the denial violated ORS 659A.403, that it was not protected by either the Oregon or United States constitutions, and that no exemption should be granted.
- Due Process entitles the Kleins to a hearing before somebody who waits to hear the facts and arguments before reaching those conclusions.