

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

SUSAN FLETCHER,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Case No. _____

Oral Argument Requested

**PLAINTIFF’S APPLICATION FOR PRELIMINARY INJUNCTION
AND BRIEF IN SUPPORT**

Plaintiff Susan Fletcher (“Ms. Fletcher” or “Plaintiff”) moves for a preliminary injunction, and in support thereof, states as follows:¹

I. Introduction

As a special way of sharing her faith this Christmas, Plaintiff Susan Fletcher wishes to create customized postage stamps to share with her loved ones. As a result of her deeply-rooted Christian faith, Ms. Fletcher believes that celebration of the birth of Christ is an essential aspect of any Christmas message, and she feels compelled by her sincerely held religious beliefs to include references to the Biblical Christmas story on her customized Christmas stamps. However, the United States Postal Service’s regulations governing customized postage categorically prohibit any customized stamp design that includes religious content. Under this regulatory scheme, therefore, Ms. Fletcher’s stamp designs will be rejected, and she will be barred from sharing her

¹ Ms. Fletcher incorporates and adopts by reference each and every allegation in her Original Complaint.

Christian viewpoint on the Christmas holiday and freely exercising her sincerely held religious beliefs.

Ms. Fletcher has also designed other holiday-themed stamps and stamps for other celebratory occasions that contain religious images or text, which will similarly be rejected under USPS's religious content ban. Although Ms. Fletcher recognizes that, given the short time until Christmas, she may not be able to print her customized Christmas stamp design this year, she hopes to be able to celebrate and communicate her religious viewpoint on other holidays and celebratory occasions that may occur while this suit remains pending. For example, Ms. Fletcher has designed a customized stamp to celebrate Texas Independence Day, which will occur on March 2, 2020. As such, Ms. Fletcher seeks a preliminary injunction suspending USPS's enforcement of its unconstitutional ban on religious content in customized postage and requiring USPS to permit Ms. Fletcher to create her customized stamps while she awaits the Court's decision on her constitutional and statutory claims.

II. Factual Background

A. USPS's Customized Stamp Program Prohibits Any Depiction of Religious Content.

Under 39 U.S.C. § 404(a)(4), the United States Postal Service ("USPS") has the authority to "provide and sell postage stamps . . . and to provide such other evidences of payment of postage and fees as may be necessary or desirable[.]" Pursuant to this statutory grant of power, USPS operates a customized postage program that enables individuals to design and purchase customized stamps from authorized third-party vendors. Specifically, these third party vendors, called "Postage Evidencing System providers," are permitted to print "Customized Postage"—"products combining barcode indicia of postage payment with digital, graphic, or pictorial images or text" provided by the customer. 39 C.F.R. § 501.21(a)(2).

However, the customized postage program is subject to unreasonable and restrictive “Eligibility Criteria” dictating the kinds of images and text that are “allowable” under the regulatory scheme. *Id.* § 501.21(b). The customer’s submitted images or text must be “commercial” or “social” as defined in the regulation, and they “must not contain content that is unsuitable for all-ages audiences.” *Id.* § 501.21(b)(1), (2). Among the categories of prohibited content deemed “unsuitable” is “[a]ny depiction of . . . religious . . . content[.]” *Id.* § 501.21(b)(2)(iii) (emphasis added).

B. As Authorized Third-Party Vendors, Stamps.com and PhotoStamps.com Must Enforce USPS’s Eligibility Criteria.

In order to be authorized to provide customized postage, third-party vendors must strictly adhere to the Eligibility Criteria set out in 39 C.F.R. § 501.21. The vendors must publish the Criteria on their websites, must implement a process to ensure that only compliant images or text are accepted for printing, and may not use any other criteria in accepting or rejecting customized stamp designs. *Id.* § 501.21(c). If a vendor fails to comply with these requirements, USPS can suspend or revoke its authorization to print customized postage. *Id.* § 501.21(c)(7).

PhotoStamps.com (“PhotoStamps”), an affiliate of Stamps.com, has been authorized by USPS to provide customized stamps under the regulatory framework set out above.² Consistent with the requirements of 39 C.F.R. § 501.21, PhotoStamps outlines the USPS Eligibility Criteria for customized postage on its website and warns that any content not consistent with the Criteria will be rejected.³ A customer who submits an order that violates the Eligibility Criteria may be charged a \$10 processing fee per image submitted, and a customer who “publicize[s]” such a

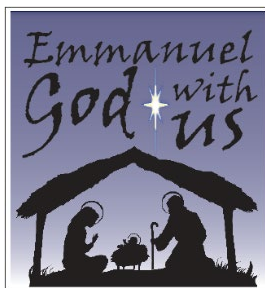
² *Is This Real Postage?*, Photostamps.com, <https://photostamps.com/pages/is-this-real-postage> (last visited Dec. 11, 2019).

³ *Terms and Conditions*, Photostamps.com, <https://photostamps.com/pages/terms-and-conditions> (last visited Dec. 11, 2019).

violation is subject to the following liability provision: “[Y]ou acknowledge that Stamps.com will suffer substantial damage to its reputation and goodwill and that you can be liable for causing such substantial damage.”⁴

C. USPS’s Prohibition on Religious Content Requires PhotoStamps to Reject Ms. Fletcher’s Holiday Day Stamp Designs in Violation of Her Constitutional and Statutory Rights.

To celebrate Christmas and her sincerely held religious beliefs surrounding the holiday, Ms. Fletcher desires to create customized postage via PhotoStamps to share with her loved ones. Because Ms. Fletcher believes that Christmas is foundationally a celebration of the birth of Christ, she considers including religious images and text on these customized stamps to be an essential aspect of her religious practice and Christmastime message to her friends and family. Ms. Fletcher has designed the following Christmas stamp to express her religious beliefs:



Ms. Fletcher also wishes to declare her sincerely held religious beliefs in connection with other holidays and celebratory occasions throughout the year. She has created customized postage stamp designs for various federal and Texas holidays, as well as the various missions activities she engages in throughout the year, with religious messages that she believes are essential to celebrating the occasions with her loved ones:

⁴ *Id.*

Texas Independence Day – March 2, 2020



Easter – April 12, 2020



Mission Trip Stamp



Each of Ms. Fletcher’s stamp designs is “social” in nature, but they contain religious images and text, which are deemed “unsuitable” by USPS’s Eligibility Criteria for customized postage. As such, if Ms. Fletcher were to submit her designs to PhotoStamps for printing, PhotoStamps would be forced to reject them, and Ms. Fletcher could be required to pay a \$10 processing fee for each image. In addition, if she had submitted her stamps to PhotoStamps prior to filing this suit, she would be subject to PhotoStamps’s liability provision for publicizing Eligibility Criteria violations.

As a result, Ms. Fletcher filed this declaratory judgment action alleging free speech violations under the United States Constitution, free exercise violations under the United States Constitution, and violations of the federal Religious Freedom Restoration Act (“RFRA”). While the lawsuit is pending, Ms. Fletcher seeks a preliminary injunction suspending enforcement of the unconstitutional aspects of the USPS Eligibility Criteria and requiring USPS to permit PhotoStamps to print her customized stamps in time for the respective holidays (with the exception of Christmas, which Ms. Fletcher recognizes may not be feasible).⁵ Without an injunction to this effect, Ms. Fletcher will be prohibited from sharing her religious viewpoint and sincerely held religious beliefs through customized postage until the Court renders a final decision on the merits in this case.

III. Argument and Authorities

A preliminary injunction is warranted where the plaintiff demonstrates: “(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.” *Texans for Free Enterprise v. Texas Ethics Comm’n*, 732 F.3d 535, 536–37 (5th Cir. 2013). For the reasons explained below, Ms. Fletcher satisfies each of these requirements and is accordingly entitled to the requested injunctive relief.

⁵ While Ms. Fletcher would love to be able to print her customized Christmas stamps in advance of the holiday, she recognizes that only a short time remains before Christmas. Ms. Fletcher does not wish for her request for a preliminary injunction to unduly burden the court, USPS, or any other person. Instead, Ms. Fletcher requests a preliminary injunction in the normal course of proceedings, including time for USPS to respond and for the court to schedule a preliminary injunction hearing.

A. Ms. Fletcher is Substantially Likely to Succeed on the Merits of Her Free Speech, Free Exercise, and RFRA Claims.

USPS's provision of postage, including its customized postage program, is an exercise of Congress's constitutional postage power. *See* U.S. Const. Art. I, § 8; 39 C.F.R. § 501.2(a). Accordingly, USPS regulations may not violate the First Amendment to the United States Constitution. *See United States Postal Serv. v. Council of Greenburgh Civic Ass'n*, 453 U.S. 114, 126 (1981) ("However broad the postal power conferred by Art. I may be, it may not of course be exercised by Congress in a manner which abridges the freedom of speech or of the press protected by the First Amendment to the Constitution."). USPS does not enjoy sovereign immunity, and notwithstanding its exemption from the judicial review provisions of the Administrative Procedure Act (APA), USPS is subject to judicial review where it acts outside of its statutory authority. *See* 39 U.S.C. § 401(1) (authorizing USPS to "sue and be sued"); *Leedom v. Kyne*, 358 U.S. 184, 188–89 (1958) (judicial review proper despite statutory exclusion from judicial review where National Labor Relations Board acted in excess of its delegated powers); *Aid Ass'n for Lutherans v. United States Postal Serv.*, 321 F.3d 1166, 1173 (D.C. Cir. 2003) ("[T]he APA's stricture barring judicial review to the extent that statutes preclude judicial review . . . does not repeal the review of *ultra vires* actions that was recognized long before." (internal quotation marks and citations omitted)).

Because the USPS Eligibility Criteria set out in 39 C.F.R. § 501.21 categorically prohibit religious viewpoints on otherwise permissible topics, they violate the First Amendment's free speech guarantee. For that reason alone, Ms. Fletcher is substantially likely to prevail in her declaratory judgment action against USPS. In addition, the Eligibility Criteria substantially burden Ms. Fletcher's religious practices but impose no such burden on similarly-situated non-religious individuals, which violates her free exercise rights under the United States Constitution and RFRA. Ms. Fletcher is therefore substantially likely to succeed on her religious liberty claims as well.

1. Ms. Fletcher is Likely to Succeed on the Merits of Her Free Speech Claim.

USPS's Eligibility Criteria favor secular holiday and celebratory messages while banning the religious messages expressed by Ms. Fletcher. By refusing to permit religious holiday stamp designs or designs for other celebratory occasions like the ones Ms. Fletcher created, USPS operates under an unreasonable regulatory scheme and has engaged in viewpoint discrimination in violation of the First Amendment.

As an initial matter, Ms. Fletcher's creation of customized stamps is private speech, not government speech. The longstanding determinative factor for government speech is control. *See Johanns v. Livestock Marketing Assoc.*, 544 U.S. 550, 562 (2005) ("when the government sets the overall message to be communicated and approves every word that is disseminated[,]" the speech at issue is government speech).⁶ In the Supreme Court's most recent case to explore government speech doctrine, *Matal v. Tam*, 137 S. Ct. 1744 (2017), the Court analyzed whether trademarks are government speech, finding that they are not. The volume of private choices involved in registering trademarks is analogous to the volume of individual private stamp designs. To find

⁶ USPS will undoubtedly argue that all stamps, including stamps exclusively designed by private citizens and printed through third-party companies, are government speech. *See generally Walker v. Sons of Confederate Veterans Inc.*, 135 S. Ct. 2239 (2015) (Texas license plates are government speech when the government chooses which messages it is willing to print on its license plates). There are three factors the Court mentioned in *Walker* for determining whether speech is government speech or private speech—history, public understanding, and control. *Id.* at 2248–49. While it is true that for most of the history of the USPS, stamps were only those designs specifically approved and disseminated by the government, recent history reveals that thousands of private stamp designs are hitting mailboxes. While the Court in *Walker* did not have a change in historical practice before it, this Court does, and due credit should be given to that deliberate historic change. Second, while it is true that a common public understanding is that stamps convey a government-approved message, that is not the case here because the government specifically disclaimed association with private stamps in 39 C.F.R. § 501.21(c)(4). Third, the government is not controlling, approving, or even cognizant of the many thousands of stamp designs circulating through the mail. Given the government's deliberate decision to issue guidelines and leave it to the public to do as it pleases within those guidelines, the government far removed itself from the facts of *Walker* in which the government approved each particular license plate. In any event, *Walker* "marks the outer bounds of the government-speech doctrine." *Matal*, 137 S. Ct. at 1760.

otherwise, the government would be “babbling prodigiously and incoherently . . . [and] unashamedly endorsing a vast array” of messages. *Id.* at 1758. In fact, the government specifically dissociated itself from custom stamps by declaring that personalized stamps are not “U.S. stamps” and no providers may “make any representations tending to imply that Customized Postage products are related in any way to official U.S. postage stamps[.]” 39 C.F.R. § 501.21(c)(4). It would be “far-fetched to suggest that the content” of a personalized stamp is government speech when the government disclaims it so specifically. *Matal*, 137 S. Ct. at 1758.

“In the realm of private speech or expression, government regulation may not favor one speaker over another.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). Significantly, “[d]iscrimination against speech because of its message is presumed to be unconstitutional.” *Id.* “When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Id.* at 829. “Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Id.* The Supreme Court has repeatedly held that categorical exclusion of religious viewpoints on permitted topics constitutes viewpoint discrimination. *See, e.g., id.* at 837; *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 109–10 (2001); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–94 (1993).

The USPS Eligibility Criteria expressly permit individuals to create customized stamps using “social” images and text, defined in part as images or text promoting “events commonly associated with community relations or companionship.” 39 C.F.R. § 501.21(b)(1)(ii). As evidenced by the pre-designed stamps available for sale on PhotoStamps’s website, holiday stamps

and stamps for other celebratory occasions certainly fit within this definition and are permitted topics under the Criteria.⁷ Despite permitting an array of secular holiday images and text on customized postage, however, USPS's Eligibility Criteria categorically prohibit similar customized postage that contains "religious" images or text. 39 C.F.R § 501.21(b)(2)(iii). Thus, although USPS's regulations permit PhotoStamps to print other holiday-themed and celebratory stamps, it refuses to print Ms. Fletcher's holiday-themed and celebratory stamps because their message is articulated from a religious perspective. By banning religious viewpoints while permitting secular holiday messages, USPS has violated the First Amendment to the United States Constitution. USPS's targeting of religious speech for unfavorable treatment is presumed to be unconstitutional. *Rosenberger*, 515 U.S. at 828.⁸

2. *Ms. Fletcher is Likely to Succeed on the Merits of Her RFRA Claim.*

Under the federal RFRA, the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless the government can demonstrate that the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a), (b). "To claim RFRA's protections, a person must show that (1) the relevant religious exercise is grounded in a sincerely held religious belief and (2) the government's action or policy substantially burdens that exercise by, for example, forcing the plaintiff to engage

⁷ *Holiday PhotoStamps*, PhotoStamps.com, <https://photostamps.com/collections/holiday-photostamps> (last visited Dec. 11, 2019).

⁸ Although viewpoint discrimination claims frequently involve a "forum analysis" to determine whether the defendant opened a "limited public forum," such analysis is not a necessary component of a viewpoint discrimination claim. The Fifth Circuit has observed that "[i]t is well settled that viewpoint discrimination is a clearly established violation of the First Amendment in *any* forum." *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 350 (5th Cir. 2001) (emphasis added).

in conduct that seriously violates his or her religious beliefs.” *United States v. Comrie*, 842 F.3d 348, 351 (5th Cir. 2016) (internal quotation marks and citations omitted).

Ms. Fletcher is a devout Christian who has a sincerely held religious belief that she is compelled by the Lord to use her God-given artistic abilities to advance a religious message in all available communications media, including custom stamps for various holiday and celebratory occasions. Ex. A, Decl. of Susan Fletcher, ¶ 1, 3. Ms. Fletcher’s celebration of the Christmas holiday is inseparable from her belief that the occasion commemorates the birth of Jesus Christ. *Id.* ¶ 4. Ms. Fletcher sincerely believes that her faith compels her to share the religious aspects of the Christmas holiday with her friends and family, and this includes sharing that message via a customized postage stamp. *Id.* ¶ 5. Ms. Fletcher’s sincere beliefs regarding other holidays and celebratory occasions are similar: that her faith compels her to incorporate a Christian message into the customized stamps she will share with her loved ones. *Id.* ¶ 6. As such, Ms. Fletcher’s desire to print her customized postage is grounded in a sincerely held religious belief.

USPS’s Eligibility Criteria forbidding religious images or text in customized postage substantially burden Ms. Fletcher’s exercise of that sincere belief by prohibiting her from engaging in conduct that she believes is compelled by her Christian faith. The Supreme Court has held that an individual’s religious practices are substantially burdened where the policy at issue pressures the individual to forego the religious practice or forces her to “choose between following the precepts of her religion and forfeiting benefits” or abandoning her belief. *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *see also Merced v. Kasson*, 577 F.3d 578, 587, 588–89 (5th Cir. 2009) (applying *Sherbert* in RFRA analysis). Here, USPS’s Eligibility Criteria pressure Ms. Fletcher to forego creating her customized stamps due to the threat of violating the regulation and being subjected to PhotoStamps’s liability policy. Moreover, the Eligibility Criteria require Ms. Fletcher

to choose between adhering to her Christian faith and foregoing the benefit of customized postage or abandoning her beliefs to participate in the customized postage program. Accordingly, Ms. Fletcher has demonstrated that the Eligibility Criteria substantially burden the exercise of her religious practices.

USPS cannot articulate a compelling government interest justifying the ban on religious content in the Eligibility Criteria, nor can it establish that a categorical prohibition of religious images and text is the least restrictive means of furthering any government interest that does exist. Under RFRA, the government bears the burden of establishing these requirements, *see* 42 U.S.C. § 2000bb-1(b), and Ms. Fletcher will respond to any argument USPS raises on these points in a response to this application or at a hearing on Ms. Fletcher’s preliminary injunction, whichever occurs first.

3. *Ms. Fletcher is Likely to Succeed on the Merits of Her Free Exercise Claim.*

USPS’s Eligibility Criteria burden the religious practice of individuals wishing to express their sincerely held religious beliefs through customized stamps, while imposing no such burden on similarly-situated non-religious individuals. As a result, the Eligibility Criteria are not neutral or generally applicable, but instead unlawfully discriminate against religious individuals in violation of the First Amendment.

Under the Supreme Court’s decision in *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, “the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” 494 U.S. 872, 879 (1990). However, the *Smith* Court “did not overrule its prior free exercise decisions,” which apply when the law or regulation at issue is not generally applicable. *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 363 (3d Cir. 1999) (Alito, J.). And as the Third Circuit explained

in *City of Newark*, when a regulation provides for an individualized assessment of compliance with a general requirement, the regulation is not generally applicable. *See id.* at 364–65. USPS’s customized stamp program provides for an individualized assessment of each design’s compliance with the Eligibility Criteria, so the *Smith* general applicability framework does not apply here. Instead, this Court must look to the Supreme Court’s prior free exercise decisions.

“The Free Exercise Clause protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (internal quotation marks, alteration, and citation omitted). As a result, the Supreme Court “has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order”—in other words, strict scrutiny applies. *Id.* (internal quotation marks and citation omitted). “[T]he fundamentals of our free exercise jurisprudence” provide that a law “may not discriminate against some or all religious beliefs,” nor may a law “regulate or outlaw conduct because it is religiously motivated.” *Id.* at 2021 (internal quotation marks and citation omitted). The Supreme Court has consistently invalidated laws that discriminate against otherwise eligible recipients of a publicly-available benefit or service solely because of their religious character. *See, e.g., id.* at 2021–22; *McDaniel v. Paty*, 435 U.S. 618, 627–29 (1978); *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953).

USPS offers the generally available benefit of customized postage to the public, but “target[s] the religious for special disabilities based on their religious status” by prohibiting any religious images or text in that customized postage. *See Trinity Lutheran*, 137 S. Ct. at 2019. By declining to print stamps like Ms. Fletcher’s that contain religious content, USPS outlaws conduct

purely because it is religiously motivated, denying otherwise eligible individuals the benefit of the customized postage program solely because of the religious character of the messages they wish to convey. USPS cannot articulate any “state interest of the highest order” to justify this inequitable treatment. *See id.* By denying individuals who wish to express sincerely held religious beliefs through custom stamps the ability to do so while imposing no similar burden on non-religious individuals, USPS burdens the free exercise of religion in violation of the First Amendment to the United States Constitution.

* * *

For the foregoing reasons, USPS’s Eligibility Criteria violate the United States constitutional guarantees of free speech and free exercise of religion, as well as RFRA. As a result, Ms. Fletcher has established a substantial likelihood of success on the merits of the claims set out in her Original Complaint.

B. Enforcement of USPS’s Prohibition on Religious Content Will Inflict Irreparable Injury on Ms. Fletcher If the Injunction is Not Issued.

Ms. Fletcher has “satisfied the irreparable-harm requirement because [she] has alleged violations of [her] First Amendment [rights].” *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012). As the Fifth Circuit has explained, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Id.* (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The Fifth Circuit has recognized that the same is true in the RFRA context because RFRA enforces First Amendment freedoms. *Id.*

Moreover, “courts may not second-guess a religious [person’s] sincere belief that certain activities are central to or required by [her] religion.” *Id.* at 296. Ms. Fletcher’s sincere belief is that her Christian faith compels her to create customized stamps with religious messages to declare the religious aspects of federal and Texas holidays and other celebratory occasions to her friends

and family. USPS's Eligibility Criteria have caused and continue to cause her irreparable harm by excluding her religious viewpoint on these holidays and celebratory occasions and interfering with her ability to freely exercise her sincerely held religious belief. *See id.* And as a practical matter, declining to issue a preliminary injunction permitting Ms. Fletcher to print her customized stamps prior to the respective holidays will moot her claims with respect to those holidays. For example, if this Court declines to grant Ms. Fletcher a preliminary injunction prior to Texas Independence Day on March 2, 2020, Ms. Fletcher will have lost the opportunity to exercise her First Amendment rights in connection with that holiday. This loss of First Amendment rights is an irreparable injury.

C. The Balance of Harms Favors a Preliminary Injunction.

A preliminary injunction is also warranted because the “threatened injury to [Ms. Fletcher] . . . outweighs the potential harm the injunction causes [to USPS.]” *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 332 (5th Cir. Unit B Nov. 1981). Ms. Fletcher has demonstrated that she risks suffering irreparable harm as a matter of law. Accordingly, USPS “would need to present powerful evidence of harm to its interests to prevent [Ms. Fletcher] from meeting this requirement.” *Opulent Life*, 697 F.3d at 297.

Even if Ms. Fletcher prevails at the end of a trial and a permanent injunction is entered, that injunction will not compensate Ms. Fletcher for the intervening interference with her First Amendment right or her rights under RFRA. And it is difficult to see what, if any, harm USPS would suffer if it suspends enforcement of the religious content ban in the Eligibility Criteria against Ms. Fletcher just until this litigation concludes. As the Fifth Circuit has explained, when there is a “substantial likelihood of success on the merits, . . . the harm to the [defendant] from delaying enforcement is slight.” *Fla. Businessmen for Free Enterprise v. City of Hollywood*, 648 F.2d 956, 959 (5th Cir. Unit B June 1981). This “slight” harm is outweighed by Ms. Fletcher’s

substantial and irreparable harm resulting from the violation of her constitutional and statutory rights.

D. The Public Interest in Protecting the Constitutional Rights to Free Speech and Free Exercise of Religion Requires Entry of a Preliminary Injunction.

Finally, the public interest is well-served by a preliminary injunction that prevents USPS from engaging in viewpoint discrimination or unlawfully burdening the exercise of religion. As the Fifth Circuit has observed, “injunctions protecting First Amendment freedoms are always in the public interest.” *Opulent Life*, 697 F.3d at 298 (alteration and citation omitted). In addition, “[t]he public interest does not support [USPS’s] expenditure of time, money, and effort in attempting to enforce a [regulation] that may well be held unconstitutional.” *Fla. Businessmen*, 648 F.2d at 959.

IV. Conclusion and Prayer for Relief

USPS has enacted and enforced a customized postage regulation that plainly violates the First Amendment to the United States Constitution and the federal RFRA. If USPS is allowed to continue to enforce this blatantly discriminatory regulation to deny Ms. Fletcher the right to speak freely about her religious views and freely exercise her religion, Ms. Fletcher will continue to be irreparably harmed. Accordingly, preliminary injunctive relief is proper. Ms. Fletcher respectfully requests that the Court enter an order:

- a. Preliminarily enjoining enforcement of the USPS Eligibility Criteria’s ban on religious content in customized postage until this suit is resolved;
- b. Preliminarily enjoining USPS from permitting its authorized third-party vendors to enforce the USPS Eligibility Criteria’s ban on religious content in customized postage until this suit is resolved; and

c. Ordering USPS to permit PhotoStamps to print Ms. Fletcher's customized holiday and celebratory stamp designs prior to the respective holidays and events, including:

- (1) Texas Independence Day, which occurs on March 2, 2020; and
- (2) Easter, which occurs on April 12, 2020.

Dated: December 19, 2019

Respectfully submitted,

/s/ Chad B. Walker

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all counsel of record via electronic filing on December 19, 2019.

/s/ Chad B. Walker

Chad B. Walker

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

SUSAN FLETCHER,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Case No. _____

Oral Argument Requested

DECLARATION OF SUSAN FLETCHER

I, Susan Fletcher, declare as follows:

1. I am a Texas resident, devout Christian, and designer of the customized religious stamps in question. I have personal knowledge of the matters stated in this declaration and would testify to them if called upon to do so.

2. I submit this declaration in support of "Plaintiff's Motion for Preliminary Injunction and Brief in Support."

3. I have a sincerely held religious belief that I am compelled by the Lord to use my God-given artistic abilities to advance a religious message in all available communications media, including custom stamps for various holiday and celebratory occasions.

4. I am a devout Christian whose celebration of the Christmas holiday is inseparable from my belief that the occasion commemorates the birth of Jesus Christ.

5. I sincerely believe that my faith compels me to share the religious aspects of the Christmas holiday with my friends and family, and this includes sharing that message via a customized postage stamp.

6. My sincere beliefs regarding other holidays and celebratory events, including, but not limited to, Texas Independence Day and Easter, are similar: that my faith compels me to incorporate a Christian message into the customized stamps I will share with my friends and loved ones.

7. In expressing my sincere beliefs, I created various customized holiday stamps. I did so for a religious reason—to share meaningful religious holiday messages with my friends and family.

8. I created the stamps as an exercise of my religion, motivated by my sincerely held religious beliefs.

9. As such, my desire to print customized postage is grounded in my sincerely held religious beliefs.

10. I have been harmed by the USPS's Eligibility Criteria because they exclude my religious viewpoint on Christmas and other holidays and celebratory occasions and interfere with my ability to freely exercise my religious convictions.

11. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Plano, Texas, this 18th day of December 2019.

By: _____

