

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

SUSAN FLETCHER,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Case No. _____

TRIAL BY JURY REQUESTED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Susan Fletcher (“Ms. Fletcher” or “Plaintiff”) brings this action against the United States Postal Service (“USPS”) to protect her constitutional rights to free speech and religious liberty granted under the First Amendment of the United States Constitution, and alleges as follows:

I. Preliminary Statement

1. This year, to share her love of Christmas, and other celebratory holidays with her friends and family in a way that reflects her sincerely held religious beliefs, Ms. Fletcher desires to create personalized postage stamps through PhotoStamps.com (“PhotoStamps”), an affiliate of Stamps.com. USPS operates a customized postage program that allows third parties, like Stamps.com and PhotoStamps, to print designs created by ordinary citizens.

2. However, Ms. Fletcher’s stamp designs, which express her sincerely held religious beliefs, will be rejected by Stamps.com and USPS because the USPS regulation governing

customized stamps categorically prohibits images or text containing *any* depiction of religious content, despite allowing secular depictions of the same topics.¹

3. The Supreme Court has repeatedly held that this kind of categorical exclusion of religious perspectives on permitted topics constitutes impermissible viewpoint discrimination in violation of the First Amendment's free speech guarantee. It also creates a substantial burden on Ms. Fletcher's religious practices in violation of the United States Constitution and the federal Religious Freedom Restoration Act.² As a result, this Court should (1) declare the USPS regulation's prohibition on religious content in customized stamps unconstitutional; (2) enjoin any further enforcement of the illegal aspects of that regulation; and (3) order USPS to permit PhotoStamps to print Ms. Fletcher's various holiday and celebratory stamps.

II. Parties

4. Ms. Fletcher is a resident of Collin County, Texas, a devout Christian, and a citizen of the United States.

5. Defendant USPS is a government corporation that provides postal services to all communities, including the provision and regulation of postage and custom postage provided by third party providers.

III. Jurisdiction and Venue

6. This Court has jurisdiction pursuant to 28 U.S.C §§ 1331 and 1339, as well as 39 U.S.C § 409.

7. Venue is proper in this Court because Plaintiff and Defendant can be found in, and transact business in this judicial district, and the events that give rise to the claims in this action occurred in this district.

¹ 39 C.F.R. § 501.21(b)(2).

² See 42 U.S.C.A. § 2000bb-1.

8. USPS does not enjoy sovereign immunity and may be subject to judicial review when, as here, it acts outside the scope of its statutory authority.³

IV. Facts

A. USPS

9. The United States Postal Service is governed by U.S. Code title 39. Congress directed USPS “to provide and sell postage stamps and other stamped paper, cards, and envelopes and to provide such other evidences of payment of postage and fees as may be necessary or desirable.”⁴

10. As a part of its specific power to proscribe postage, USPS authorized Postage Evidencing System Providers (“Third Party Providers”) to produce customized postage with digital, graphic, pictorial images or text.⁵ Customized content must strictly adhere to the eligibility criteria.⁶

11. To be approved, images or text must either be commercial, “intended for no purpose other than the sales of goods or services in commerce,” or social, “promoting or depicting people, animals, items, or events commonly associated with community relations or companionship and likely to generate invitations, announcements, notices, thank-you notes, RSVPs, or similar correspondence.”⁷

³ See 39 U.S.C. § 401(1) (authorizing the USPS to “sue and be sued”); *United States Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 744 (2004) (“The sue-and-be-sued clause waives immunity, and makes the Postal Service amenable to suit, as well as to the incidents of judicial process.”); *Aid Ass’n for Lutherans v. United States Postal Serv.*, 321 F.3d 1166, 1172–73 (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.”) (quotations and citations omitted).

⁴ 39 U.S.C. § 404(a)(4).

⁵ 39 C.F.R. § 501.21(a)(2).

⁶ See *id.*

⁷ 39 C.F.R. § 501.21(b).

12. Significantly, the eligibility criteria expressly prohibit images or text containing “content that is unsuitable for all-ages audiences,” including but not limited to:

- i. Any non-incident depiction of alcohol, tobacco, gambling, or firearms or other weapons;
- ii. Any depiction of controlled substances, including but not limited to marijuana;
- iii. Any depiction of political, *religious*, violent or sexual content; or
- iv. Any depiction of subject matter prohibited for display under U.S. law.⁸

13. USPS reserves the right to determine, independently of third party providers, whether an image or text meets the eligibility criteria. Any content not identified in the criteria is prohibited. According to USPS regulations, customized stamps may contain images that include “incidental depictions” of “alcohol, tobacco, gambling, and weapons”; however, the same exemption does not apply for incidental depictions of religious content.⁹ USPS bans *all* religious depictions.

B. PhotoStamps.com

14. PhotoStamps is an authorized USPS third party provider owned and operated by Stamps.com. PhotoStamps maintains a website that “allows customers to include their favorite digital photographs, designs, or images on valid US Postal Service postage.”¹⁰

15. Customers are invited to click the “[c]reate [n]ow” icon to begin their personalized stamp design. Once there, PhotoStamps informs users of its restrictions: “*[n]ote: [a]ll images must meet our content restrictions.”¹¹ Customers who wish to create custom postage must comply

⁸ *Id.* (emphasis added).

⁹ See 82 Fed. Reg. 60117.

¹⁰ PhotoStamps About Us: PhotoStamps, <https://photostamps.com/pages/about-us> (last visited Nov. 27, 2019).

¹¹ PhotoStamps Create Now: PhotoStamps, <https://photostamps.com/apps/customizeit> (last visited Nov. 27, 2019).

with both the Stamps.com and the USPS criteria requirements. Section C of the Stamps.com criteria prohibits any material that transmits or communicates religious material.¹²

16. The website also requires customers to agree that Stamps.com, in its sole discretion, may determine if designs meet the eligibility criteria and may also reject orders without explanations. If customers submit a design Stamps.com determines is in violation of their requirements, those customers may be charged a processing fee of \$10 per image.

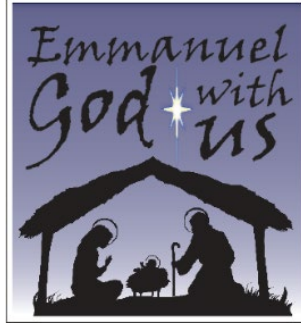
17. If customers publicly complain about the rejection of a stamp design, Stamps.com claims it will be harmed and may pursue legal action. The website states, “[if] you intentionally publicize such violation, you acknowledge that Stamps.com will suffer substantial damage to its reputation and goodwill and that you can be liable for causing such substantial damage.”¹³

C. Constitutional Violations by PhotoStamps and USPS

18. This holiday season, Ms. Fletcher wishes to use Stamps.com to create customized Christmas postage to share with her friends and family. Ms. Fletcher 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. Ms. Fletcher considers these stamps to be an essential aspect of her religious practices and Christmastime message for friends and family. Her postage design includes an image of the nativity scene under text stating, “Emmanuel God with us”, as seen below.

¹² PhotoStamps Terms and Conditions: Content Restrictions, <https://photostamps.com/pages/terms-and-conditions> (last visited Nov. 27, 2019).

¹³ PhotoStamps Terms and Conditions: Content Restrictions, <https://photostamps.com/pages/terms-and-conditions> (last visited Nov. 27, 2019).



19. 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 and celebratory events, as well as the various mission activities she engages in throughout the year, with religious messages that she believes are essential to celebrating the occasions with her loved ones:

Texas Independence Day – March, 2, 2020



Easter – April 12, 2020



Mission Trip Stamp



20. However, because the designs for her Christmas, holiday, and other celebratory stamps incorporate religious content that is arbitrarily prohibited by USPS regulations, Ms. Fletcher’s designs will be rejected. As a result, Ms. Fletcher will be unable to share her sincerely held religious beliefs with those she loves. Because of PhotoStamps’s admonition regarding potential liability for publicly challenging the customized postage criteria, Ms. Fletcher has not yet submitted her stamp designs to PhotoStamps and instead seeks declaratory relief.

21. While PhotoStamps’s stated policy prohibits any material that depicts “religious content,”¹⁴ PhotoStamps advertises and prints custom postage with images that contain so-called “religious content.”¹⁵ For example, it has printed and offered for sale to the public the stamps depicted below, which include images of a dreidel and kinara. These images, seen below, represent the religious holidays of Hanukkah and Kwanzaa and contain prohibited “religious content.”¹⁶



¹⁴ PhotoStamps Terms and Conditions: Content Restrictions, <https://photostamps.com/pages/terms-and-conditions> (last visited Nov. 27, 2019).

¹⁵ *Id.*

¹⁶ *Id.*

22. PhotoStamps has engaged in conduct that is inconsistent with its stated policies and the policies of USPS. By allowing PhotoStamps to promote and sell customized postage stamps that display certain religious images but not others, USPS has engaged in unlawful viewpoint discrimination and burdened Ms. Fletcher's religious practices.

V. FIRST CAUSE OF ACTION

USPS's Eligibility Criteria and Implementation Violate the Free Speech Clause of the First Amendment to the United States Constitution

23. PhotoStamps is a USPS third party provider authorized to sell custom postage stamps under 39 C.F.R. § 501.21. USPS delegated to PhotoStamps the performance of the traditional governmental function of printing and selling U.S. postage stamps. USPS has made PhotoStamps a state actor in this regard.

24. As a state actor, to which USPS has delegated statutory governmental functions, PhotoStamps's conduct must comply with the U.S. Constitution and USPS's regulatory statute. USPS is responsible for ensuring that PhotoStamps's conduct of the delegated governmental function is lawful. As Stamps.com and PhotoStamps are officially authorized by USPS, they should not be allowed to arbitrarily and unreasonably engage in viewpoint discrimination.

25. Even though PhotoStamps has engaged in a governmental function and is a state actor, it is not a necessary party to this litigation. Under the Federal Rules of Civil Procedure, a party is a necessary party if the court cannot grant relief without the party, the omitted party would be unable to protect their interests, or the omitted party would be subjected to substantial risk.¹⁷ In this case, the Court can accord complete relief to Ms. Fletcher without impeding PhotoStamps's interests or causing substantial risk. PhotoStamps is not named in the USPS regulations and would be required to comply with a new, constitutional USPS regulation.

¹⁷ Fed. R. Civ. P. 19(a)(1).

26. USPS's provision and regulation of customized postage is an exercise of Congress's constitutional postage power.¹⁸ Therefore, USPS regulations may not violate the First Amendment's Free Speech Clause by engaging in viewpoint discrimination.¹⁹ USPS has failed in its duty to ensure that PhotoStamps operates in a lawful manner, and Ms. Fletcher has been injured by USPS's inaction. Specifically, USPS has failed to protect Ms. Fletcher against and has condoned PhotoStamps's viewpoint discrimination in violation of Ms. Fletcher's free speech rights.

27. Rather than issuing regulations or otherwise requiring PhotoStamps to carry out its custom-stamp program in a manner consistent with the First Amendment, USPS chose to promulgate a regulation allowing third-party providers, such as PhotoStamps, to discriminate against speech. Regulation 39 C.F.R. § 501.7(c)(1) requires the provider—here, PhotoStamps—to ensure that what it prints is “[c]onsistent with the Postal Service’s intent to maintain neutrality on religious, social, political, legal, moral, or other public issues.”²⁰ In exercising its delegated authority to print customized U.S. postage in a manner consistent with this regulation, PhotoStamps could and did engage in viewpoint discrimination. PhotoStamps's discriminatory policy application discouraged Ms. Fletcher from submitting her designs for publication as customized U.S. postage, and she has therefore been injured.

28. USPS's actions unlawfully permit PhotoStamps to refuse to print Ms. Fletcher's holiday and celebratory stamps because they display religious content. As the Supreme Court has

¹⁸ See U.S. Const. Art. I § 8; 39 C.F.R. § 501.2(a).

¹⁹ See *United States Postal Service v. Council of Greenburgh Civic Ass'n*, 453 U.S. 114, 126 (1981) (“However broad the postal power conferred by Article 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.”).

²⁰ 39 C.F.R. § 501.7(c)(1).

repeatedly held, this kind of categorical exclusion of religious perspectives on permitted topics constitutes impermissible viewpoint discrimination. In addition, because PhotoStamps advertises and sells stamps depicting religious content in violation of 39 C.F.R. § 501.7(c), USPS has further allowed PhotoStamps to engage in unlawful viewpoint discrimination. By engaging in viewpoint discrimination, USPS violated the Free Speech Clause of the First Amendment to the United States Constitution.

VI. SECOND CAUSE OF ACTION

USPS's Restrictions on Religious Stamps Violate the Religious Freedom Restoration Act

29. The Religious Freedom Restoration Act of 1993 (RFRA) states that the “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.”²¹ Unless the government satisfies the compelling interest test by “demonstrat[ing] that [the] application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest,”²² the governmental act will be found to be a substantial burden and rejected.

30. RFRA imposes strict scrutiny over all actions of the government that “substantially burden a person's exercise of religion.”²³ The act broadly defines the “exercise of religion” to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”²⁴ In *Burwell*, the Supreme Court stated that the exercise of religion involves “not only belief and profession but the performance of (or abstention from) physical acts that are engaged in

²¹ 42 U.S.C.A. § 2000bb-1.

²² 42 U.S.C.A. § 2000bb-1(b).

²³ *Id.*

²⁴ *Id.*; *See* 42 U.S.C.A. § 2000bb-2(4).

for religious reason.”²⁵ Further, the Court has repeatedly articulated that courts have no business addressing whether sincerely held religious beliefs are reasonable.²⁶

31. In expressing her sincerely held beliefs, Ms. Fletcher created various customized holiday and celebratory stamps. She did so for a religious reason—to share meaningful religious messages with her friends and family. The act of creating the stamps was an exercise of Ms. Fletcher’s sincerely held religious beliefs. Ms. Fletcher’s religious exercise was substantially burdened by USPS because it (1) enacted eligibility criteria containing a blanket religious content prohibition; (2) prevented the approval and printing of her holiday-themed and celebratory stamps; and (3) allowed PhotoStamps, a third party provider, to interpret the USPS eligibility criteria and arbitrarily deny her customized stamp designs.

32. The purpose of RFRA is clear and written into the statute itself. The Act was created to “restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened.”²⁷ A compelling interest is defined as, “only those interests of the highest order.”²⁸ “[O]nly the gravest abuses, endangering paramount interest, give occasion for permissible limitation.”²⁹ Additionally, the government must show it took the least restrictive means in furthering its interest. Least restrictive means has its plain meaning,³⁰ and as the Supreme Court has continually noted, “[t]he least-restrictive-means standard is

²⁵ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (citing *Smith*, 494 U.S. at 877).

²⁶ *See id.* at 724.

²⁷ 42 U.S.C.A. § 2000bb (b)(1).

²⁸ *Yoder*, 406 U.S. at 215.

²⁹ *Sherbert*, 374 U.S. at 406.

³⁰ *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 332 (5th Cir.2009).

exceptionally demanding.”³¹ And most importantly, it is the government that bears the *heavy* burden of demonstrating its actions were the least restrictive means.³²

33. USPS failed to meet its burden when it enacted the eligibility criteria for custom stamp creation under 39 C.F.R. § 501.21. USPS does not have a compelling state interest in preventing Ms. Fletcher’s custom religious stamps from being printed by third party providers, and creating a blanket regulation that prohibits all religious content is not the least restrictive means to advance any alleged government interest. By enacting the eligibility criteria and preventing the printing of her holiday-themed and celebratory stamps, USPS placed a substantial burden on Ms. Fletcher’s exercise of religion.

34. Any person whose religious exercise is burdened by the government in violation of RFRA “may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.”³³ Ms. Fletcher has the right to bring this claim against USPS for placing a substantial burden on her exercise of religion by enacting overbroad eligibility criteria and preventing the printing of her custom holiday and celebratory stamps. Ms. Fletcher brings this action against USPS for declaratory and injunctive relief.

VII. THIRD CAUSE OF ACTION

USPS’s Eligibility Criteria Violates the Free Exercise Clause of the First Amendment to the United States Constitution

35. The USPS customized postage regulation, 39 C.F.R. § 501.21, prohibits customized stamp designs that contain religious images or text but does not restrict similar designs that do not contain religious content. The regulation thereby treats differently and burdens the religious practice of religious individuals wishing to express their sincerely held beliefs through

³¹ *Hobby Lobby*, 573 U.S. at 728.

³² *See id.* at 727. (emphasis added).

³³ 42 U.S.C.A. § 2000bb-1(c).

customized stamps, but imposes no such burden on similarly-situated non-religious individuals. Accordingly, 39 C.F.R. § 501.21 is not neutral or of general applicability, but discriminates against religious individuals.

36. 39 C.F.R. § 501.21 does not serve any compelling governmental interest, and it is not narrowly tailored to serve any legitimate governmental interest.

37. Accordingly, 39 C.F.R. § 501.21 violates the Free Exercise Clause of the First Amendment to the United States Constitution.

38. Ms. Fletcher has suffered injury as a result of the enforcement of this discriminatory regulation and will suffer irreparable harm if enforcement of this discriminatory regulation is not enjoined. As such, Ms. Fletcher is entitled to a declaration that 39 C.F.R. § 501.21 violates the free exercise protections of the United States Constitution and a permanent injunction enjoining enforcement of the illegal portions of that regulation.

VIII. Jury Trial Demand

39. Ms. Fletcher requests a jury trial on all issues that may be tried to a jury.

IX. Prayer For Relief

WHEREFORE, Plaintiff requests this Court enter an order:

- a. Declaring Defendant USPS has, both directly and through its agent PhotoStamps, unlawfully engaged in viewpoint discrimination in violation of the First Amendment of the United States Constitution;
- b. Declaring Defendant USPS has, both directly and through its agent PhotoStamps, unlawfully burdened Ms. Fletcher's exercise of her religion in violation of the First Amendment of the United States Constitution and RFRA;

- c. Permanently enjoining USPS from continuing to engage in the aforesaid unlawful viewpoint discrimination and unlawful conduct burdening Ms. Fletcher's exercise of her religion;
- d. Permanently enjoining USPS from delegating the governmental function of making and selling U.S. postage stamps to any person who engages in viewpoint discrimination or unlawfully burdens any individual's exercise of religion in performing that function;
- e. Ordering USPS not to permit PhotoStamps to make and sell U.S. custom postage stamps unless and until it agrees to print, pursuant to its ordinary and usual terms of service, Ms. Fletcher's various holiday and celebratory stamps and explicitly agrees not to engage in viewpoint discrimination or unlawfully burden the exercise of religion in the future;
- f. Requiring USPS to withdraw or refrain from enforcing the unconstitutional aspects of 39 C.F.R. § 501.21 insofar as it applies to the customized stamp program;
- g. Awarding the Plaintiff costs and reasonable attorneys' fees and expenses; and
- h. Granting the Plaintiff all such other relief as the Court deems just and proper.

Dated: December 19, 2019

Respectfully submitted,

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