



## STATE OF IOWA

TERRY BRANSTAD, GOVERNOR  
KIM REYNOLDS, LT. GOVERNOR

IOWA CIVIL RIGHTS COMMISSION  
BETH TOWNSEND  
EXECUTIVE DIRECTOR

8/19/2014

GORTZ HAUS GALLERY INC  
408 E 1ST STREET  
GRIMES, IA 50111

RE: DONALD/JARED STAFFORD/ELLARS  
CP# 08-13-64618

GORTZ HAUS GALLERY INC:

The Iowa Civil Rights Commission (ICRC) has completed its investigation of the above-captioned complaint.

The ICRC Administrative Law Judge has determined a probable cause finding effective as of the date on this letter. Please refer to the enclosed copy of the Administrative Law Judge's Order and Case Summary.

After a finding of probable cause, conciliation is the next step. The Conciliator for ICRC will contact you. Thank you for your cooperation. Thank you for your cooperation.

Sincerely,

Iowa Civil Rights Commission

Enclosures: ALJ Order  
Case Summary

CC: File  
FRANK HARTY, Respondent's Attorney

ICRC/S36 (41R)



**BEFORE THE IOWA CIVIL RIGHTS COMMISSION**

**ORDER TO PROCEED TO CONCILIATION  
UPON A FINDING OF PROBABLE CAUSE**

<b>CP#</b>	08-13-64618
<b>Complainant</b>	Donald Stafford Jared Ellars
<b>Respondent</b>	Gortz Haus Gallery, Inc.

**STATEMENT OF THE CASE**

Complainants Donald Stafford and Jared Ellars filed a complaint with the Iowa Civil Rights Commission (the Commission) alleging that Respondent Gortz Haus Gallery, Inc. discriminated against them in the area of public accommodation on the basis of their sexual orientation.

The complaint was reviewed by Commission staff and determined to fall within the investigative jurisdiction of the Commission. Accordingly, the complaint was assigned to a Commission investigator who conducted an investigation.

The investigation included interviews of Complainants, as well as Respondent's owners, Richard Odgaard and Betty Odgaard. Additionally, the investigation included a review of relevant documents provided by Respondents. At the conclusion of the investigation, the investigator prepared a written report detailing the investigative findings.

Pursuant to Iowa Code section 216.15(3) and 161 Iowa Administrative Code 3.13(1), this complaint now comes before the undersigned administrative law judge for consideration. Based on the evidence presented and for the reasons set forth below, **Probable Cause** exists to support the allegations of discrimination in a public accommodation based on sexual orientation.

**INVESTIGATIVE FINDINGS**

The investigative findings most relevant to Complainants' allegations are summarized below.

Complainants Donald Stafford and Jared Ellars, both male, were engaged at the time the events underlying this complaint took place; they have subsequently married. Complainants had scheduled their wedding to occur on October 5, 2013. The wedding venue that they had arranged was unexpectedly closed. At some point prior to August 3, 2013, Stafford corresponded with an employee of Respondent Gortz Haus Gallery, Inc. by e-mail to arrange a date and time to visit the facility as a potential venue for the wedding.

On August 3, 2013, Complainants visited Respondent's location and were given a tour by Richard Odgaard, one of Respondent's owners. Odgaard confirmed with Complainants that the October 5 date they were seeking was available for a wedding and reception. Odgaard showed Complainants around and answered questions regarding Complainants' proposed menu, number of guests, arrangement of tables, and serving staff.

At the end of the tour, Odgaard asked Complainants if they wanted to hold a "gay wedding" at Respondent's facility. When Complainants responded in the affirmative, Odgaard stated, "I can't take your money and I don't do anything for free."

During the Commission's investigation, Respondent admitted that it denied Complainants the ability to book its facility for a wedding because of Complainants' sexual orientation and asserted that the denial was due to the owners' sincerely-held religious beliefs. Respondent's owners believe that knowingly planning, facilitating, or hosting a same-sex wedding ceremony is morally wrong.

Respondent's physical location was formerly a church until the congregation relocated in February 2002. Respondent's business does not have a connection to any particular religion. Betty Odgaard identifies as Mennonite and has attended church in the past. Richard Odgaard identifies as a Christian.

## LEGAL CONCLUSIONS

### A. *Probable Cause Standard*

After a complaint of discrimination or unfair practice has been made to the Commission and an investigation has been completed, an administrative law judge is required to issue a determination of probable cause or no probable cause regarding the complaint.<sup>1</sup> Neither the Iowa Civil Rights Act nor the Commission's regulations set forth a standard for making a probable cause determination. The Iowa Supreme Court has held that the legislature did not intend to require the Commission to process every complaint which merely generated a minimal prima facie case. The Court noted its belief that the legislative intent of the Act was to permit the Commission to be selective in the cases it processed so as to better impact unfair or discriminatory practices with highly visible and meritorious cases.<sup>2</sup>

In other contexts, the Iowa Supreme Court has defined probable cause as equivalent to reasonable grounds and held that it does not require absolute certainty.<sup>3</sup> A determination of probable cause can be made after a preliminary investigation and is based on facts and circumstances that would be sufficient to induce a reasonable belief in the truth of the assertion.<sup>4</sup>

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<sup>1</sup> Iowa Code § 216.15(3) (2013).

<sup>2</sup> *Estabrook v. Iowa Civil Rights Commission*, 283 N.W.2d 306, 310 (Iowa 1979).

<sup>3</sup> *See Children v. Burton*, 331 N.W.2d 673, 679 (Iowa 1983).

<sup>4</sup> *In re Detention of Mead*, 790 N.W.2d 104, 111 (Iowa 2010) (Court interpreted undefined probable cause provision of statute authorizing civil confinement of sexually violent predators).

B. *Public Accommodation Discrimination Claim*

The Iowa Civil Rights Act (ICRA) provides:

It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:

a. To refuse or deny to any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.<sup>5</sup>

A public accommodation includes each and every place or establishment that offers services, facilities, or goods for a fee or charge to nonmembers.<sup>6</sup>

The ICRA was amended in 2007 to add sexual orientation as a protected class. At that time, Iowa Code section 595.2(1) defined marriage as a union between only a male and a female. The following language was added to the ICRA, "This chapter shall not be construed to allow marriage between persons of the same sex, in accordance with chapter 595."<sup>7</sup> In 2009, the Iowa Supreme Court declared that Iowa's marriage statute, contained in Iowa Code Chapter 595, violated the state constitution by prohibiting same-sex couples from marrying. The Court ordered the language limiting marriage to a union between a man and a woman stricken from the statute and directed that "the remaining statutory language must be interpreted and applied in a manner allowing gay and lesbian people full access to the institution of civil marriage."<sup>8</sup> The ICRA language regarding same-sex marriage does not limit the protections available to gay persons making allegations of discrimination in public accommodation on the basis of sexual orientation, even if the service denied is connected to a same-sex marriage.

The Iowa Supreme Court has held that the Iowa Civil Rights Act establishes a general proscription against discrimination, therefore the Court has looked to corresponding federal statutes as a guide in applying the state Act.<sup>9</sup> To support their sexual orientation discrimination claim, Complainants must set forth direct evidence of discrimination or an inference of discrimination.<sup>10</sup> Direct evidence demonstrates a specific link between

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<sup>5</sup> Iowa Code § 216.7(1) (2013).

<sup>6</sup> Iowa Code § 216.2(13)(a) (2013).

<sup>7</sup> Iowa Code § 216.18(2) (2013).

<sup>8</sup> *Varnum v. Brien*, 763 N.W.2d 862, 906-07 (Iowa 2009).

<sup>9</sup> *Casey's General Stores v. Blackford*, 661 N.W.2d 515, 519 (Iowa 2003); *see also DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 7 (Iowa 2009); *Vivian v. Madison*, 601 N.W. 2d 872, 873 (Iowa 1999).

<sup>10</sup> *Putman v. Unity Health Sys.*, 348 F.3d 732, 735 (8th Cir. 2003).

the challenged action and the alleged animus.<sup>11</sup> Respondent's owners have acknowledged as part of the investigation that their denial of service to Complainants was because Complainants sought to have a same-sex wedding at Respondent's facility; this necessarily implicates Complainants' sexual orientation. Probable cause exists to support the conclusion that Respondent discriminated against Complainants in the area of public accommodation because of their sexual orientation.

There is an exception to the ICRA's public accommodation discrimination prohibition for bona fide religious institutions.<sup>12</sup> While Respondent's owners have asserted that allowing a same-sex wedding to take place at Respondent's facility would violate their own religious convictions, there is no evidence that Respondent is a bona fide religious institution. Consequently, Respondent is not exempted from the prohibition on discrimination in Iowa Code section 216.7.

### ORDER

Probable cause exists to support the allegations of discrimination in a public accommodation based upon Complainants' sexual orientation. It is ordered that the claim proceed to conciliation in accordance with the Iowa Civil Rights Act.



Laura E. Lockard  
Administrative Law Judge

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<sup>11</sup> *Id.* (quoting *Thomas v. First Nat'l Bank of Wynne*, 111 F.3d 64, 66 (8th Cir. 1997)).

<sup>12</sup> Iowa Code § 216.7(2)(a) (2103).

## INVESTIGATIVE ANALYSIS

CP #08-13-64618

Area: Public Accommodation

Basis: Sexual Orientation

Complainants: Donald Stafford and Jared Ellars

Respondent: Gortz Haus Gallery, Inc.

### Recommendation

After conducting a thorough investigation and based on all the information collected, I recommend the administrative law judge determine **probable cause** to believe Respondent committed a discriminatory practice, in violation of Iowa Code §216.7.

### Complainant's Allegations

Complainants Donald Stafford and Jared Ellars allege Respondent Gortz Haus Gallery, Inc. ("Respondent" or "Gortz Haus") denied them service based on their sexual orientation (homosexual). Specifically, Complainants allege they were not allowed to hold their wedding and reception at the Gortz Haus because they sought to enter into a same-sex marriage.

During Complainants' search for a venue to hold their wedding ceremony and reception, they began communicating with Respondent. Respondent is known for hosting many weddings and receptions at its establishment and even has a pricing structure for such events. Complainants asked one of Respondent's owners, Richard Odgaard, to give them a tour of the facility and he seemed more than willing to do so.

On August 3, 2013, Complainants arrived at the Gortz Haus at approximately 2:30 p.m. They spoke with Mr. Odgaard, who showed them the facility and answered their questions about the arrangements for their marriage ceremony and reception. They went over details regarding their intended menu, number of guests, arrangement of tables, and serving staff. At the completion of the tour, Mr. Odgaard began taking notes regarding questions he had (e.g., regarding the menu) that he needed to discuss with his wife. At no time was the date of the ceremony mentioned, nor did Mr. Odgaard check any calendar to verify that any date was available. After Mr. Odgaard wrote down the questions, he asked, "Is this for a gay wedding?" Mr. Stafford responded, "Yes, it is." Odgaard said, "I cannot take your money and I don't do anything for free." Mr. Stafford asked for clarification by asking, "You can't take our money?" Mr. Odgaard stated, "I cannot take your money." Complainants promptly ended the conversation and left the facility.

### Complainants' Interviews

#### *Jared Ellars*

I interviewed Complainant Jared Ellars on May 19, 2014. He reiterated much of the information previously provided to the Commission. This section will only discuss information that is of first consideration, better explains Complainant's allegations, or is in response to Respondent's

claims. The interview was recorded and any other information provided but not referenced here will be contained within that recording.

Ellars and his husband (then fiancé), Lee Stafford, initially contacted Respondent to inquire whether the venue was available for an October 5, 2013 wedding. Ellars and Stafford had initially planned to wed at Hotel Pattee, but the hotel closed before their wedding date. Ellars and Stafford arranged a time to visit Respondent's location and discuss potential wedding arrangements.

At the Gortz Haus, Ellars and Stafford were taken on a quick tour by Richard Odgaard. Ellars does not believe Betty Odgaard was present that day. After the tour, Mr. Odgaard asked the couple if they were seeking to hold a same-sex wedding, and they confirmed that they were. After that, Mr. Odgaard told them, "I can't take your money and I don't do anything for free." Mr. Odgaard did not explicitly tell them why he could not take their money, but Ellars interpreted his statement as objecting to the same-sex wedding. Ellars was shocked, upset, and angry.

#### ***Donald Stafford***

I interviewed Donald "Lee" Stafford Junior on May 20, 2014. He reiterated much of the information previously provided to the Commission. This section will only discuss information that is of first consideration, better explains Complainant's allegations, or is in response to Respondent's claims. The interview was recorded and any other information provided but not referenced here will be contained within that recording.

Stafford and his husband (then fiancé), Jared Ellars, were referred to Respondent as a potential wedding venue by a friend. Stafford initially corresponded with an employee via email and arranged a date and time to visit the facility. Stafford and Ellars were scrambling to find a replacement wedding and reception venue, after their original venue unexpectedly closed.

Stafford and Ellars visited the Gortz Haus on a Saturday and met with Richard Odgaard. They confirmed that the October 5, 2013, date was available for a wedding and reception. Stafford and Ellars had set their October 5 wedding date because it was close to October 10, their anniversary. Stafford and Ellars discussed their planned ceremony and reception with Mr. Odgaard, who indicated Respondent could accommodate each of the couple's requests. Specifically, Stafford discussed the food requirements with Mr. Odgaard: the wedding invitations included a menu and had already been mailed to guests, so it was important to the couple that their new venue could prepare the menu as listed on the invitation.

Stafford remembers Mr. Odgaard asking the couple if they were seeking to hold a gay wedding at the Gortz Haus. Stafford indicated they were, and Mr. Odgaard told them, "I can't take your money and I don't do anything for free." The couple left the building, and it "hit" them in the parking lot that they were being by the Gortz Haus because of their sexual orientation. Stafford felt like an ant, "so small," and he was frustrated and angry.

Subsequently, Stafford and Ellars visited the Flynn Barn at Living History Farms. The first question Stafford asked the staff member there was, "Do you have a problem with a gay

wedding?" The staff member, Carla, said she did not. The couple ultimately booked the barn for their wedding.

#### Respondents' Reasons

Respondent admits it denied Complainants Donald Stafford and Jared Ellars the ability to rent the Gortz Haus for their wedding and reception. Respondent states that it denied Complainants use of its facility for a wedding because of its owners' sincerely-held religious beliefs.

Respondent is an unincorporated entity owned and operated by Richard and Betty Ann Odgaard. Respondent displays and sells art, including Mrs. Odgaard's art. Additionally, Respondent personally plans, facilitates, and hosts events such as wedding ceremonies and receptions, and it runs a small bistro, flower shop, and frame shop.

One of the Complainants sent an email arranging to come in on August 3 with his fiancée to tour the facility. When Complainants arrived that day, they met with Richard Odgaard. The bistro was busy when they arrived, and so while Mr. Odgaard was concerned that they may have wanted him to host a same-sex wedding at the facility, he did not immediately have a private location to confirm that. Once Mr. Odgaard was able to find a moment to do so privately, he asked whether they wanted him to host a same-sex wedding ceremony at the facility. They said yes. Mr. Odgaard said he could not do that, so Complainants left.

Mr. Odgaard's decision was based upon his and his wife's sincerely-held religious conviction that knowingly planning, facilitating, or hosting a wedding ceremony violates their beliefs and would be morally wrong.

#### Respondent's Interview

##### ***Betty Odgaard***

I interviewed Mrs. Betty Odgaard on June 11, 2014. Mrs. Odgaard is the owner-operator of Respondent Gortz Haus Gallery. In this position, she oversees a bistro, a flower shop, a frame shop, facility rental, and the sale of artwork and gifts.

Respondent functions as a "one-stop shop" for weddings, as it includes a wedding venue, a reception venue, flowers, and on-site catering. Neither Mrs. Odgaard nor her husband, Richard, officiate weddings at their venue. However, they have previously given out the contact information for a Lutheran pastor they know personally when a couple has asked for an officiant recommendation. Mrs. Odgaard is involved with all weddings held at the Gortz Haus. She helps set up, decorate, prepare the food, and attends to all other details to ensure everything is "exactly right."

Respondent's physical location was formerly a church, St. Peter's Lutheran Church, until February 2002, when the congregation relocated. Respondent is not an incorporated business, and it does not have any connection to any particular religion. However, Mrs. Odgaard said the business is connected to her religion, as she runs it. Mrs. Odgaard is Mennonite, and she has attended church in the past. She has a "deep faith" that affects everything she does and how she

interacts with other people. She strives to be Christ-like, to glorify God in her words, and to behave with honesty, integrity, and respect toward all who enter her business.

Mrs. Odgaard was not present on August 3, when the Complainants visited Respondent's location. Mrs. Odgaard and her husband have a mutual agreement not to host same-sex weddings at the Gortz Haus, because same-sex marriage violates their religious beliefs. Mrs. Odgaard explained that her faith informs multiple aspects of her business, and the refusal to allow same-sex wedding ceremonies is one of those aspects. Additionally, the Gortz Haus does not display artwork including nude figures, dark themes or subject matter, or symbols that contradict the Odgaards' faith.

The negative attention that this matter has brought to Respondent and its owners has been difficult for Mrs. Odgaard. She now suffers from depression and has become physically ill from the stress brought on by this issue and the negative reactions she and her husband have received. Respondent's walk-in business has dropped dramatically since this matter began, which is challenging for the employees.

### ***Richard Odgaard***

I interviewed Mr. Richard Odgaard on June 11, 2014. Mr. Odgaard works in technical services with animal health and nutrition technology transfer, and he also owns Respondent jointly with his wife, Betty. Mr. Odgaard acts as the physical facilitator for weddings held at the Gortz Haus. In this role, he works with the wedding party and the officiant to provide the sound system, arrange the furniture, and perform other services.

Mr. Odgaard describes himself as a Christian. Most of his life he was Lutheran. He is not a member of any church currently. Mr. Odgaard married a Mennonite, but he is not Mennonite. However, Mr. Odgaard has attended a local Mennonite church with his wife off and on for the past 20 years. Mr. Odgaard denies that Respondent has a connection to any religion.

Mr. Odgaard recalls the date on which the Complainants visited the Gortz Haus. Their visit was arranged very rapidly; they emailed on August 2 and arranged a visit for the following day. The couple arrived at lunchtime, and the bistro was busy. Complainants did not identify themselves as the couple who sought to hold a wedding. Mr. Odgaard gave them a brief tour and asked them questions about their menu and other superficial details. During the visit, Mr. Odgaard noticed that only one of the men was talking. When he was able to speak with them more privately, he confirmed that they were seeking to marry one another at the Gortz Haus. He then told them, "We cannot accept your money, and we don't do anything for free." He said this because he could not allow them to rent the facility, and he did not want them to think they could use it free of charge.

Mr. Odgaard turned away Complainants because he and his wife hold a religious belief that marriage exists solely between one man and one woman, and they choose not to participate in the religious ceremony for homosexual couples. This belief began for him his first day in Sunday school at a Lutheran church. Mr. Odgaard indicated Complainants are not the first homosexual couple who were denied the ability to rent the Gortz Haus for their wedding.

Respondent's walk-in lunch traffic has decreased since Mr. Odgaard refused to accept Complainants' money and rent the Gortz Haus to them. However, other services the Gortz Haus offers have somewhat compensated for this decrease. Mr. and Mrs. Odgaard are now more apprehensive and experience psychological trauma. The negative attention this matter has brought to Mr. and Mrs. Odgaard has taken the joy out of providing services to the public. He stated, "Running a business is difficult enough without having the burden of discrimination accusations and hate thrown at you just because of your faith."

#### Respondent's Relevant Documents

Respondent provided copious documentation in this matter. This documentation is summarized in brief below:

#### ***Correspondence, Publications, and Pleadings***

Respondent submitted copies of correspondence and publications related to the 2007 amendments to the Iowa Civil Rights Act (adding "sexual orientation" and "gender identity" as protected classes) and the Iowa Supreme Court's 2009 decision in *Varnum v. Brien*, holding that Iowa's former marriage statute (defining marriage as solely between one man and one woman) violates the equal protection clause of the Iowa Constitution. The documentation indicates Mr. and Mrs. Odgaard previously sought guidance on how these events would affect their business. Respondent also submitted copies of various pleadings Mr. and Mrs. Odgaard filed in a lawsuit they initiated against the Commission.

#### ***Emails***

Respondent submitted copies of emails it has received since the public became aware that the facility refused to host a same-sex wedding. One of the emails inquires whether the Gortz Haus would be available for an inter-religious wedding. Several emails document prospective renters cancelling their contracts or choosing not to rent the facility because of the Odgaards' refusal to allow the venue to host same-sex weddings. Respondent also provided copies of multiple emails criticizing the venue and the Odgaards personally. These emails often include sarcasm, profanity, and condemnation.

#### ***Facebook***

Respondent submitted over 150 pages of print-outs documenting activity on its Facebook page. Some of the pages reflect the business' own postings; these include photographs of events, announcements about sales, and other business-related information. These print-outs also document private messages the business received from both supporters and opponents of the Odgaards' stance on gay marriage.

However, the bulk of these print-outs is devoted to documenting comments that Facebook users have posted to the Gortz Haus Facebook wall. These comments include Bible quotations, popular internet memes, links to news articles, statements supporting the Odgaards, statements admonishing the Odgaards, excerpts from the Iowa Civil Rights Act, graphics, and a range of opinions on same-sex marriage, religion, freedom of speech, civil rights, and other peripherally related issues. While some of these comments attempt to foster a discourse regarding same-sex marriage and religious freedom, the majority of the comments range from benign to

inflammatory and hostile provocations aimed at no one in particular. None of these comments appear to have been written by Mr. Odgaard, Mrs. Odgaard, Mr. Stafford, or Mr. Ellars.

### Analysis

Probable cause exists if there are reasonable grounds for believing discrimination has occurred. *Wilson v. Hayes*, 464 N.W.2d 250, 261-62 (Iowa 1990) (citing 52 Am.Jur.2d *Malicious Prosecution* §51 at 219). A determination of probable cause is made after an investigation and is based on “facts and circumstances that would be sufficient to induce a reasonable belief in the truth of the [claim].” *In re Det. of Mead*, 790 N.W.2d 104, 111 (Iowa 2010), rehearing denied (Dec. 10, 2010). *See, also, Shaul v. Brown*, 28 Iowa 37, 47, 4 Am. Rep. 151 (Iowa 1869) (stating, “Without entering at length into the discussion, we may remark that the question of probable cause in every case involves first the ascertainment of the facts from the evidence, and then the application of the law to the facts ascertained.”).

Neither the Iowa Code nor the Iowa Administrative Code define “probable cause” or provide guidance on making a probable cause determination. *Klein v. Dubuque Human Rights Commission*, 829 N.W.2d 190 (Iowa Ct. App. 2013). Black’s Law Dictionary defines the term variously as “having more evidence than against[, and a] reasonable ground for belief in the existence of facts warranting the proceedings complained of.” *Id.* (citing Black’s Law Dictionary 1081 (5th ed.)). The test for probable cause is whether there are reasonable grounds to believe the assertion. *Children v. Burton*, 331 N.W.2d 673, 679 (Iowa 1983). In contrast to the preponderance of evidence standard applicable at the public hearing, the test for probable cause is whether there is sufficient evidence to support a reasonable belief that the Iowa Civil Rights Act has been violated. A finding of probable cause means it has been determined, based on our investigation, that there is sufficient evidence to support such a belief.

### I. Public Accommodation Discrimination

The Iowa Civil Rights Act (ICRA) prohibits discriminatory practices in the provision of public accommodations based on defined classes of people. In 2007, the ICRA was amended to include “sexual orientation” as one of those classes. In its current form, Iowa Code § 216.7(1) states:

It shall be an unfair or discriminatory practice for any ... proprietor ... of any public accommodation or any agent or employee thereof: (a) to refuse or deny to any person because of ... sexual orientation ... the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of ... sexual orientation ... in the furnishing of such accommodations, advantages, facilities, services, or privileges.

In 2007, when the ICRA was amended to include sexual orientation as a protected class, the law did not permit same-sex couples to marry in Iowa. Iowa Code § 595.2(1) provided that, “Only a marriage between a male and a female is valid.” The ICRA accordingly clarified that, “This chapter shall not be construed to allow marriage between persons of the same sex, in accordance with chapter 595.” Iowa Code § 216.18(2). On its face, subsection 216.18(2) only means that the 2007 amendments to the ICRA did not alter subsection 595.2(1), which at that time, prohibited same-sex marriage. Subsequently, in 2009, the Iowa Supreme Court held that subsection 595.2(1) violates the Equal Protection Clause of the Iowa Constitution. *Varnum v. Brien*, 763

N.W.2d 862, 785 (Iowa) (2009). (“A statute inconsistent with the Iowa Constitution must be declared void, even though it may be supported by strong and deep-seated traditional beliefs and popular opinion.”). Subsection 216.18(2) does not state nor does it mean—especially given the current state of the law—that discriminatory acts regarding the facilitation of same-sex marriage ceremonies are permitted. The Iowa Civil Rights Act must be construed broadly to effectuate its purpose. Iowa Code § 216.18(1).

A prima facie case of discrimination in public accommodation requires a showing the Complainant (1) is a member of a protected class; (2) he or she sought to enjoy the accommodations of the public accommodation; and (3) he or she did not enjoy the accommodations because of discrimination in that (a) the individual was refused or denied the accommodations while similarly situated persons outside the protected class were not deprived of those services, or (b) the individual was allowed to use them but was otherwise subjected to markedly hostile conduct. *Kirt v. Fashion Bug* #3253, 479 F. Supp. 2d 938, 959 (N.D. Iowa 2007).

In this case, Complainants Donald Stafford and Jared Ellars are homosexual, and therefore they are a member of a protected class based on their sexual orientation. Complainants sought to enjoy the accommodations of the Gortz Haus when they inquired about renting the facility for their wedding and wedding reception. However, Richard Odgaard, one of the owners, refused to rent the venue to them, and therefore they did not enjoy the accommodations. The Gortz Haus routinely hosts heterosexual couples’ weddings and receptions, but it refused to host the wedding and reception for Complainants. Complainants have established a prima facie case of public accommodation discrimination.

## II. Respondent’s Reason

In this case, Respondent admits that it denied Complainants services because of their sexual orientation. The Gortz Haus operates in part to host weddings and wedding receptions, and while it hosts weddings for heterosexual couples, it refuses to host weddings for homosexual couples under equivalent circumstances. Respondent alleges this refusal is justified, based on the sincerely-held religious beliefs of its owners, Richard and Betty Odgaard. Respondent points out that it provides all of its offered services other than hosting weddings to patrons regardless of sexual orientation, and it alleges it has employed homosexual employees in the past.

Any attempt to distinguish between Complainants’ status of being homosexual and their conduct in engaging in a same-sex wedding ceremony is not persuasive. On numerous occasions, the United States Supreme Court has rejected similar attempts to distinguish conduct from status. *Lawrence v. Texas*, 539 U.S. 558, 575 (2003) (“When homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination.”) and 583 (O’Connor, J., concurring in judgment) (“While it is true that the law applies only to conduct, the conduct targeted by this law is conduct that is closely correlated with being homosexual. Under such circumstances, [the] law is targeted at more than conduct. It is instead directed toward gay persons as a class.”). See also *Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Martinez*, 561 U.S. \_\_\_, \_\_\_, 130 S.Ct. 2971, 2980 (2010) (refusing to distinguish between status and conduct where a Christian organization of students requiring its members to refrain from “unrepentant

homosexual conduct” argued it did not exclude individuals because of sexual orientation); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993) (“A tax on wearing yarmulkes is a tax on Jews.”).

Respondent’s assurance that it does not discriminate based on sexual orientation when hiring employees and providing services other than hosting a wedding is unavailing. When deciding whether a wedding photographer violated the New Mexico Human Rights Act by refusing to photograph a same-sex couple’s wedding, the New Mexico Supreme Court analogized:

If a restaurant offers a full menu to male customers, it may not refuse to serve entrees to women, even if it will serve them appetizers. The New Mexico Human Rights Act does not permit businesses to offer a ‘limited menu’ of goods or services to customers on the basis of a status that fits within one of the protected categories. Therefore, Elane Photography’s willingness to offer some services to [the plaintiff] does not cure its refusal to provide other services that if offered to the general public.

*Elane Photography, LLC v. Willock*, 309 P.3d 53 (N.M. 2012), *petition for cert. filed* (U.S. Nov. 8, 2013) (No. 13-585).

Based on this information, and in light of available case law, Respondent has articulated a reason for denying Complainants service but that reason is discriminatory. However, the Iowa Civil Rights Act contains an exception that should be analyzed in this case.

### III. Exception for Bona Fide Religious Institutions

The section of the ICRA prohibiting discrimination in public accommodation includes a specific, narrow exception regarding religious institutions:

This section shall not apply to: Any bona fide religious institution with respect to any qualifications the institution may impose based on religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose.

Iowa Code § 216.7(2)(a). The determination of whether a respondent qualifies as a “bona fide religious institution” is to be done on a case-by-case basis by weighing all significant religious and secular characteristics to determine whether the respondent’s purpose and character are primarily religious. *Compare Saeemodarae v. Mercy Health Svcs.*, 456 F. Supp. 2d 1021, 1025 (N.D. Iowa 2006) with *E.E.O.C. v. Townley Engineering & Mfg. Co.*, 859 F.2d 610 (9th Cir. 1988).

In *Saeemodarae*, an Eighth Circuit case applying the exception, the plaintiff, a practicing Wiccan, brought claims of religious discrimination and retaliation against a medical center claiming to have a Roman Catholic identity. The defendant medical center moved to dismiss on the ground that it was a bona fide religious institution under Title VII and the Iowa Civil Rights

Act. In determining the defendant qualified for a religious exemption under Title VII,<sup>1</sup> it recognized that it was founded by the Sisters of Mercy; it was supported and controlled by a Catholic institution; and its purpose was making the interrelated religious/service mission of the Catholic Church. The atmosphere of the medical center was "permeated with religious overtones," as demonstrated by religious decoration and iconography throughout the Hospital; handbooks and orientation materials for employees that inform them of medical center's religious mission and religious foundation; an initiative which reaffirmed the religious values of the institution; the regular practice of religious ceremonies, such as prayers and devotions broadcast on the hospital speaker system; and the well-developed pastoral care program with a staff of on-site chaplains.

The Ninth Circuit Court of Appeals also addressed the exception under Title VII in *E.E.O.C. v. Townley Engineering & Mfg. Co.*, 859 F.2d 610 (9th Cir. 1988). In that case, Townley Manufacturing Company (Townley) was a closely held corporation that manufactured mining equipment. It was founded by J.O. and Helen Townley, who still owned 94 percent of the stock at the time the events in question occurred. When they founded the company, the Townleys made a covenant with God that their business "would be a Christian, faith-operated business." The Townleys were "born again believers in the Lord Jesus Christ" who were "unable to separate God from any portion of their daily lives, including their activities at the Townley company." Townley reflected its founders' covenant with God in several ways. The company enclosed a Gospel tract in every piece of outgoing mail; it printed Biblical verses on all company invoices, purchase orders, and other commercial documents; it gave financial support to various churches and missionaries; and it held a devotional service once a week during work hours. In finding the business did not qualify for the "religious exemption" under Title VII, the court noted:

On the secular side, the company is for profit. It produces mining equipment, an admittedly secular product. It is not affiliated with or supported by a church. Its articles of incorporation do not mention any religious purpose. Against these elements are the facts that Townley encloses Gospel tracts in its outgoing mail, prints Bible verses on its commercial documents (such as invoices and purchase orders), financially supports churches, missionaries, a prison ministry, and Christian radio broadcasts, and, of course, conducts a weekly devotional service. Underlying these facts, of course, is 'the discipleship Jake and Helen Townley have for the Lord Jesus Christ.' When viewed together, we have no difficulty in holding that these characteristics indicate that Townley is primarily secular. We do not question the sincerity of the religious beliefs of the owners of Townley. Nor do we question that they regard the conduct of their company as subject to a compact with God. We merely hold that the beliefs of the owners and operators of a corporation are simply not enough in themselves to make the corporation 'religious' within the meaning of [Title VII].

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<sup>1</sup> The court declined to exercise supplemental jurisdiction over remaining ICRA claims of religious discrimination and thus did not decide whether the defendant met the religious exemption under the ICRA.

Based on the information collected during the investigation, it appears Respondent is more akin to *Townley Engineering & Manufacturing* than to *Saeemodarae*. Respondent states that it was founded by Richard and Betty Odgaard. Mrs. Odgaard is Mennonite, while Mr. Odgaard identifies himself as a "Christian" of no particular denomination. The facility in which Respondent is located is a former church building, and the Odgaards chose to retain a number of architectural elements from the church, including religious-themed stained-glass windows and railings with cross symbols. The Odgaards also added additional religious imagery to the building's decor. However, the personal beliefs of the Odgaards and the presence of religious symbols alone cannot establish a "bona fide religious institution."


The Gortz Haus includes an art gallery that hosts weddings and receptions, a lunch bistro, a flower shop, a gift shop, and a framing shop. Each of these ventures appears to be for-profit. Respondent is not incorporated as a religious non-profit corporation, and the Odgaards deny the business itself has any religious purpose or affiliation. Though the Odgaards occasionally recommend pastors to couples using its facility for a wedding venue, the investigation did not uncover any information suggesting Respondent imposes any religious requirements regarding the couple's choice of officiant. Respondent does not indicate that it is financially supported by or financially supports a particular church or religious denomination, other than its relationship as a buyer of a building from the St. Peter Lutheran Church.

The information gathered during the investigation does not support a finding that the Gortz Haus Gallery is a "bona fide religious organization," exempting it from the provisions of Iowa Code § 216.7. For purposes of this investigation, the sincerity of Richard and Betty Odgaard's religious beliefs is assumed; however, the Iowa Civil Rights Act does not include an exception from its prohibition against discrimination for persons acting based on sincerely-held religious beliefs. The investigation did not uncover evidence to support the Gortz Haus as an exempt "bona fide religious institution" within the meaning of Iowa Code § 216.7.

### Conclusion

Based on information gathered from Complainants' and Respondents' interviews, together with the documentation submitted by both parties, Complainants have presented a valid claim of sexual orientation discrimination in a public accommodation. Respondent has failed to articulate a legitimate, non-discriminatory reason for refusing to allow Complainants to host a same-sex wedding in the Gortz Haus Gallery.

Therefore, I recommend the administrative law judge find there is **probable cause** to believe Respondent discriminated against Complainants when it denied them service, in violation of Iowa Code §216.7.



Elizabeth A. Johnson  
Civil Rights Specialist  
Iowa Civil Rights Commission

July 3, 2014  
Date