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2 MS. WAGGONER: The Pulitzer --

3 JUSTICE SOTOMAYOR: -- is the person
4 viewing it going to think is talking? You --

5 MS. WAGGONER: The Pulitzer Prize
6 doesn't go to the customer or to the subject; it
7 goes to the photographer, and there's a reason
8 for that. That reason is because you are
9 requiring that artist to speak a message. It is
10 their work. It might also be the customer's and
11 the customer can use that.

12 But the First Amendment is broad
13 enough to cover the lesbian website designer and
14 the Catholic calligrapher. The line is that no
15 one on any side of any debate has to be
16 compelled to express a message that violates
17 their core convictions because, as this Court
18 found, it's demeaning to them.

19 JUSTICE SOTOMAYOR: But the line you
20 want us --

21 JUSTICE JACKSON: So can I --

22 JUSTICE SOTOMAYOR: I'm sorry.

23 JUSTICE JACKSON: -- can I ask you a
24 hypothetical that just sort of helps me to flesh
25 that out? Because I also heard you suggest

1 earlier that there's something different about
2 race, maybe the person wouldn't sell to someone
3 of a different race.

4 So -- so suppose -- you say that
5 photography is expressive. Can you give me your
6 thoughts on a photography business in a shopping
7 mall during the holiday season that offers a
8 product called Scenes with Santa, and this
9 business wants to express its own view of
10 nostalgia about Christmases past by reproducing
11 classic 1940s and 1950s Santa scenes. They do
12 it in sepia tone and they are customizing each
13 one. This is not off a rack. They're really
14 bringing the people in and having them interact
15 with Santa, children, because they're trying to
16 capture the feelings of a certain era.

17 But precisely because they're trying
18 to capture -- capture the feelings of a certain
19 era, their policy is that only white children
20 can be photographed with Santa in this way
21 because that's how they view the scenes with
22 Santa that they're trying to depict.

23 Now the business will gladly refer
24 families of color to the Santa at the other end
25 of the mall who will take anybody, but -- and --

1 and they will photograph families of color in
2 other scenes -- other scenes, so they're not
3 discriminating against the families. What
4 they're saying is Scenes with Santa is preserved
5 for white families and they want to have a sign
6 next to the Santa that says "only white
7 children."

8 Why isn't your argument that they
9 should be able to do that? And maybe it is.

10 MS. WAGGONER: Because, in the
11 photograph itself, the objection is not
12 contained in that photograph.

13 But, in addition, I think it's
14 important to remind the Court that --

15 JUSTICE JACKSON: No, no, no, don't
16 leave. Sorry. What do you mean? I mean, the
17 objection, just like your client's objection, is
18 to expressions that violate their own views of
19 what is being depicted, and so their view of
20 what is being depicted is that a scene with
21 Santa and a child on the lap and all of that in
22 sepia tone, trying to harken back to the good
23 old days, should only have white children in it.
24 That's their firm belief. They are not willing
25 to take photographs of black, Hispanic, Asian

1 children on Santa's lap.

2 Why is that any different than a
3 situation like this?

4 MS. WAGGONER: Because the specific
5 objection that you're including is not
6 necessarily in that photograph, but even if it
7 were, this Court has protected vile, awful,
8 reprehensible, violent speech in the past, and
9 it has never --

10 JUSTICE JACKSON: No, I'm just asking
11 you why is the objection of the web designer, as
12 Justice both Kagan and Sotomayor's pointed out,
13 when we look at your examples, they just say
14 things like "Please come to the wedding on this
15 day."

16 MS. WAGGONER: Precisely. It's an
17 invitation to a wedding --

18 JUSTICE JACKSON: Okay. So I --

19 MS. WAGGONER: -- which --

20 JUSTICE JACKSON: -- so -- so, if my
21 hypothetical is an invitation to join me in the
22 1950s through looking at this photo, you say one
23 is different?

24 MS. WAGGONER: I say that that same
25 clarity of the message isn't in that photo, but