

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

TELESCOPE MEDIA GROUP, a Minnesota corporation, CARL LARSEN and ANGEL LARSEN, the founders and owners of TELESCOPE MEDIA GROUP,

Plaintiffs,

vs.

KEVIN LINDSEY, in his official capacity as Commissioner of the Minnesota Department of Human Rights and LORI SWANSON, in her official capacity as Attorney General of Minnesota,

Defendants.

Case No. 0:16-cv-04094-JRT-LIB

Chief Judge John R. Tunheim

Magistrate Judge Leo I. Brisbois

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

1. Plaintiffs, Telescope Media Group, Carl Larsen, and Angel Larsen (hereinafter, “the Larsens”), respectfully move this Court for a preliminary injunction to protect their constitutional rights by enjoining the application of the Minn. Stat. § 363A.11(1) and § 363A.17(3) (hereinafter “MHRA”) to interfere with their constitutionally protected decisions regarding what content to film and produce.

2. Carl and Angel Larsen are experienced cinematographers who work through their company Telescope Media Group (hereinafter “TMG”). From filming major concerts to scripting documentaries, and producing original animations and promotional videos, they use their exceptional artistic talents to convey only those messages that are consistent with, or at least do not compromise, their sincerely-held religious beliefs. Because of their religious beliefs, and their belief in the power of film and media production to change hearts and minds, the Larsens desire to use their talents and the expressive platform of TMG to celebrate and promote God’s design for

marriage as a lifelong union of one man and one woman. As they have used their business to glorify God by producing the stories and messages of religious groups like Billy Graham Evangelistic Association, Desiring God (a ministry of John Piper), Secret Church (a ministry of David Platt), Lighthouse (the largest outdoor Christian music festival in the nation), Multiply Movement, and other well-known Christian ministries, the Larsens want to use TMG as a platform to glorify God by offering their services as film producers to tell stories that promote biblical marriage.

3. Under the Minnesota Department of Human Rights' ("MDHR") interpretation of the MHRA, however, the Larsens are prohibited from operating a closely-held family business that produces only wedding cinematography that communicates their religious beliefs and message about marriage. If they produce wedding films that communicate their religious beliefs and message, the MDHR compels them to also produce content that contradicts those beliefs and message by producing and telling stories promoting same-sex wedding ceremonies. *Id.* The MDHR's official guidance, which states that "a business that provides wedding services" for opposite-sex weddings must also provide the same service for same-sex weddings regardless of the owners' "religious beliefs regarding same-sex marriage,"¹ has severely chilled the Larsens' expression and unconstitutionally prevents the Larsens from controlling the content of the message they communicate about marriage through their filmmaking. Moreover, the MDHR has already actively enforced its official guidance against another business in the wedding industry after it

¹ See Minn. Dep't of Human Rights, "Minnesota's Same-Sex Marriage Law, *available at* <https://mn.gov/mdhr/yourrights/who-is-protected/sexual-orientation/same-sex-marriage/>; Larsen Dec.5-6; Appendix In Support of Pl.'s Mot. for Prelim. Inj. ("App.") 1-3.

used test shoppers to determine that a wedding venue was only being made available to opposite-sex couples.²

4. If they produce cinematography for opposite-sex weddings, but not same-sex weddings, the MDHR subjects the Larsens to crippling fines and up to ninety days in jail for each offense.³ Only because of these substantial threats, the Larsens currently refrain from producing any wedding films at all.

5. The MDHR's targeting of expressive business owners, like the Larsens, who adhere to the traditional religious view of marriage as one man and one woman in its application of the MHRA serves to exclude these citizens from the marketplace because they cannot in good conscience produce speech communicating the message that marriage is anything other than the union of one man and one woman. This particular application of the MHRA violates the Larsens' constitutional rights to free speech, expressive association, free exercise, and the unconstitutional conditions doctrine.

6. The Free Speech Clause protects the Larsens' right to communicate freely their religious message about the beauty of God's design for biblical marriage and to refuse to speak a message promoting same-sex marriage with which they disagree on moral or religious grounds. But the MDHR unconstitutionally requires the Larsens either to (1) remain silent on the subject of marriage and forego their free speech rights, (2) speak by producing wedding films that are

² See Minn. Dep't of Human Rights, "MDHR negotiates settlement agreement with Same-Sex Couple, wedding venue that denied service," available at <http://mn.gov/mdhr/news-community/case-histories/case-spotlight/?id=1061-242750>; Larsen Dec.11-12; App.12-15.

³ Minn. Stat. § 363A.11(1) (public accommodation provision); Minn. Stat. § 363A.29(4) (civil penalty and punitive damages); Minn. Stat. § 363A.30(4) (violation is a misdemeanor); Minn. Stat. § 609.02(3) (misdemeanor is punishable by up to ninety days in jail).

consistent with their beliefs and suffer civil fines, triple compensatory damages awards, punitive damages up to \$25,000, and up to 90 days in jail for each offense, or (3) produce wedding films celebrating same-sex marriages that they would not create absent government coercion. Putting the Larsens to that choice violates the compelled speech doctrine. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 578 (1995) (holding that public accommodation laws cannot be applied “to require speakers to modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own”); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (“The First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster ... an idea they find morally objectionable.”).

7. The First Amendment also safeguards the Larsens’ right—as artists—to associate freely with patrons who share their expressive purpose of promoting biblical marriage through wedding cinematography and to decline to associate with patrons wishing to express a contrary view. However, the MDHR applies the MHRA to require the Larsens to form an expressive association with those who seek to produce compelling films celebrating same-sex marriage, which significantly burdens the Larsens’ ability to promote their opposing marriage views. Depriving the Larsens of the ability to collaborate artistically only with those who share their expressive intention of promoting God’s design for marriage through the production of persuasive wedding films violates the First Amendment. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 642 (2000) (holding that state pressure to maintain an expressive association that significantly burdens private parties’ “right to oppose or disfavor” certain concepts violates the First Amendment).

8. The Free Exercise Clause subjects non-neutral or not generally applicable laws to strict scrutiny. In addition to various categorical exemptions, the MHRA contains a broad exemption

for “legitimate business purposes” that not only excludes a broad swath of secular conduct but requires a case-by-case evaluation of the justification for declining a given project. *See* Minn. Stat. § 363A.17(3). Yet the MDHR has said that no religious reasons qualify for an exemption. The law is accordingly neither neutral nor generally applicable. In fact, it violates the First Amendment for the government to devalue the Larsens’ religious beliefs and refuse to extend a system of individualized exemptions “to cases of ‘religious hardship’ without compelling reasons,” as the MDHR has done here. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993).

9. Moreover, under the unconstitutional conditions doctrine, the government cannot induce citizens to forsake their constitutional rights by conditioning “a benefit to a person on a basis that infringes his constitutionally protected interests.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). But the Larsens have not only the constitutional rights to free speech, free association, and free exercise, they also have the right to pursue their “chosen profession free from unreasonable governmental interference.” *Greene v. McElroy*, 360 U.S. 474, 492 (1959). The MDHR, however, condition the Larsens’ right to enter the wedding cinematography business on their willingness to produce films that promote same-sex marriage and thereby forego their free speech, free association, and free exercise rights. This indirect attempt to compel the Larsens to promote the moral viewpoint that same-sex marriage is equivalent to marriage between one man and one woman—something the MDHR could not do directly—violates the unconstitutional conditions doctrine. *See Perry*, 408 U.S. at 597 (explaining the government cannot deny a benefit to “produce a result [it] could not command directly” (quotation omitted)).

10. Absent their requested relief, the Larsens will suffer irreparable injury: in particular, the loss of rights and freedoms guaranteed by the United States Constitution. They are likely to

succeed on the merits, the balance of equities weighs in favor of granting an injunction to secure these rights, and it is in the public interest to enjoin the enforcement of a law that “likely” restricts First Amendment speech. *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012).

11. Therefore, Plaintiffs respectfully move this Court to issue preliminary injunctive relief to restrain Defendants, and any person acting in concert with them, from enforcing Minnesota Statutes Annotated § 363A.11(1) and § 363A.17(3) as-applied to Plaintiffs’ expressive business of producing films (a) promoting marriage exclusively as an institution between one man and one woman, and (b) declining to create films that express ideas that conflict with their beliefs about marriage.

12. The MDHR’s application of the MHRA has barred, and will continue to bar, the Larsens from engaging in protected speech about marriage. They experience irreparable harm each day Defendants prohibit them from exercising their free speech, free association, and free exercise rights. The Larsens thus respectfully request that this Court rule on their Motion for Preliminary Injunction as soon as possible.

13. In support of this Motion, the Larsens rely on the following:

- The concurrently filed Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Injunction.
- The Appendix to the concurrently filed Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Injunction.
- The Affidavit of Carl Larsen.
- The Affidavit of Jeremy Tedesco.
- The First Amended Verified Complaint and exhibit thereto.

14. The Larsens also respectfully request that this Court waive the bond requirement for a preliminary injunction because this case serves the public interest by vindicating their First and Fourteenth Amendment rights. *See City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d

1084, 1094 (5th Cir. 1981) (upholding the waiver of bond where “plaintiffs were engaged in public-interest litigation”), and there is no likelihood of harm to Defendants, as they already recognize the free speech rights of expressive businesses that support same-sex marriage, *Richland/Wilkin Joint Power Auth. v. U.S. Army Corps of Engineers*, 826 F.3d 1030, 1043 (8th Cir. 2016) (noting that it was “permissible for the district court to waive the bond requirement based on its evaluation of public interest in [a] specific case”). The Larsens’ ability to protect their constitutional “rights should not be contingent upon an ability to pay.” *Doctor John’s, Inc. v. City of Sioux City*, 305 F. Supp. 2d 1022, 1043-44 (N.D. Iowa 2004); *see also Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 129 (D. Mass. 2003) (noting that “requiring a security bond ... might deter others from exercising their constitutional rights”).

15. Pursuant to LR 7.1(a) counsel for Plaintiffs called and conferred with counsel for Defendants on January 13, 2017. Counsel for Defendants indicated that Defendants do not consent to Plaintiffs’ request for a preliminary injunction.

16. Pursuant to Chief Judge Tunheim’s Practice Pointers and Preferences, Plaintiffs have not contacted the Courtroom Deputy to request a hearing date but will wait until the motion is fully briefed by all parties to do so.

Respectfully submitted this 13th day of January, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January, 2017, a copy of the foregoing Plaintiffs' Motion For Preliminary Injunction was filed with the Clerk of the Court using the ECF system. I also certify that the foregoing will be served, along with a copy of the Summons and Complaint, via a private process server upon the following defendants:

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