No. 17-3352

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE EIGHTH CIRCUIT**

TELESCOPE MEDIA GROUP, *ET AL.*,

*Plaintiffs-Appellants,*

v.

KEVIN LINDSEY AND LORI SWANSON,

*Defendants-Appellees.*

On Appeal from a Judgment of the United States District Court
for the District of Minnesota

# BRIEF OF AMICI CURIAE MASSACHUSETTS, HAWAII, CALIFORNIA, CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA, ILLINOIS, IOWA, MAINE, MARYLAND, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

RUSSELL SUZUKI
*Acting Attorney General*
*State of Hawaii*
Clyde J. Wadsworth
*Solicitor General*
Kalikoʻonalani D. Fernandes
*Deputy Solicitor General*
425 Queen Street
Honolulu, HI 96813
clyde.j.wadsworth@hawaii.gov
(808) 586-1500

MAURA HEALEY
*Attorney General*
*Commonwealth of Massachusetts*
Elizabeth N. Dewar*
*State Solicitor*
David C. Kravitz
Genevieve C. Nadeau
Jon Burke
*Assistant Attorneys General*
One Ashburton Place
Boston, MA 02108
bessie.dewar@state.ma.us
(617) 963-2204
**Counsel of Record*

# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Constitutional Provisions and Statutes**



**Miscellaneous Sources**

## INTERESTS OF AMICI

The *Amici* States share a sovereign and compelling interest in protecting our residents and visitors from discrimination. Like Minnesota, we support civil rights protections for LGBTQ people, including prohibitions on discrimination in places of public accommodation: the inns, diners, stores, and other businesses that are part of daily life in a free society.

Appellants and their *amici* contend that the States have a less than compelling interest in prohibiting discrimination against LGBTQ people by the businesses in their communities. We strongly disagree. Public accommodations laws respond to the pervasive discrimination LGBTQ people have long suffered and continue to suffer today. These laws ensure equal enjoyment of goods and services and combat the severe personal, economic, and social harms caused by discrimination.

The *Amici* States also share an interest in upholding the rights protected by the First Amendment. But the First Amendment does not shield commercial businesses from content-neutral, generally applicable civil rights laws like the one Appellants propose to violate.

Allowing commercial businesses to use the First Amendment as a shield for discriminatory conduct would undermine state civil rights laws and the vital benefits they provide to residents and visitors, leaving behind a society separate

and unequal by law. Many Americans would face exclusion from a host of everyday businesses or, at the very least, the ever-present threat that any business owner could refuse to serve them when they walk in the door—simply because of their sexual orientation, or their race, religion, or gender.

The *Amici* States therefore join Minnesota in asking this Court to affirm the decision below.

## SUMMARY OF ARGUMENT

Since the mid-nineteenth century, statutes prohibiting discrimination in places of public accommodation have been a centerpiece of state efforts to combat the economic, personal, and social harms caused by invidious discrimination. *See Romer v. Evans*, 517 U.S. 620, 627-28 (1996). These statutes have long been held constitutional as applied to a range of public accommodations, including commercial businesses. *See, e.g., Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 260 (1964). Indeed, the Supreme Court upheld the statute at issue in this case against constitutional challenge over thirty years ago. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623-24 (1984).

This case concerns a videography business operating as a conventional public accommodation. Despite having opened its doors to the public, the business plans to refuse to offer wedding videography services to same-sex couples, claiming a constitutional right to refuse equal service to certain members of the

public based on its owner's personal beliefs. We have heard this kind of claim before. S*ee, e.g.*, *Katzenbach v. McClung*, 379 U.S. 294, 298 n.1 (1964); *Newman v. Piggie Park Enters. Inc.*, 256 F. Supp. 941, 945 (D.S.C. 1966), *aff'd in relevant part*, 377 F.2d 433 (4th Cir. 1967), *aff'd in relevant part*, 390 U.S. 400 (1968) (rejecting a claim that the Free Exercise clause provided a restaurant a right to discriminate against African Americans based on sincerely held religious beliefs). History has taught us to be wary.

This business is one of a growing number raising First Amendment challenges to state laws prohibiting discrimination against LGBTQ people. To date, federal and state courts have uniformly and rightly rejected the arguments raised here: that the Free Speech Clause grants "expressive" businesses a license to discriminate on the basis of their views related to sexual orientation, and that the Free Exercise Clause gives businesses a right to discriminate based on their owners' personal religious beliefs. The same result is warranted here.

The federal constitution simply does not provide commercial businesses a right to "pick and choose" customers in violation of state law. *Bell v. Maryland*, 378 U.S. 226, 254-55 (1964) (Douglas, J., concurring); *see also Marsh v. Alabama*, 326 U.S. 501, 505-06 (1946). Enforcing content- and viewpoint-neutral public accommodations laws to prevent commercial businesses from denying the equal

enjoyment of their services based on race, gender, religion, or sexual orientation does no harm to either free exercise or free speech rights.

Appellants' contentions to the contrary would open up a dangerous exemption, stretching far beyond wedding videos. States cannot effectively fight discrimination in the commercial marketplace—or in employment, housing, or other contexts—if personal belief operates as a "law unto itself." *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990); *see also Lombard v. Louisiana*, 373 U.S. 267, 281 (1963) (Douglas, J., concurring). Yet the exemption Appellants seek under the Free Speech Clause would permit business owners holding racist, sexist, or otherwise discriminatory beliefs to refuse equal service based on prospective customers' identities, so long as their business activities are "expressive." Appellants' proposed exemption thus risks licensing all manner of harmful discrimination—and risks once again subjecting millions of people to the mercy of business owners and their judgments as to who is worthy of service. The First Amendment does not bar States' efforts to combat the societal disintegration and economic balkanization caused by this kind of discrimination.

## ARGUMENT

### I. States across the country have enacted laws to combat discrimination against LGBTQ people in the commercial marketplace.

The States have a sovereign and compelling interest in protecting their residents, and particularly members of historically disadvantaged groups, from the harms caused by discrimination. *See Roberts*, 468 U.S. at 624. In furtherance of this interest, many States and other jurisdictions throughout the country protect LGBTQ people from discrimination in places of public accommodation. *See* Addendum Tables A and B, *infra* (collecting laws covering 21 States, the District of Columbia, and 100 local jurisdictions outside the 21 States).

#### A. LGBTQ Americans are a historically disadvantaged group.

LGBTQ Americans have faced a long history of invidious discrimination—including legally sanctioned discrimination. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2596-97, 2604, 2606 (2015); *Goodridge v. Dep't of Pub. Health*, 798 N.E. 2d 941, 967-68 (Mass. 2003). LGBTQ people have been fired from their jobs, evicted from their homes, and denied service by businesses across the country simply because of their "distinct identity." *Obergefell*, 135 S. Ct. at 2596 (recognizing, further, that sexual orientation is "a normal expression of human sexuality"). They have also been harassed, assaulted, and killed because of that identity.

Discrimination against LGBTQ people is a severe and continuing problem. LGBTQ Americans are still much more likely to be bullied, harassed, and targeted for hate crimes than their non-LGBTQ peers.[1] LGBTQ people also report overt discrimination, particularly in the form of denial of service by businesses, at rates comparable to, or greater than, those for other historically disadvantaged groups.[2]

This continuing discrimination harms the health and well-being of LGBTQ people, their families, and their communities. A large and growing body of evidence shows that discriminatory social conditions have severe negative health impacts on LGBTQ people, including increased rates of mental health disorders and suicide attempts, especially for LGBTQ youth.[3] Notably, these outcomes are

---

[1] *See, e.g.*, Haeyoun Park & Iaryna Mykhyalyshyn, *LGBT People Are More Likely to Be Targets of Hate Crimes Than Any Other Minority Group*, New York Times (June 16, 2016), www.nytimes.com/interactive/2016/06/16/us/hate-crimes-against-lgbt.html (analyzing FBI crime data); *see also* Laura Kann et al., *Youth Risk Behavior Surveillance—United States, 2015*, 65 Morbidity & Mortality Weekly Rep. Surveill. Summ. 1 (June 10, 2016) (discussing risks for LGBTQ youth).

[2] *See* Christy Mallory & Brad Sears, *Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014*, The Williams Institute (Feb. 2016); Christy Mallory & Brad Sears, *Documented Evidence of Employment Discrimination and Its Effect on LGBT People*, The Williams Institute (July 2011).

[3] *See, e.g.*, Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9-12—United States and Selected Sites: 2015*, 65 Morbidity & Mortality Weekly Report Surveill. Summ. 1 (Aug. 12,

less severe and pervasive in communities that provide LGBTQ people with legal protection against discrimination.[4]

### B. States prohibit discrimination against LGBTQ people in the commercial marketplace to prevent severe economic, personal, and social harms.

Discrimination by places of public accommodation causes unique and severe economic, personal, and social harms. It denies equal access to important goods and services and, by segregating the market, has a well-established "substantial and harmful effect" on the economy. *Heart of Atlanta*, 379 U.S. at 258 (acknowledging broad impacts of seemingly local discrimination); *see also Roberts*, 468 U.S. at 625-26. Such discrimination also stigmatizes its victims, causing them intense dignitary injuries, and encourages social fragmentation and

---

2016); Mark L. Hatzenbuehler et al., *Structural Stigma and All-Cause Mortality in Sexual Minority Populations*, 103 Soc. Sci. & Med. 33 (2014); Laura S. Richman & Mark L. Hatzenbuehler, *A Multilevel Analysis of Stigma and Health: Implications for Research and Policy*, 1 Pol'y Insights from the Behav. & Brain Sci. 213, 217 (2014); Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 Pediatrics 896 (2011); Mark L. Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 Am. J. Pub. Health 452, 454-55 (2010); Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 Psychol. Bull. 674 (2003).

[4] *See* Hatzenbuehler (2014), *supra* n.3; Richman & Hatzenbuehler, *supra* n.3.

conflict. *See Roberts*, 468 U.S. at 625-626; *Daniel v. Paul*, 395 U.S. 298, 306 (1969); *Heart of Atlanta*, 379 U.S. at 250.

As the Supreme Court has recognized, "[n]o action is more contrary to the spirit of our democracy and Constitution—or more rightfully resented by a…citizen who seeks only equal treatment"—than a denial of equal service by a business "ostensibly open to the general public." *Daniel*, 395 U.S. at 306 (quoting President Kennedy on the harms caused by racial discrimination in public accommodations); *see also Heart of Atlanta*, 379 U.S. at 292 (Goldberg, J., concurring) ("Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color." (quoting S. Rep. No. 872, 88th Cong., 2d Sess., at 16 (1964))).

The American legal and political system has long recognized the importance of public accommodations being open to all. Modern statutes codify, and expand upon, a common law doctrine, dating back at least to the sixteenth century, that generally required public accommodations to serve all customers. *See Heart of Atlanta*, 379 U.S. at 261; *Bell*, 378 U.S. at 296-98; *Lombard*, 373 U.S. at 275-77 & n.6. States began enacting public accommodations statutes in 1865 to prohibit discrimination against African Americans. *See* Act Forbidding Unjust

Discrimination on Account of Color or Race, 1865 Mass. Acts, ch. 277 (May 16, 1865). Although there is some variation across the States, "public accommodations" laws generally guarantee that when customers enter a business that has opened its doors to the public, they will not be denied service simply because of the color of their skin, their gender, their disability, or—under many state and local laws—their sexual orientation.

A majority of Americans now live in communities that prohibit places of public accommodation from discriminating on the basis of sexual orientation. Twenty-one States and the District of Columbia protect their residents against discrimination in public accommodations on the basis of sexual orientation.[5] These state-level protections are supplemented by local laws and ordinances enacted by hundreds of cities, towns, and counties across the country.[6] Only seven

[5] These States are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin. See Addendum Table A, *infra*, collecting citations. According to the U.S. Census Bureau, as of 2016, these States had a cumulative population of more than 140 million people. *See id*.

[6] See Addendum Table B, *infra*, collecting citations to local laws and ordinances in States that do not have statewide laws protecting against discrimination in public accommodations based on sexual orientation. These local laws protect LGBTQ people in jurisdictions with a cumulative population of well over 33 million people. *See id*. The total number of Americans living in jurisdictions that have

States appear to have neither a statewide nor any local public accommodations law that covers sexual orientation.[7]

These laws reflect a recognition of the "overwhelming" evidence of discrimination against LGBTQ people. *See, e.g.*, *Telescope Media Grp. v. Lindsey*, 271 F. Supp. 3d 1090, 1115-16 & n.25 (D. Minn. Sept. 20, 2017) (describing the history behind the law at issue in this case); N.Y. Sexual Orientation Non-Discrimination Act of 2002, ch. 2, § 1 (finding that prejudice on account of sexual orientation "has severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering…[and] fostered a general climate of hostility and distrust, leading in some instances to physical violence," and that it "threatens the peace, order, health, safety and general welfare of the state and its inhabitants"). And they ban the very "acts of discrimination"—and only those acts—"that produce the harm the [laws] seek[] to prevent." *Telescope Media*, 271 F.3d at 1117.

---

statewide or local laws is thus over 174 million (or 53.9% of the national population of 323 million). *See supra* n.5.

[7] These States are Arkansas, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, and Utah.

## II. The First Amendment does not exempt commercial businesses from state anti-discrimination laws.

There can be no real dispute that Appellants plan to discriminate against LGBTQ customers: Appellants will categorically refuse to provide wedding videography services to same-sex couples. *See* Appellants' Br. 26. Appellants insist that this is not a refusal to serve customers based on sexual orientation because they would refuse to film same-sex weddings "no matter who requested it." *Id*. That is nothing more than a semantic sleight of hand. The argument that Appellants' planned discrimination is about something other than sexual orientation—that "[s]exual orientation is simply not a factor in their decisionmaking," Appellants' Br. 29—cannot be taken seriously. Appellants' objection to two people of the same sex marrying cannot reasonably be divorced from the status of being gay. *See Christian Legal Soc. v. U.C. Hastings*, 561 U.S. 661, 689 (2010); *Lawrence v. Texas*, 539 U.S. 558, 583 (2003).

Appellants also insist that the company will "serve all people" because it will provide *other* videography services to LGBTQ couples. Appellants' Br. 26. But public accommodations laws exist to prevent not only outright exclusion, but also separate and unequal treatment. Otherwise, our country would be blighted by segregated businesses that "served all people," but in perniciously unequal ways. *See McClung*, 379 U.S. at 296-97 (discussing restaurant that served African-

American customers through a take-out window but refused to permit them in the dining area).

The First Amendment offers no refuge to commercial businesses engaging in such discrimination. The Free Speech Clause does not allow businesses—even "expressive" ones—to pick and choose their customers in defiance of laws that regulate discriminatory conduct. And the Free Exercise Clause does not excuse businesses from complying with generally applicable civil rights laws, no matter the business owner's religious beliefs.

### A. State public accommodations laws do not violate the Free Speech Clause when applied to people with objections to serving LGBTQ customers.

The application of Minnesota's content- and viewpoint-neutral public accommodations law to prevent a commercial business from denying the full and equal enjoyment of their services to LGBTQ customers does not violate the Free Speech Clause of the First Amendment.

#### 1. Prohibiting commercial businesses from discriminating against customers does not compel speech.

Appellants' attempt to fashion this as a "compelled speech" case is unpersuasive. *See* Appellants' Br. 22. The First Amendment prohibits States from "telling people what they must say" or requiring them to "speak the government's

message," *Rumsfeld v. Forum for Acad. & Inst'l Rights, Inc.* (*FAIR*), 547 U.S. 47, 61, 63 (2006), but public accommodations statutes like Minnesota's do neither.

Indeed, Minnesota's public accommodations law does not regulate Appellants' speech at all. In *FAIR*, the Supreme Court rejected the argument that a prohibition on law schools discriminating against military recruiters when providing campus access to outside employers regulated the law schools' speech. *Id.* at 60. The Court concluded that the prohibition regulated "conduct, not speech" given that "[i]t affects what law schools must *do*—afford equal access to military recruiters—not what they may or may not *say*." *Id.* That reasoning applies equally to this case. State anti-discrimination laws like Minnesota's affect what public accommodations "must *do*"—provide equal access to LGBTQ people—"not what they may or may not *say*." *Id.*

Appellants, in other words, are not required, by virtue of Minnesota's public accommodations law, to speak or endorse a government motto, pledge, or message. *See FAIR*, 547 U.S. at 62. Rather, they may not refuse to provide the full range of their services to LGBTQ couples because of such couples' sexual orientation, as it is that refusal to "afford equal access" that violates Minnesota law. *Id.* at 60.

Even assuming, as Appellants argue, that videotaping weddings is a form of expression, Minnesota law does not "compel" Appellants to make videos, govern how they produce their videos, or otherwise regulate the process of videography.

Appellants are under no legal obligation to offer wedding videos as a service of their business, nor to produce their videos in any particular way. Minnesota law simply requires that Appellants make wedding videos for LGBTQ customers if, and to the extent that, they make wedding videos for other customers.[8]

This type of equal access or non-discrimination requirement is a "far cry" from laws "dictat[ing] the content of…speech." *FAIR*, 547 U.S. at 62 (distinguishing *Wooley v. Maynard*, 430 U.S. 705 (1977), and *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943), because, under the Solomon Amendment, speech was "only 'compelled' if, and to the extent, the school provides such speech for other recruiters"). As the Supreme Court noted in *FAIR*, "prohibit[ing] employers from discriminating in hiring on the basis of race" does not compel speech. *Id*. That is precisely the kind of prohibition Minnesota has imposed in this case, and "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated,

[8] Public accommodations laws also leave businesses like Telescope Media free to disclaim any message they worry may be communicated in the course of providing non-discriminatory service to customers. Appellants may, for example, create and disseminate a disclaimer stating that they comply with Minnesota law, and that their provision of service does not constitute "an endorsement or approval" of any customer or conduct. *See FAIR*, 547 U.S. at 64-65; *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 86-88 (1980). Moreover, there are numerous other ways that Appellants are free to express their views on marriage, including through film.

evidenced, or carried out by means of language, either spoken, written, or printed." *Id.* (quoting *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)).

### 2. Public accommodations laws like Minnesota's survive both intermediate and strict scrutiny.

"[W]hen 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitation on First Amendment freedoms." *United States v. Petrovic*, 701 F.3d 849, 854 (8th Cir. 2012). A content-neutral state law directed at conduct—like one requiring businesses to serve all customers equally regardless of race, gender, religion, or sexual orientation—that incidentally burdens freedom of speech is constitutional if (1) "it is within the constitutional power of the Government"; (2) "it furthers an important or substantial governmental interest"; (3) "the governmental interest is unrelated to the suppression of free expression"; and (4) "the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.* (quoting *United States v. O'Brien*, 391 U.S. 367, 376-77 (1968)). Such a law need only promote a substantial interest "that would be achieved less effectively absent the regulation." *FAIR*, 547 U.S. at 67-68 (quoting *United States v. Albertini*, 472 U.S. 675, 689 (1985)).

Minnesota's law easily satisfies the *O'Brien* standard. Indeed, it would survive even strict scrutiny. As the Supreme Court has found time and again, "public accommodations laws 'plainly serv[e] compelling state interests of the highest order.'" *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (quoting *Roberts*, 468 U.S. at 624).

**a. States have a compelling interest in eliminating sexual orientation discrimination in the commercial marketplace.**

As Chief Judge Lay of this Court once declared, "[t]here should be little doubt that a sovereign has a compelling interest in eradicating second-class citizenship in places of public accommodation." *U.S. Jaycees v. McClure*, 709 F.2d 1560, 1581 (8th Cir. 1983) (Lay, C.J., dissenting), *rev'd sub nom.*, *Roberts*, 468 U.S. 609. This "compelling interest of the highest order" is no less compelling when invoked to protect LGBTQ people than when invoked to protect other groups that have faced, and continue to face, invidious discrimination. *Duarte*, 481 U.S. at 549 (quoting *Roberts*, 468 U.S. at 624). Courts across the country have joined the court below in recognizing as much. *See Telescope Media*, 271 F. Supp. 3d at 1115-16; *see, e.g.*, *Cervelli v. Aloha Bed & Breakfast*, No. 13-806, __P.3d__, 2018 WL 1027804, at *12-13 (Haw. Ct. App. Feb. 23, 2018); *Gifford v. McCarthy*, 137 A.D.3d 30, 40 (N.Y. App. Div. 2016); *N. Coast Women's Care Med. Grp., Inc. v. San Diego Cty. Superior Court*, 189 P.3d 959, 968 (Cal. 2008); *Gay Rights Coal.*

*of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 31-37 (D.C. 1987).

As described above, LGBTQ Americans continue to suffer severe and pervasive discrimination in employment, housing, and places of public accommodation, among other facets of their everyday lives. *See* Part I, *supra*, at 5-6 & nn.1-2. The injuries caused by discrimination are "surely felt as strongly by persons suffering discrimination on the basis of their [sexual orientation] as by those treated differently because of their [gender or race]." *Roberts*, 468 U.S. at 625 (comparing gender and racial discrimination). And, indeed, research bears that out. *See* Part I, *supra*, at 6-7 & nn.3-4.

Appellants mischaracterize the nature of the harm here in questioning whether vindicating dignitary interests can justify an intrusion on First Amendment rights. Appellants' Br. 54. Appellants cite cases concerning the extent of the governmental interest in alleviating dignitary harms caused by hurtful or offensive speech—for example, foreign diplomats seeing signs "critical of their governments or governmental policies." *Boos v. Barry*, 485 U.S. 312 (1988). But couples refused full and equal enjoyment of Appellants' services will not simply be forced to *hear* a hurtful message about same-sex marriage; that is, this is not a case about "shield[ing] the sensibilities of listeners," *United States v. Playboy Enter. Grp., Inc.*, 529 U.S. 803, 813 (2000). Rather, they will actually be *refused equal service*

on account of being a same-sex couple. The Supreme Court has long recognized the significant harm caused by such discrimination and the States' concomitant compelling interests in preventing such harms. *See, e.g.*, *Duarte*, 481 U.S. at 549.

Appellants have an unquestioned constitutional right to hold and advocate their beliefs. Minnesota is in no way attempting to interfere with that right. Like other States, however, Minnesota has a compelling interest in ensuring that when a business enters the commercial marketplace, it does not discriminate against customers based on its owner's or employees' beliefs, religious or otherwise. *See, e.g.*, *Piggie Park*, 256 F. Supp. at 945.

**b. Public accommodations laws are narrowly tailored to serve the States' compelling interest in combatting discrimination.**

Just as employment discrimination laws are "precisely tailored" to advance a state interest in providing "equal opportunity to participate in the workforce," *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2783 (2014), public accommodations laws are precisely tailored to advance a state interest in ensuring equal access to the commercial marketplace, *see Roberts*, 468 U.S. at 628. Public accommodations laws directly combat the economic, personal, and social harms caused by discrimination. By guaranteeing full and equal access to the commercial marketplace, these laws ensure that LGBTQ residents are not denied—or forced to overcome artificial barriers to acquire—"tangible goods and services."

*Id.* at 625-26; *see also Romer*, 517 U.S. at 631 ("[T]hese are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life."). Appellants argue that such protections are unnecessary because, even if Appellants close their doors to LGBTQ couples, LGBTQ people can find other videographers to serve them. *See* Appellants' Br. 54. But this assertion misses the point of anti-discrimination laws: to ensure that people will *not* be turned away from a business on account of their race, gender, religion, or sexual orientation. Appellants' "just go elsewhere" argument would eviscerate this central purpose and justify segregated businesses throughout Minnesota and the Eighth Circuit.

Critically, public accommodations laws also provide protection from the "stigmatizing injury" and "deprivation of personal dignity" that necessarily "accompanies denials of equal access to public establishments." *Roberts*, 468 U.S. at 625. By ensuring that the commercial marketplace is open to the entire public, these laws foster not only the economic, but also the social and political integration of residents. *Id*. In so doing, these laws deliver many benefits, including counteracting the negative health effects caused by stigmatization and social exclusion, *see supra* n.3. In short, Minnesota's law and its analogues across the country serve to vindicate the "equal dignity" of LGBTQ people. *Obergefell*, 135 S. Ct. at 2608.

Given these "compelling state interests of the highest order" directly served by public accommodations laws, the First Amendment does not require creating an exemption from these laws based on a business owner's views. *Duarte*, 481 U.S. at 549 (quoting *Roberts*, 468 U.S. at 624). Any such exception would not constitute better tailoring; rather, it would frustrate the laws' very purpose.[9] Laws like Minnesota's effectively ensure equal access to goods and services, thereby combatting dignitary harms, only when they comprehensively cover the commercial marketplace. States cannot both combat discrimination and, at the same time, license businesses to discriminate. "When the doors of a business are open to the public, they must be open to all…if apartheid is not to become engrained in our [society]." *Lombard*, 373 U.S. at 281 (Douglas, J., concurring). An "expressive" business exemption to public accommodations laws would thus substantially undermine the States' compelling interests in eliminating invidious discrimination.

### 3. State laws prohibiting discrimination have long been held constitutional as applied to commercial businesses.

For well over a century, courts have consistently upheld the constitutionality of public accommodations laws against challenges by businesses seeking to

[9] Minnesota's law does contain an exception for religious organizations, *see* Minn. Stat. § 363A.26—a finite and far more limited category than an exception based solely on a business owner's views, which would be almost limitless.

discriminate based on "personal convictions." *McClung*, 379 U.S. at 298 n.1 (rejecting argument that restaurant could discriminate against African Americans based on "personal convictions and…choice of associates," as argued in the Brief for Appellees, No. 543, 1964 WL 81100, at *32-33 (U.S. Oct. 2, 1964)). The Supreme Court has long decried discrimination in public establishments as a "unique evil" entitled to "no constitutional protection," *Roberts*, 468 U.S. at 628-29, and has described state laws prohibiting such discrimination as "unquestionab[ly]" constitutional, *Heart of Atlanta*, 379 U.S. at 260-61.

Appellants have not identified a single case in which a court expressed concern about the constitutionality of a state effort to prohibit discrimination by commercial enterprises. Instead, relying on *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), and *Hurley v. Irish American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995), they seek to extend protections afforded to private, non-commercial organizations engaged in activity at the core of the First Amendment's protections—expressive association—to cover discrimination by a broad swath of commercial businesses. In so doing, Appellants "stretch a number of First Amendment doctrines well beyond the sort of activities these doctrines protect." *FAIR*, 547 U.S. at 70.

*Dale* and *Hurley* involved "peculiar" attempts by States to use their public accommodations laws to regulate the First Amendment activities of private,

expressive associations. *See Hurley*, 515 U.S. at 559, 572-73; *Dale*, 530 U.S. at 643-44, 648, 657-58. But, contrary to Appellants' contentions, there is nothing "peculiar" about Minnesota's application of its public accommodations law to prevent a business, open to the general public, from discriminating against a certain class of potential customers. Eliminating discrimination in such transactions is the core concern of public accommodations laws. As the Court was careful to point out in *Hurley* and *Dale*, a State's attempt to dictate who marches in a private parade, or who must be admitted to a private group, implicates speech and associational rights that are not at issue in cases involving discrimination by ordinary commercial enterprises. *See Dale*, 530 U.S. at 657-58; *Hurley*, 515 U.S. at 572-73; *see also Roberts*, 468 U.S. at 638 (O'Connor, J., concurring).

Here, Telescope Media is a "clearly commercial entity," *Dale*, 530 U.S. at 657; its sale of services is not analogous to putting on a parade, and it has no protected expressive interest in its relationship with its customers. *See FAIR*, 547 U.S. at 69 (holding that *Dale* is inapplicable to cases that do not involve state attempts to force an "expressive association" to "accept members it does not desire"); *Roberts*, 468 U.S. at 638 (O'Connor, J., concurring); *Bell*, 378 U.S. at 254-55 (Douglas, J., concurring); *Goodpaster v. City of Indianapolis*, 736 F.3d 1060, 1073 (7th Cir. 2013). Moreover, Minnesota's compelling interest in prohibiting discrimination in the commercial marketplace is directly implicated by

a commercial enterprise's refusal to serve same-sex couples in a way that it would not be by the activities of a non-commercial, distinctly private group. *Cf. Dale*, 530 U.S. at 657-59; *Hurley*, 515 U.S. at 578.

### B. State public accommodations laws do not violate the Free Exercise Clause.

Prohibiting Appellants from discriminating against LGBTQ customers also does not violate the Free Exercise Clause. Appellants' claim was rejected decades ago when used to justify racial discrimination. Courts rightly "refuse[d] to lend credence or support to [a business owner's] position that he ha[d] a constitutional right to refuse to serve members of the Negro race in his business establishment upon the ground that to do so would violate his sacred religious beliefs." *Piggie Park*, 256 F. Supp. at 945; *see also Piggie Park*, 390 U.S. at 402 n.5. Businesses today have no more of a right to justify their discrimination against LGBTQ individuals on religious grounds.

Since the days of *Piggie Park*, the Supreme Court has clarified that, more generally, the Free Exercise Clause does not excuse businesses from complying with neutral laws of general applicability. *Employment Div.*, 494 U.S. at 879. For free exercise purposes, a law is neutral and generally applicable if it does not target religion and "prohibit[s] conduct the State is free to regulate." *Id*. at 878-79.

Appellants do not seriously challenge that public accommodations laws like Minnesota's, on their face, meet this requirement.

Instead, Appellants question whether the Minnesota statute operates in a neutral manner. Appellants protest that videographers "who support same-sex marriage are free to create and sell wedding films that align with their views on marriage [but those] like the Larsens who believe in biblical marriage are not." Appellants' Br. 48-49. This argument misunderstands how public accommodations laws work.

Like all public accommodations laws, Minnesota law prohibits businesses from refusing to serve potential customers, or denying any person the full and equal enjoyment of their services, "*because of*" certain characteristics, like their race, sex, or sexual orientation. Minn. Stat. §§ 363A.11(1), 363A.17(3) (emphasis added). Appellants propose to violate the law by refusing to provide a service for same-sex couples that they would provide for other customers. Appellants may insist that they simply refuse to make videos that contradict their personal beliefs, but their refusal is based solely on the identity of the couple marrying, regardless of the particular style of video the potential customers request, and regardless of any other particular circumstances relating to the wedding itself.

In essence, Appellants' objection is really that Minnesota's law includes sexual orientation as a protected characteristic without exception for those who

object to the existence of LGBTQ persons or their marriages. Minnesota is not "show[ing] its favoritism" by defending the application of its law to Appellants' proposed actions. See Appellants' Br. 45. Rather, Minnesota is defending its law as its legislature chose to write it. Because that law is content-neutral and generally applicable, Appellants' free exercise claim should be rejected.

## III. A First Amendment exemption to public accommodations laws of the kind sought by Appellants would dramatically undermine anti-discrimination laws.

Appellants' claim to a constitutional entitlement to violate Minnesota's public accommodations law boils down to a claim that the Supreme Court's freedom-of-association precedents compel a decision in their favor. *See* Appellants' Br. 4. But that claim proves far too much and would dramatically undermine state and federal anti-discrimination laws.

First, Appellants offer no principled basis for distinguishing a videography business from myriad other businesses seeking to claim such an exemption. A website designer, architect, sign-maker, hairdresser, make-up artist, chef: each is engaged in a business that may in some way touch on "expressive" activity. Indeed, there is no reason that Appellants' sweeping view of *Hurley* would be limited to their category of "expressive" businesses, as opposed to other businesses that offer services with potentially expressive aspects—signage and the like. If Appellants are right about *Hurley*'s reach, LGBTQ people could be exposed to

discrimination in a broad section of the commercial marketplace, particularly when they attempt to exercise their fundamental right to marry or attempt to celebrate other important life events.

Second, the free-speech exemption Appellants seek would not be limited to opposition to marriage between same-sex couples or to beliefs rooted in religious convictions. Under their theory, an anti-Semitic baker could refuse service to a Jewish couple, and a racist architect could refuse to design a family home for an interracial couple. It remains a sad fact of American society that such views are disturbingly prevalent.[10] Although the First Amendment tolerates all manner of odious speech in the public square, *see, e.g.*, *Snyder v. Phelps*, 562 U.S. 443 (2011), it does not require insulating from liability businesses that violate content-neutral laws by turning away customers because of their race, religion, gender, or sexual orientation.

---

[10] *See, e.g.*, Sheryl Gay Stolberg & Brian M. Rosenthal, *White Nationalist Protest Leads to Deadly Violence: Brawling Erupts in Virginia—Opponents Clash and a Car Plows into a Crowd*, New York Times, Aug. 13, 2017, at A1; *Reuters/Ipsos/UVA Center for Politics Race Poll* (Sept. 11, 2017), http://www.centerforpolitics.org/crystalball/wp-content/uploads/ 2017/09/2017-Reuters-UVA-Ipsos-Race-Poll-9-11-2017.pdf (showing 16% of adults—*i.e.*, approximately 35 million people—agree that "[m]arriage should only be allowed between people of the same race," and 5% of adults—*i.e.*, approximately 12 million people—disagree that "[p]eople of different races should be free to live wherever they choose").

Third, state and federal laws barring discrimination in other areas like housing and employment would also seem vulnerable to individuals' racist, sexist, anti-LGBTQ, or otherwise discriminatory objections that the laws compelled speech in conflict with their beliefs, or tarred them by association with a group they despise. The Supreme Court has repeatedly rejected such arguments in the past. *See, e.g.*, *Romer*, 517 U.S. at 635 ("The primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality."); *see also* Brief for Appellees, *McClung*, 1964 WL 81100, at *33 (arguing that "a businessman has always possessed the right to deal with those he pleases").[11] They should likewise be rejected here.

Appellants' view of the proper scope of anti-discrimination law thus hearkens back to a societal structure from which this country has been trying to recover for decades. During the mid-twentieth century, an African-American mailman from New York published a guide called the "Negro Motorist Green

[11] As Evelyn Smith, the landlord in *Smith v. Fair Employment & Housing Commission*, 913 P.2d 909 (Cal. 1996), put it: "If it means the homosexuals and the fornicators can't find a place to live, well I am sure there are enough sinners who would rent to them…. There is no way in the world I am ever going to rent to fornicators." Maura Dolan, *Housing, Religious Rights Clash in Rental Dispute*, L.A. Times, Nov. 22, 1994, at A1.

Book." It was "the bible of black travel during Jim Crow…assist[ing] black travelers in finding lodging, businesses, and gas stations that would serve them along the road."[12] The Green Book is now remembered by most as a cause for national embarrassment. Yet Appellants implicitly suggest that LGBTQ customers similarly need only look to online directories, for example, to determine which businesses are willing to serve them. Appellants' Br. 54. This suggestion not only is demeaning to LGBTQ people, but also turns a blind eye to the pernicious inequity inherent in segregation.

This Court should reject Appellants' invitation to return to a time when the availability of public accommodations could turn on a particular business owner's discriminatory views. States must be permitted to preserve their residents' social and economic well-being and protect all within their borders from the manifest harms of discrimination.

## CONCLUSION

For the foregoing reasons, this Court should affirm the decision below.

[12] Jennifer Kent & Christy Fisher, *Integration in a Post-Brown World: Conversation with Judge Marcella Holland*, Md. B.J., November/December 2016, at 34.

Respectfully submitted,


RUSSELL SUZUKI
*Acting Attorney General*
*State of Hawaii*
Clyde J. Wadsworth
*Solicitor General*
Kaliko‘onalani D. Fernandes
*Deputy Solicitor General*
425 Queen Street
Honolulu, HI 96813
clyde.j.wadsworth@hawaii.gov
(808) 586-1500

MAURA HEALEY
*Attorney General*
*Commonwealth of Massachusetts*
Elizabeth N. Dewar*
*State Solicitor*
David C. Kravitz
Genevieve C. Nadeau
Jon Burke
*Assistant Attorneys General*
One Ashburton Place
Boston, MA 02108
bessie.dewar@state.ma.us
(617) 963-2204
**Counsel of Record*

XAVIER BECERRA
*Attorney General*
*California*
1300 I Street
Sacramento, CA 95814

KARL A. RACINE
*Attorney General*
*District of Columbia*
One Judiciary Square
441 4th Street, N.W.
Washington, D.C. 20001

GEORGE JEPSEN
*Attorney General*
*Connecticut*
55 Elm Street
Hartford, CT 06106

LISA MADIGAN
*Attorney General*
*Illinois*
100 West Randolph Street
12th Floor
Chicago, IL 60601

MATTHEW P. DENN
*Attorney General*
*Delaware*
Department of Justice
Carvel State Building
6th Floor
820 North French Street
Wilmington, DE 19801

THOMAS J. MILLER
*Attorney General*
*Iowa*
1305 East Walnut Street
Des Moines, IA 50319

JANET T. MILLS
*Attorney General*
*Maine*
State House Station
Augusta, ME 04333

BRIAN E. FROSH
*Attorney General*
*Maryland*
200 Saint Paul Place
Baltimore, MD 21202

HECTOR BALDERAS
*Attorney General*
*New Mexico*
408 Galisteo Street
Santa Fe, NM 87501

GURBIR S. GREWAL
*Attorney General*
*New Jersey*
25 Market Street
Trenton, NJ 08625

ERIC T. SCHNEIDERMAN
*Attorney General*
*New York*
120 Broadway, 25th Floor
New York, NY 10271

ELLEN F. ROSENBLUM
*Attorney General*
*Oregon*
1162 Court Street N.E.
Salem, OR 97301

JOSH SHAPIRO
*Attorney General*
*Pennsylvania*
16th Floor
Strawberry Square
Harrisburg, PA 17120

PETER F. KILMARTIN
*Attorney General*
*Rhode Island*
150 South Main Street
Providence, RI 02903

THOMAS J. DONOVAN, JR.
*Attorney General*
*Vermont*
109 State Street
Montpelier, VT 05609

MARK R. HERRING
*Attorney General*
*Virginia*
202 North Ninth Street
Richmond, VA 23219

ROBERT W. FERGUSON
*Attorney General*
*Washington*
P.O. Box 40100
1125 Washington Street SE
Olympia, WA 98504

March 13, 2018

## CERTIFICATES OF COMPLIANCE AND SERVICE

## CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B), because it contains 6,282 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman style, 14-point font.

3. Pursuant to Eighth Circuit Rule 28A(h)(2), the brief has been scanned for viruses and is virus-free.

/s/ Elizabeth N. Dewar
*Counsel of Record*

## CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2018, I electronically filed the foregoing document with the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that the following counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

Kristen K. Waggoner
David A. Cortman
Jeremy D. Tedesco
Jonathan A. Scruggs
Rory T. Gray
Jacob P. Warner
Jonathan C. Dalton
Jordan W. Lorence
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260

Renee K. Carlson
CARLSON LAW, PLLC
855 Village Center Drive
Suite 259
St. Paul, MN 55127

/s/ Elizabeth N. Dewar
*Counsel of Record*

## ADDENDUM

### Table A: State Laws

The following States have laws prohibiting discrimination on the basis of sexual orientation in places of public accommodation. The population data is taken from the United States Census Bureau's estimate of State populations as of July 1, 2016.[13]

| *State* | *Population* | *State Law* |
|---|---|---|
| California | 39,250,017 | Cal. Civ. Code § 51 (2016). |
| Colorado | 5,540,545 | Colo. Rev. Stat. § 24-34-601 (2014). |
| Connecticut | 3,576,452 | Conn. Gen. Stat. § 46a-64 (2017). |
| Delaware | 952,065 | Del. Code Ann. tit. 6, § 4504 (2013). |
| District of Columbia | 681,170 | D.C. Code § 2-1402.31 (2001). |
| Hawaii | 1,428,557 | Haw. Rev. Stat. § 489-3 (2006). |
| Illinois | 12,801,539 | 775 Ill. Comp. Stat. 5/1-102, 5/5-102 (2015). |
| Iowa | 3,134,693 | Iowa Code § 216.7 (2007). |
| Maine | 1,331,479 | Me. Rev. Stat. tit. 5, § 4592 (2016). |
| Maryland | 6,016,447 | Md. Code Ann., State Gov't § 20-304 (West 2014). |
| Massachusetts | 6,811,779 | Mass. Gen. Laws. ch. 272, § 98 (2016). |
| Minnesota | 5,519,952 | Minn. Stat. § 363A.11 (2017). |
| Nevada | 2,940,058 | Nev. Rev. Stat. § 651.070 (2011). |
| New Hampshire | 1,334,795 | N.H. Rev. Stat. § 354-A:17 (2009). |
| New Jersey | 8,944,469 | N.J. Stat. § 10:5-4 (2007). |

[13] *See* U.S. Census Bureau, *Annual Estimates of Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2016* (Dec. 2016), https://www.census.gov/data/tables/2016/demo/popest/nation-total.html.

| | | |
|---|---|---|
| New Mexico | 2,081,015 | N.M. Stat. § 28-1-7 (2008). |
| New York | 19,745,289 | N.Y. Exec. Law § 291 (McKinney 2010). |
| Oregon | 4,093,465 | Or. Rev. Stat. § 659A.403 (2016). |
| Rhode Island | 1,056,426 | R.I. Gen. Laws § 11-24-2 (2017). |
| Vermont | 624,594 | Vt. Stat. tit. 9, § 4502 (2017). |
| Washington | 7,288,000 | Wash. Rev. Code § 49.60.030 (2017). |
| Wisconsin | 5,778,708 | Wis. Stat. § 106.52 (2016). |

## Table B: Local Laws

The following local jurisdictions have laws or ordinances prohibiting discrimination on the basis of sexual orientation in places of public accommodation and are jurisdictions *not* covered by the State-level public accommodations laws listed in Table A. The list is not exhaustive but includes the laws and ordinances that could be readily identified and reviewed through publicly available sources. The population data is taken from the U.S. Census Bureau's estimates of local populations as of July 1, 2016.[14] (This table omits the numerous local non-discrimination ordinances in the States listed in Table A.)

| *Population* | *Ordinance* |
|---|---|
| **Alabama** | |
| 212,157 | Birmingham, Ala., Ordinance No. 17-121 (2017). |
| **Alaska** | |
| 298,192 | Anchorage, Alaska, Anchorage Municipal Code tit. 5, ch. 5.20, § 5.20.050 (2015). |
| 32,468 | Juneau, Alaska, Compiled Laws of the City and Borough of Juneau, Alaska tit. 41, ch. 41.05, § 41.05.020 (2016). |

[14] *See* U.S. Census Bureau Population Estimate Program, *Population and Housing Unit Estimates: July 1, 2016*, https://www.census.gov/programs-surveys/popest/data/ tables.html); U.S. Census Bureau, *Annual Estimate of Resident Population for Counties Municipalities, Municipios, Metropolitan Statistical Areas, Micropolitan Statistical Areas, Metropolitan Divisions, and Combined Statistical Areas: April 1, 2010 to July 1, 2016* (March 2017) (data accessible at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk); U.S. Census Bureau, *Annual Estimate of the Resident Population for Cities and Towns (Incorporated Places and Minor Civil Divisions): April 1, 2010 to July 1, 2016* (May 2017) (data accessible at same link).

| | |
|---|---|
| **Arizona** | |
| 1,615,017 | Phoenix, Ariz., Phx. City Code art 1, ch. 18, §18-4 (2013). |
| 530,706 | Tucson, Ariz., Tucson City Code ch. 17, art. 3, § 17-12 (1999). |
| 182,498 | Tempe, Ariz., Tempe City Code ch. 2, § 2-603(1) (2016). |
| 71,459 | Flagstaff, Ariz., Flagstaff City Code ch. 14-02-001-0003(A) (2013). |
| **Florida** | |
| 2,712,945 | Miami-Dade County, Fla., The Code of Miami-Dade County ch. 11A, art. 3, § 11A-19 (2014). |
| 1,909,632 | Broward County, Fla., Broward County, Fla., Code of Ordinances ch. 16½, §§ 16½-3(p), 16½-34 (2011). |
| 1,376,238 | Hillsborough County, Fla., Hillsborough County Code of Ordinances and Laws ch. 30, § 30-23 (2014). |
| 1,314,367 | Orange County, Fla., Orange County Code of Ordinances ch. 22, art. 3, § 22-42 (2013). |
| 960,730 | Pinellas County, Fla., Pinellas County Code of Ordinances ch. 70, art. 2, § 70-214 (2014). |
| 529,364 | Volusia County, Fla., Municipal Code of Ordinances ch. 36, art. 3, § 36-41 (2017). |
| 287,822 | Leon County, Fla., Orange County Code of Ordinances ch. 9, art. 3, § 9-40 (2013). |
| 263,496 | Alachua County, Fla., Alachua County Code of Ordinances ch. 111, art. 1, § 111.06 (2013). |
| **Georgia** | |
| 472,522 | Atlanta, Ga., Atlanta Code of Ordinances ch. 94, art. 3, § 94-68 (2000). |
| **Idaho** | |
| 223,154 | Boise, Idaho, Boise City Code ch. 6, § 6-02-03(B) (2012). |
| 54,746 | Pocatello, Idaho, City Code tit. 9, ch. 9.36, ch. 9.36, § 9.36.030(B) (2013). |
| 50,285 | Coeur D'Alene, Idaho, Coeur d'Alene, Idaho City Code tit. 9, ch. 9.56, § 9.56.030(B) (2017). |

| | |
|---|---|
| 25,322 | Moscow, Idaho, Moscow City Code tit. 10, ch. 19, § 19-23(B) (2013). |
| **Indiana** | |
| 941,229 | Indianapolis-Marion County, Ind., Rev. Code of the Consolidated City and County ch. 581, art. 1, § 581-101 (2008). |
| 264,488 | Fort Wayne, Ind., Fort Wayne City Code tit. 9, ch. 93, § 93.018 (2003). |
| 188,059 | Tippecanoe County, Code of Tippecanoe County tit. 3, ch. 31, §§ 31.75, 31.76 (2001). |
| 181,721 | Vanderburgh County, Ind., Vanderburgh County Code tit. 2, ch. 2.56, § 2.56.020 (2017). |
| 145,496 | Monroe County, Ind., Monroe County Code ch. 520-2 (2016). |
| 101,735 | South Bend, Ind., Municipal Code of South Bend, Ind. ch. 2, art. 9, § 2-127.1 (2012). |
| 77,134 | Hammond, Ind., City of Hammond, Ind. Code of Ordinances tit. 3, ch. 37, § 37.057 (2015). |
| 69,010 | Muncie, Ind., Code of Ordinances tit. 3, ch. 34, div. 5, § 34.87(F) (2015). |
| 33,104 | Valparaiso, Ind. Ordinance No. 16-09 (2016). |
| 31,157 | Michigan City, Ind., Michigan City Code ch. 66, div. 3, § 66-114 (2015). |
| 26,784 | Zionsville, Ind., Zionsville Town Code tit. 9, ch. 103, § 103.07 (2015). |
| **Kansas** | |
| 95,358 | Lawrence, Kan., City Code of Lawrence ch. 10, art. 1, § 10-110 (2015). |
| 54,983 | Manhattan, Kan., Code of Ordinances City of Manhattan, Kan. ch. 10, art. 3, § 10-17 (2016). |
| **Kentucky** | |
| 616,261 | Louisville-Jefferson County, Ky., Metro Code tit. 9, ch. 92, § 92.05 (2004). |

| | |
|---|---|
| 318,449 | Lexington-Fayette County, Ky., Charter and Code of Ordinances Lexington-Fayette Urban County Gov't ch. 2, art. 2, § 2-33 (1999). |
| 40,797 | Covington, Ky., Covington, Ky. Code of Ordinances tit. 3, ch. 37, § 37.07 (2003). |
| 27,855 | Frankfort, Ky., City of Frankfort, Ky. Code of Ordinances tit. 9, ch. 96, § 96.08 (2013). |
| 7,758 | Morehead, Ky., City of Morehead, Ky. Code of Ordinances tit. 9, ch. 96, § 96.07 (2013). |
| **Louisiana** | |
| 391,495 | New Orleans, La., Code of the City of New Orleans, Louisiana ch. 86, art. 6, § 86-33 (1999). |
| 194,920 | Shreveport, La., City Code of Ordinances City of Shreveport ch. 39, art. 1, § 39-2 (2013). |
| **Michigan** | |
| 672,795 | Detroit, Mich., Detroit City Code ch. 27, art. 6, § 27-6-1 (2008). |
| 120,782 | Ann Arbor, Mich., Code City of Ann Arbor tit. 9, ch. 112, §§ 9:150, 9:153 (2014). |
| 116,020 | Lansing, Mich., Codified Ordinances of Lansing, Mich. tit. 12, ch. 297.04 (2016). |
| 75,984 | Kalamazoo, Mich., Kalamazoo City Code ch. 18, art. 2, § 18-20 (2009). |
| 48,870 | East Lansing, Mich., Code of Ordinances City of East Lansing, Mich. ch. 22, art. 2, § 22-35 (2012). |
| 20,099 | Ferndale, Mich., Code of Ordinances City of Ferndale, Mich. ch. 28, §28-4 (2006). |
| 15,479 | Traverse City, Mich., Codified Ordinances of Traverse City, Mich. Pt. 6, ch. 605, § 605.04 (2010). |
| 2,555 | Pleasant Ridge, Mich., Code of Ordinances City of Pleasant Ridge, Mich. ch. 40, § 40-4 (2013). |

| | |
|---|---|
| **Mississippi** | |
| 169,148 | Jackson, Miss., Code of Ordinances City of Jackson, Miss. ch. 86, art. 10, § 86-302 (2016). |
| **Missouri** | |
| 998,581 | St. Louis County, Mo., Code of Ordinances, tit. 7, ch. 718, § 718.020 (2012). |
| 481,420 | Kansas City, Mo., Code of Ordinances of Kansas City, Mo. vol. 1, ch. 38, art. 3, § 38-113 (2013). |
| 311,404 | St. Louis, Mo., The Charter, the Scheme, and the General Ordinances of the City of St. Louis, Mo. tit. 3, ch. 3.44, § 3.44.080(E) (2003). |
| 120,612 | Columbia, Mo., Code of Ordinances ch. 12, art. 3, div. 1, §12-35 (2012). |
| 69,293 | St. Charles, Mo., Code of Ordinances of the City of St. Charles ch. 240, art. 3, § 240.090. |
| **Montana** | |
| 72,364 | Missoula, Mont., Missoula Municipal Code tit. 9, ch. 64, §9.64.040 (2010). |
| 45,250 | Bozeman, Mont., Municipal Code of the City of Bozeman, Mont. Ch. 24, art. 10, § 24.10.050 (2014). |
| 33,853 | Butte-Silver Bow, Mont., Butte-Silver Bow Municipal Code tit. 5, ch. 5.68, §5.68.040 (2014). |
| 31,169 | Helena, Mont., Municipal Code of the City of Helena, Mont. tit. 1, ch. 8, § 1-8-4 (2017). |
| 7,279 | Whitefish, Mont., The City Code of the City of Whitefish, Mont. tit. 1, ch. 10, § 1-10-4 (2016). |
| **Nebraska** | |
| 446,970 | Omaha, Neb., Ohama Municipal Code, Charter, and General Ordinances of the City vol. I, ch. 13, art. 3, div. 1, § 13-84 (2012). |
| **Ohio** | |
| 860,090 | Columbus, Ohio, Columbus – City Code of Ordinances tit 23, ch. 2331, § 2331.04 (2008). |

| | |
|---|---|
| 385,809 | Cleveland, Ohio, Code of Ordinances § 667.01 (2016). |
| 298,800 | Cincinnati, Ohio, Municipal Code of Cincinnati, Ohio § 914-7 (2006). |
| 278,508 | Toledo, Ohio, Toledo Municipal Code § 554.05 (2017). |
| 197,633 | Akron, Ohio, Code of Ordinances tit. 3, ch. 38, § 38.04 (2017). |
| 140,489 | Dayton, Ohio, Code of Ordinances City of Dayton, Ohio tit. III, div. I, § 32.04 (2007). |

**United States Court of Appeals**
***For The Eighth Circuit***
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
**St. Louis, Missouri 63102**

**Michael E. Gans**
***Clerk of Court***

**VOICE (314) 244-2400**
**FAX (314) 244-2780**
**www.ca8.uscourts.gov**

March 13, 2018

Elizabeth N. Dewar
ATTORNEY GENERAL'S OFFICE
1 Ashburton Place
Boston, MA 02108-0000

RE: 17-3352 Telescope Media Group, et al v. Kevin Lindsey, et al

Dear Counsel:

The amicus curiae brief of Massachusetts, Hawaii, California, Connecticut, Delaware, the District of Columbia, Illinois, Iowa, Maine, Maryland, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington was filed on March 13, 2018. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

Michael E. Gans
Clerk of Court

MER

Enclosure(s)

cc: Mr. J. Matthew Belz
Mr. Timothy Belz
Mr. Joshua A. Block
Mr. Eric Brown
Mr. David Todd Bydalek
Ms. Renee K. Carlson
Mr. Anthony T. Caso
Mr. David Andrew Cortman
Mr. Jonathan Caleb Dalton
Mr. Jefferson Downing
Mr. John C. Eastman

Mr. John Allen Eidsmoe
Mr. Steven W. Fitschen
Mr. Rory Thomas Gray
Ms. Alethea Marie Huyser
Ms. Lindsey Kaley
Ms. Janine Wetzel Kimble
Mr. Jordan W. Lorence
Ms. Teresa Nelson
Mr. Jonathan Andrew Scruggs
Ms. Ilya Shapiro
Mr. Jeremy David Tedesco
Mr. Eugene Volokh
Ms. Kristen Waggoner
Mr. Jacob P. Warner
Mr. Jonathan R. Whitehead

District Court/Agency Case Number(s): 0:16-cv-04094-JRT