

APPEAL NO. 17-3352
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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

v.

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-Appellees,

On Appeal from the United States District Court
for the District of Minnesota
The Honorable Chief Judge John R. Tunheim
Case No. 0:16-cv-04094-JRT-LIB

**PLAINTIFFS-APPELLANTS' MOTION FOR SUPPLEMENTAL
BRIEFING UNDER FED. R. APP. P. 27**

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The U.S. Supreme Court heard two cases this term that involve compelled speech claims made by religiously-motivated entities: *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, ___ S. Ct. ___, 2018 WL 2465172 (June 4, 2018), and *Nat’l Inst. of Family Life Advocates v. Becerra*, (“NIFLA”) No. 16-1140 (U.S., argued Mar. 20, 2018). The Court also heard *Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, No. 16-1466 (U.S., argued Feb. 26, 2018), which involved compelled association and speech claims. After briefing was completed in the appeal now before this Court, the Supreme Court released its decision in *Masterpiece* and will soon release its decisions in *NIFLA* and *Janus*. These cases will likely be pertinent to the decision in this appeal. Plaintiffs-Appellants Carl and Angel Larsen ask that this Court allow the parties to provide supplemental briefs no longer than 2,500 words within 10 days after the final day of the U.S. Supreme Court’s present term (October 2017 term).¹

1. On June 4, 2018, the U.S. Supreme Court released its decision in *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*.

2. That case involved a creative professional who challenged a state’s application of its public accommodation law on free speech and free exercise grounds. The majority opinion addressed the free exercise claim, while several concurrences and a dissent addressed the free speech claim.

¹ “The Larsens” refers to all Plaintiffs-Appellants.

3. The case now on appeal before this Court involves creative professionals who are challenging a state’s application of its public accommodation law on free speech and free exercise grounds (among others).

4. The U.S. Supreme Court’s decision in *Masterpiece* provides guidance for this Court in deciding the free speech and free exercise issues raised in this appeal.

5. Minnesota submitted a Rule 28(j) letter (Entry ID: 4671010) about *Masterpiece* on June 8, 2018.²

6. On March 20, 2018, the U.S. Supreme Court heard oral arguments in *NIFLA v. Becerra*.

7. That case involved a religiously-motivated organization’s challenge to a state law that compels speech. In addition, respondents in that case raised ripeness questions that the Court may address.

8. The case now on appeal before this Court involves a compelled speech claim, and Minnesota raised a ripeness question about one aspect of the Larsens’ lawsuit.

9. The U.S. Supreme Court will decide *NIFLA* by the end of this month. That decision will likely provide guidance for this Court in deciding the compelled speech and ripeness issues raised in this appeal.

² “Minnesota” refers to all Defendants-Appellees.

10. On February 26, 2018, the U.S. Supreme Court heard oral arguments in *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*.

11. That case involves compelled association and speech claims made by an employee who objected to subsidizing a union's speech that he did not support.

12. The case now on appeal before this Court involves compelled association and speech claims.

13. The U.S. Supreme Court will decide *Janus* by the end of this month. That decision will likely provide guidance for this Court in deciding the compelled association and speech issues raised in this appeal.

14. The interests of justice and judicial economy favor granting the parties an opportunity to provide supplemental briefing about these cases.

15. Minnesota opposes this request and will separately inform the Court of its position that supplemental briefing is not necessary.

THEREFORE, the Larsens ask that this Court permit the parties to each submit one supplemental brief (no longer than 2,500 words) about *Masterpiece*, *NIFLA*, and *Janus*, and their impact on this case within 10 days after the final day of the U.S. Supreme Court's present term (October 2017 term).

Respectfully submitted this 13th day of June, 2018.

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CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this motion contains 608 words, excluding the parts exempted under Fed. R. App. P. 32(f).

2. This response complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a 14-point proportionally spaced Times New Roman typeface using Microsoft Word 2013.

3. All required privacy redactions have been made pursuant to 8th Cir. R. 25A(i).

4. Paper copies are not required for this response.

5. This response has been scanned for viruses with the most recent version of a commercial virus scanning program, Traps version 4.1.4, and is free of viruses according to this program.

Date: June 13, 2018

s/ Jeremy D. Tedesco
Jeremy D. Tedesco

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Date: June 13, 2018

s/ Jeremy D. Tedesco
Attorney for Plaintiffs/Appellants