



# STATE OF MINNESOTA

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April 24, 2019

**VIA CM/ECF**

Mr. Michael E. Gans  
Clerk, Eighth Circuit Court of Appeals  
Thomas F. Eagleton Courthouse  
111 South Tenth Street  
St. Louis, MO 63102

**Re: *Telescope Media Group, et al v. Lucero, et al*  
Eighth Circuit Court File No. 17-3352**

Dear Mr. Gans:

Pursuant to Fed. R. App. P. 28(j), I write to notify the Court of supplemental authority issued by the United States Court of Appeals for the Third Circuit, on April 22, 2019. In *Fulton v. City of Philadelphia*, Case No. 18-2574, the city stopped referring foster children to a Catholic services agency that refused to work with same-sex couples as foster parents. The city believed the agency's actions violated the city's anti-discrimination laws. The agency brought a lawsuit and argued the city violated its rights under the First Amendment and a state religious freedom act. The Third Circuit affirmed the district court's denial of a motion for preliminary injunction, and rejected appellants' arguments that the city violated their First Amendment rights.

The appellants in *Fulton* argued they were entitled to discriminate against same-sex foster care parents under the First Amendment of the U.S. Constitution and the Pennsylvania Religious Freedom Protection Act. The Third Circuit rejected appellants' theories. As to appellant's Free Exercise Clause argument, the Third Circuit held the law was neutral under *Employment Division v. Smith*, 494 U.S. 872 (1990), where appellants were not treated differently because of their religious beliefs. (Slip op. at 27, 37.) Instead, "[t]he City has acted only to enforce its non-discrimination policy in the face of what it considers a clear violation." (*Id.* at 32.) As to appellants' state-law claim, the Third Circuit observed that even if it were to assume there was a substantial burden on religion, "the City's actions are the least restrictive means of furthering a compelling government interest. It is black-letter law that 'eradicating discrimination' is a compelling interest. And mandating compliance is the least restrictive means of pursuing that interest." (Slip op. at 46 (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984)).) In other words, the law survived even strict scrutiny. (Slip op. at 48.)

Sincerely,

s/ **Janine Kimble**

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*Attorney for Appellees*

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**Certificate of Service**

I hereby certify that on April 24, 2019 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.

s/ **Janine Kimble**  
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JANINE KIMBLE