



April 29, 2019

VIA CM/ECF

Mr. Michael E. Gans
Clerk, Eighth Circuit Court of Appeals
Thomas F. Eagleton Courthouse, Room 24.329
111 South Tenth Street
St. Louis, MO 63102

**Re: Response to Supplemental Authority
Telescope Media Group, et al. v. Lucero, et al.
Eighth Circuit File No. 17-3352**

Dear Mr. Gans:

Appellants (Larsens) file this response to Appellees' (Minnesota) notice of supplemental authority about *Fulton v. City of Philadelphia*, 2019 WL 1758355 (3d Cir. Apr. 22, 2019). *Fulton* involved a city punishing a faith-based adoption agency for acting consistent with its beliefs. *Id.* at *14. This non-binding and faulty opinion is irrelevant for at least three reasons.

1. *Fulton* analyzed the agency's relationship with Philadelphia like a type of government contract. *Id.* at *13-14; *Agency for Int'l Dev. v. All. for Open Soc'y Int'l*, 570 U.S. 205, 213-17 (2013) (government's interest in controlling its own programs sometimes affects speech analysis). But Minnesota is not contracting with or paying the Larsens to do anything. Minnesota is threatening private filmmakers with jail time and fines if they do not create, edit, and publish films containing content to which they object.

2. According to *Fulton*, Philadelphia had a compelling interest to force a government contractor to provide non-expressive services to same-sex couples on a non-discriminatory basis. 2019 WL 1758355, at *16-17. Whether or not *Fulton* is correct, the Larsens' films are core artistic expression, and they serve everyone, including members of the LGBT community. They simply cannot *speak certain messages* for anyone. Appellants' Opening Br. 26-31. Minnesota's application of the law to their speech "require[s] [them] to modify the content of their expression..." something the First Amendment forbids. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 578 (1995).

3. *Fulton* said that Philadelphia acted in a neutral and generally applicable way when declining to contract with the adoption agency. 2019 WL 1758355, at *6-12. Whether or not *Fulton* is correct, Minnesota is forcing the Larsens to participate in a religious ceremony and is violating the hybrid-rights doctrine. Minnesota's law and its application also allow individualized assessments and exceptions, which the court found were not present in *Fulton*. Appellants' Opening Br. 44-48; Appellants' Reply Br. 20-22; Pls.-Appellants' Suppl. Br. 10-11. These aspects of Minnesota's law require strict scrutiny. *Id.*

In sum, *Fulton*'s analysis does not address whether Minnesota can compel privately commissioned filmmakers to speak messages that violate their beliefs.

Sincerely,

s/ Jeremy Tedesco
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Certificate of Service

I hereby certify that on April 29, 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/ Jeremy Tedesco
Jeremy Tedesco
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