

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**Robert Updegrave, and Loudoun Multi-
Images LLC d/b/a Bob Updegrave
Photography,**

Plaintiffs,

v.

Mark R. Herring, in his official capacity as
Virginia Attorney General; and **R. Thomas
Payne, II**, in his official capacity as Director
of the Virginia Division of Human Rights and
Fair Housing,

Defendants.

Case No. _____

**Plaintiffs' Motion for Preliminary
Injunction**

Motion

Consistent with Federal Rule of Civil Procedure 65, Plaintiffs Robert (Bob) Updegrave and Bob Updegrave Photography (collectively "Bob") request a preliminary injunction to stop Defendants Mark R. Herring and R. Thomas Payne, II from enforcing § 2.2-3904(B) of the Virginia Human Rights Act as applied to Bob's constitutionally protected activities.

Virginia Code § 2.2-3904(B) contains two provisions relevant here. First, Virginia Code § 2.2-3904(B) makes it unlawful for public accommodations "to refuse, withhold from, or deny any individual," "to attempt to refuse, withhold from, or deny any individual" or "to segregate or discriminate" against any individual in the use of the public accommodation "on the basis of ... sexual orientation." For clarity, Plaintiffs call this clause the Accommodations Clause.

Second, Virginia Code §2.2-3904(B) makes it unlawful "to publish, circulate, issue, display, post, or mail, directly or indirectly, any communication, notice, or advertisement to the effect

that” services “shall be refused, withheld from, or denied to any individual on the basis of ... sexual orientation.” Plaintiffs call this clause the Publication Clause.

Scope of injunction and persons bound

Bob seeks a preliminary injunction to enjoin Defendants, their officers, agents, servants, employees, and attorneys, and other persons in active concert or participation with Defendants, who receive actual notice of this motion, from taking these actions:

1. Enforcing the Accommodations Clause to force Bob to offer or provide his wedding photography services (photographing, editing, and posting) for same-sex weddings or engagements.
2. Enforcing the Accommodations Clause to prevent Bob from asking prospective clients whether they seek photography services celebrating a same-sex wedding or engagement or from asking materially similar questions.
3. Enforcing the Accommodations Clause to prevent Bob from adopting his desired editorial policy (Verified Complaint Exhibit 1).
4. Enforcing the Accommodations and Publication Clauses to prevent Bob from distributing his desired editorial policy (Verified Complaint Exhibit 1).
5. Enforcing the Accommodations and Publication Clauses to prevent Bob from posting his desired statement (Verified Complaint Exhibit 2) on his website or from making materially similar statements on his website or directly to prospective clients.

Reasons for injunction

Without a preliminary injunction, Defendants seek to compel Bob’s speech, regulate Bob’s speech based on content, and compel Bob to participate in religious ceremonies, causing irreparable harm and violating the First Amendment. In support of his motion, Bob relies on any filed pleadings, including:

- The Verified Complaint and the attached exhibits;
- Plaintiffs' Brief in Support of their Motion for Preliminary Injunction;
- Appendix to Plaintiffs' Motion for Preliminary Injunction;
- Bob Updegrave's Declaration in Support of Plaintiffs' Motion for Preliminary Injunction;
- Plaintiffs' Reply in Support of their Motion for Preliminary Injunction (when filed); and
- Any other supporting documents (if any filed).

Bob asks the Court to grant oral argument in support of his motion at a time and date set by the Court.

Security

Bob also asks this Court to waive any bond because the requested injunction serves the public interest by vindicating his rights under the First Amendment. *See Pashby v. Delia*, 709 F.3d 307, 332 (4th Cir. 2013) (district court may waive security requirement); *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (upholding district court's decision to waive bond requirement given the strength of movant's arguments and the public interest involved); *Thomas v. Andino*, No. 3:20-cv-01552-JMC, 2020 WL 2617329, at *24 (D.S.C. May 25, 2020) (waiving bond due to public interest); *Hassay v. Mayor*, 955 F. Supp. 2d 505, 527 (D. Md. 2013) (requiring \$1 bond because injunction to prevent likely First Amendment violation had "minimal or nonexistent" costs).

Respectfully submitted this 28th day of September 2020.

By: s/ C. Douglas Welty

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ATTORNEYS FOR PLAINTIFFS

*Motions for *Pro Hac Vice* admission filed concurrently

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2020, I electronically filed the foregoing paper with the Clerk of Court using the ECF system, and I hereby certify that the foregoing paper will be served via private process server with the Summons and Complaint to the following participants:

Mark R. Herring, Attorney General
Commonwealth of Virginia
Office of the Attorney General
202 North Ninth Street
Richmond, VA 23219

R. Thomas Payne, II, Director
Civil Rights Unit/SAAG Fair Housing
Division of Human Rights and Fair Housing
Office of the Attorney General
202 North Ninth Street
Richmond, VA 23219

s/ C. Douglas Welty
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Attorney for Plaintiffs

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