No. 17-3352

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

TELESCOPE MEDIA GROUP, *et al.*,

Appellants,

v.

KEVIN LINDSEY, Commissioner, *et al.*,

Appellees.

Appeal from the United States District Court for the District of Minnesota

---

BRIEF OF *AMICI CURIAE* STATES OF ALABAMA, ARKANSAS, KANSAS, LOUISIANA, MISSOURI, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, TEXAS, and WEST VIRGINIA IN SUPPORT OF APPELLANTS AND FOR REVERSAL

DOUGLAS J. PETERSON
Attorney General of Nebraska

David T. Bydalek
Chief Deputy Attorney General
Counsel of Record

OFFICE OF THE ATTORNEY GENERAL
2115 State Capitol
Lincoln, Nebraska 68509
(402) 471-2682

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER CITATIONS

INTEREST OF *AMICI CURIAE* STATES

The States of Alabama, Arkansas, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, South Carolina, Texas, and West Virginia file this brief under Fed. R. App. P. 29(a).[1]

This case concerns the application of the First Amendment to a state statute that bars discrimination in public accommodations based on sexual orientation. The *Amici* States have a substantial interest in preserving the constitutional rights of their citizens. In contrast, States do not have a legitimate interest in eliminating private expression or forcing citizens to accede to a political and religious viewpoint with which they do not agree.

Utilizing the weight of government power to order individuals to speak in a manner that violates their conscience is fundamentally at odds with the freedom of expression and tolerance for a diversity of viewpoints that this Nation has long enjoyed and promoted. The *Amici* States are well-positioned to explain that, within the framework of non-discrimination accommodation laws, there is room for a diversity of viewpoints. The government need not compel its citizenry to express or facilitate messages that violates the conscience of artistic professionals.

[1] A State "may file an amicus-curiae brief without consent of the parties or leave of court." Fed. R. App. P. 29(a).

SUMMARY OF ARGUMENT

The district court's analysis of the expressive and artistic nature of the appellants Carl and Angel Larsens' ("Larsens") filmmaking business was fundamentally flawed. The Court dismissed the Larsens' First Amendment claims by holding that the application of the "MHRA [Minnesota Human Rights Act] to expressive businesses" only "incidentally affects the content of the expressive product created for the customer . . ." Properly examined by this Court, the Larsens' creation of custom wedding videos are a form of artistic speech. Their artistic creations deserve First Amendment heightened scrutiny analysis under not only the Free Speech Clause, but also the hybrid Free Exercise Clause rationale set forth in *Empl. Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

ARGUMENT

I. The application of the MHRA to the Larsens triggers heightened scrutiny.

The MHRA requires heightened scrutiny. For the reasons explained further in this brief, heightened judicial scrutiny is required when a law compels speech by a person or entity, compels an artistic product that is inherently communication, compels an artistic creator's participation in a ceremony or other expressive event, and involves a free exercise of religion "hybrid" First Amendment claim.

The application of the MHRA to the appellant Larsens triggers heightened scrutiny because it effectively compels them to create artistic works (wedding

videos), participate in an expressive and symbolic event (a wedding), and involves their hybrid free exercise of religion-free speech claims under the First Amendment. Minnesota cannot satisfy such scrutiny because it lacks a sufficient state interest to justify such intrusions. *See, Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 575 (1995).

II. Artistic works are inherently expressive and receive full First Amendment protection.

It has long been understood that the First Amendment protection of speech extends beyond mere words. *Texas v. Johnson*, 491 U.S. 397, 404 (1989) ("The First Amendment literally forbids the abridgement only of 'speech,' but we have long recognized that its protection does not end at the spoken or written word."). Historically, the Supreme Court has demonstrated "a profound commitment to protecting communication of ideas," deeming "pictures, films, paintings, drawings, and engravings, both oral utterance and the printed word" as protected speech under the Constitution. *Kaplan v. California*, 413 U.S. 115, 119-20 (1973). But these delineated methods of communication are not the only forms of speech protected by the First Amendment. The Court broadly views speech as including "the expression of an idea" that "the government may not prohibit" "simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, at 414.

The Supreme Court has given nearly unreserved protection to art under the Free Speech Clause. "It goes without saying that artistic expression lies within this

First Amendment protection." *Nat'l Endowment for the Arts v. Finley*, 534 U.S. 569, 602-03 (1998) (Souter, J., dissenting). Recognizing art's inherently expressive nature, the Court has developed a tradition of also protecting artistic works, even works that some might find offensive. *Kois v. Wisconsin*, 408 U.S. 229, 231 (1972). Thus, artistic works, with very limited exceptions not relevant to the present case, fall within the First Amendment's broad protections. *See, e.g.*, *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 65-67 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee."). Likewise, the creation or sale of art has never been subject to commercial-speech doctrines. *See Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501-02 (1952) ("We fail to see why operation for profit should have any different effect in the case of motion pictures.").

The wide latitude regarding what qualifies as artistic expression is also exemplified in the realm of sexually explicit material: "material dealing with sex in a manner…that has literary or scientific or artistic value…may not be branded as obscenity and denied constitutional protection." *Jacobellis v. State of Ohio*, 378 U.S. 184, 191 (1964). Thus, if the thing in question has "artistic value" or even "bears some of the earmarks of an attempt" at art, then the First Amendment's strong protections apply. *See Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 246-56 (2002).

The First Amendment's protections apply equally to artistic expression that may not be literal speech. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790-91 (1989) (upholding a time-place-manner restriction on music, but recognizing that the First Amendment's protections apply to regulations of music). Moreover, with artistic expression it is unnecessary to inquire as to the speaker's message or whether it will be understood by viewers. Art in its various forms is "unquestionably shielded" by the First Amendment – be it nonsensical poetry (Lewis Carroll's Jabberwocky), awkward instrumentals (Arnold Schönberg's atonal musical compositions), or seemingly incomprehensible paintings (Jackson Pollock's modern art). *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 569 (1995). An objective observer, then, only need recognize the speaker's subjective genuine attempt to create art – and need not appreciate the art's message, beauty, technique, or anything else in order for the creation to be treated as artistic expression protected by the First Amendment.

The Court has also paid special attention to the significance of symbolism as protected speech. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), the Court underscored the communicative nature of symbols. In analyzing the act of saluting the American flag, the Court stated: "Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind

to mind." *Id.* at 632. Thus, symbolism is categorically labeled as speech because associating one's self with a symbol constitutes an affirmation of the message the symbol communicates. Key to this analysis is not only the Court's affirmation of symbolism as speech, but also its acknowledgment and subsequent treatment of the interplay between personal offense and freedom of speech. *See Id.*, at 632-33 (observing that an objection to compelled speech was an established principle to the framers of the Bill of Rights). The Court recognized the intimate nature of symbols by declaring how divisive they can be and implicitly rejecting the notion that allegedly objectionable speech is unprotected: "A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn." *Id.*

III. The Larsens' filmmaking is First Amendment protected art.

While films were heavily regulated in the early 20th century, *See e.g. Mut. Film Corp. v. Undus. Comm'n of Ohio,* 236 U.S. 230 (1915), the Supreme Court specifically recognized the artistic value of films in 1952. *See Burstyn*, *supra*, at 501 ("[M]otion pictures are a significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression.").

Art is the "expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power." New Oxford Am. Dictionary 89 (3d ed. 2010). The Larsens wish to utilize their creative skills and imaginations to create audio-visual wedding stories emphasizing what they believe to be God's design for marriage. Their films are no less an artistic endeavor than the motion pictures we see at the local movie theater.

The Larsens' business is not an over-the-counter operation, offering generic products for sale. They create custom films for their clientele. And, while they have to this point been restrained from creating wedding videos because of the enactment of the MHRA, the production of these films entails much more than simply pointing a camera at the wedding couple and pushing the "on" button.

According to the Larsens, the process of creating the video involves the following steps: When an engaged couple asks the Larsens to help them celebrate their marriage, the Larsens conduct an interview to get to know as much as possible about their relationship. The Larsens want to tell the couples' story of love and commitment in a way that changes hearts and minds. To that end, the Larsens will direct and compile a cinematic piece for use at the wedding that tells the couples' story of love, commitment and vision for the future. Their desire is for the audience to see marriage as the beautiful covenant God designed it to be.

On the wedding day, the Larsens plan to perform on-site editing to weave a story using the perfect clips of the wedding ceremony video, captured audio, and music which will be shown at the wedding reception. The Larsens' objective is for those in attendance at the reception to leave the wedding dwelling on the aspects of marriage that the Larsens wish to proclaim and reinforce.

Subsequent to the wedding, the Larsens will use their artistic vision and talents to capture each aspect of the wedding that that furthers their desired narrative. Via their editing and storytelling skills, the Larsens will create a lengthier wedding film that will strengthen the couple's marriage and affect the viewers' conception of marriage. The Larsens also plan to promote and publish the wedding videos, which they deem as cinematic stories proclaiming God's design for marriage, to a broader audience to achieve maximum cultural impact.

The record in this case establishes that the Larsens' wedding video productions are, like paintings, musical compositions and dance, the product of their artistry, skill, creativity and distinctive style. In sum, they are the Larsens' expression about the couple, their relationship and their wedding ceremony. In creating these videos, the Larsens become active participants in the wedding event. The district court thus erred in its analysis of whether the creation of these videos constitutes pure speech.

IV. The First Amendment categorically prohibits compelled artistic expression, and the MHRA's compulsion of speech is unconstitutional.

One of the central purposes of public accommodations laws is to ensure efficient and equal access to housing, employment, and commerce – the opportunities valued in a civil society. Federal and state governments have long employed facially content-neutral public accommodations laws to combat discrimination in commerce. "At common law, innkeepers, smiths, and others who made profession of a public employment, were prohibited from refusing, without good reason, to serve a customer." *Hurley*, 515 U.S. at 571 (citation and internal quotation marks omitted).

For the most part, individual First Amendment rights have coexisted comfortably with federal and state public accommodations laws. That is because those laws generally focus on preventing discriminatory conduct rather than modifying the content of expression. Under ordinary circumstances, content-neutral laws that regulate conduct rather than speech receive no First Amendment scrutiny, even where they have "plainly incidental" effects on speech. *See Rumsfeld v. Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 62 (2006).

This case is indicative of the conflict that occurs when a law, in the name of non-discrimination, forces creative professionals to create, communicate, or facilitate a message that conflicts with the creative professional's viewpoint. There

are two competing interests at play: an individual's right to speak or remain silent according to the dictates of his or her conscience, and the government's desire to combat discrimination in commercial transactions. Both interests are undeniably important.

Although a content-neutral law aimed at conduct ordinarily receives limited (if any) First Amendment scrutiny, that is not so where an application of the law would fundamentally alter "speech itself". *Hurley*, 515 U.S. at 573. In that circumstance, the Court has subjected the law's application to heightened scrutiny, even if the government's interest in regulation does not relate to the communicative nature of the expression. *See Id.* at 575-577; *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 659 (2000).

So regardless of the seemingly noble motivation to "produce a society free of … biases" (*Hurley*, 515 U.S. at 578-79), the Supreme Court has consistently, in "as applied" challenges, upheld the principle that the government cannot force individuals to speak or adhere to an ideology with which they disagree. When a law effectively compels a person both to create expression and to participate in an expressive event, as does the MHRA, the application of that law to that person triggers heightened scrutiny under the First Amendment. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox . . . or force citizens to confess by word or act their faith

therein." *Barnette*, *supra*, 319 U.S. at 642; *accord Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

The Supreme Court's *Hurley* decision is instructive in this case. In *Hurley*, the Court considered the application of a Massachusetts public accommodations law to an annual St. Patrick's Day parade organized by a private entity. 515 U.S. at 560-562. The Supreme Judicial Court of Massachusetts held that the organizers' exclusion of a group of gay, lesbian, and bisexual descendants of Irish immigrants from the parade constituted discrimination on account of sexual orientation and thus violated the state public accommodations law. *Id.* at 563-564. The Massachusetts Court concluded that requiring the group's inclusion in the parade would have only an "incidental" effect on First Amendment rights. *Id.* at 563. In reversing the lower court's ruling, *Hurley* acknowledged that the law "does not, on its face, target speech or discriminate on the basis of its content, the focal point of its prohibition being rather on the act of discriminating against individuals in the provision of publicly available goods, privileges, and services on the proscribed grounds." *Id.* at 572. But the law had nevertheless been "applied in a peculiar way" to "essentially requir[e]" the parade organizers "to alter the expressive content of their parade." *Id.* at 572-573. The Court thus refused to apply the lower level of scrutiny generally applicable to content-neutral statutes that do not target speech. *Id.* at 577-580; *see also Dale*,

530 U.S. at 659 (noting that *Hurley* had "applied traditional First Amendment analysis").

Hurley exemplifies that public accommodations laws cannot be used to compel speech. "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Id.* at 579.

In *Boy Scouts of Am. v. Dale*, *supra*, the Court reaffirmed *Hurley's* approach in the context of an expressive association. The Court explained that the typical enforcement of a state public accommodations law "would not materially interfere with the ideas" that an expressive organization seeks to communicate. 530 U.S. at 657. If, however, the law "directly and immediately affects associational rights," heightened scrutiny is appropriate. *Id.* at 659. Accordingly, the Court concluded that the First Amendment barred the application of a public accommodations law to force an expressive organization to admit members with divergent views. *Id.* at 648, 659. Together, *Hurley* and *Dale* distinguish an application of a content-neutral law that merely has an incidental effect on speech from one that fundamentally alters protected expression. In the latter situation, even a facially content-neutral regulation of conduct receives heightened scrutiny.

In the context of artistic speech, the government is barred from compelling private artistic expression. So, as it here relates to the Larsens' videography business, "it is both unnecessary and incorrect to ask whether the State can show that the statute is necessary to serve a compelling state interest and is narrowly drawn to achieve that end." *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 124 (1991) (Kennedy, J., concurring in the judgment) (internal quotation marks omitted). Private artistic expression inherently espouses ideas that must come from the artist's nuanced work. "The government may not . . . compel the endorsement of ideas that it approves." *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 309 (2012).

Thus, a government cannot force a citizen to engage in or endorse expression—whether saluting a flag, *Barnette*, 319 U.S. at 642, or even carrying a message on a license plate, *Wooley*, 430 U.S. at 717. And, unlike a cable company passively hosting someone else's message, for example, *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 (1994), the artistic endeavor here (the creation of wedding videos) is designed and created directly by the person that the government is seeking to coerce. *Id.* at 641.

Moreover, "when dissemination of a view contrary to one's own is forced upon a speaker intimately connected with the communication advanced, the speaker's right to autonomy over the message is compromised." *Hurley*, 515 U.S.

at 576. That concern is only heightened in the context of private artistic expression, which is intimately connected to the artist. Government has no authority to invade that sphere of an artist's personal autonomy and dignity.

This case falls within the set of applications of facially content-neutral laws that merit heightened scrutiny. First, the MHRA requires the Larsens to create custom wedding videos that are inherently communicative. Second, the law forces the Larsens to participate, through their artistic, communicative creations, in the historically important ritual of a wedding celebration, which is a profoundly expressive and often religious or sacred event.

As related previously, the wedding videos created by the Larsens qualify as pure speech. The Larsens immerse themselves into creating custom wedding videos for their clients. It begins from the time an engaged couple asks them to help celebrate their marriage. The Larsens learn all they can about the couple's relationship so they can tell the story of the couple's love, commitment and vision for the future. It continues through the marriage ceremony, where they use their creative skills to make a special video for the reception, the desired goal of which is to have those in attendance leave the wedding dwelling on the aspects of marriage that the Larsens wish to proclaim and reinforce. Finally, it spans beyond the wedding, where they create a lengthier video which they hope will strengthen the couple's marriage and affect the viewers' conception of marriage. The Larsens then

plan to promote and publish the wedding videos, which they deem as cinematic stories proclaiming God's design for marriage, to a broader audience to achieve maximum cultural impact.

The Larsens' wedding videos are not simply "speech for hire" as the district court concluded, with rights of protected expression residing only with the wedding couple as their final product. The Larsens' services are protected by the First Amendment, which shields not only the final product of such productions but the very *process* of creating them. *See Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1060 (9th Cir. 2010) ("The tattoo *itself*, the *process* of tattooing, and even the *business* of tattooing are not expressive conduct but purely expressive activity fully protected by the First Amendment." (italics in original). *See also Animal Legal Defense Fund v. Wasden*, ___ F.3d. ___, No. 15-35960, 2018 WL 280905, at 13 (9th Cir. Jan. 4, 2018).

Thus, the Larsens' videography creations are not mere "conduits" of other persons' speech at issue in *Rumsfeld v. Forum for Acad. and Institutional Rights, Inc.* (requiring college campus to open its facilities to military recruiters), *Turner Broad. Sys., Inc.* (requiring cable company to make available several channels for local broadcasting television), and *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980) (requiring private shopping mall to make space available for distribution of politically-oriented literature). Those cases turned on the application of laws or

regulations for *non-expressive* conduct. Unlocking facility doors to make room for military recruiters is not art. Nor is signing a contract with local broadcasters or allowing peddlers of political literature to hand out material at a shopping mall. By contrast, the Larsens' videography services involve active participation in a client couple's wedding day for the purpose of producing a personally tailored and thematically structured wedding video. The Larsens' wedding videography is *inherently expressive*.

Even assuming discrimination on the basis of sexual orientation were nonexpressive conduct subject to regulation, the Larsens are still protected. The Larsens will serve anyone, including those identifying as LGBT, and thus do not discriminate on the basis of sexual orientation. They simply seek to produce wedding videos in concert with their view that God's design for marriage is between one man and one woman. That view necessarily precludes producing videos that promote an opposing view. The activity at issue is not discrimination based on a client's sexual orientation, but promotion of a particular message and point of view about marriage. The Larsens treat all people the same, just not all messages. *See Hurley*, 515 U.S. at 570 (upholding parade's exclusion of a marching banner celebrating the LGBT identities of various descendants of Irish immigrants because of disagreement with its message, regardless of the marchers' sexual orientation).

In declining to create wedding videos for a same-sex marriage ceremonies, the Larsens are exercising a fundamental liberty guaranteed under the First Amendment – the right to choose what not to say. Forcing them to create wedding videos for same-sex marriage ceremonies is a violation of the Free Speech Clause because it compels them to use their skills and talents to create a piece of art to celebrate, and thus speak in favor of, a marriage.

Just as the statute in *Barnette* required the students to affirm a sentiment with which they did not agree, the district court's application of the MHRA law requires the Larsens to accede to a political and religious viewpoint with which they do not agree. Compelling them to create a wedding video for a same-sex marriage ceremony is forcing them to affirm a belief that they do not support. Coercing artists to utilize their talents and skills to create a symbol commonly used to celebrate an occasion is essentially forcing them to celebrate the occasion. This is a violation of the principal protection of the First Amendment. In order to preserve self-government, the individual must have the liberty to choose his or her own message. For these reasons, the MHRA, as applied to the Larsens, violates the First Amendment.

V. Compelling the Larsens to create customized art for events they cannot celebrate consistent with their religious beliefs violates the Free Exercise Clause.

Not only does the MHRA violate the Larsens' freedom of speech, it impermissibly burdens their First Amendment right to the free exercise of religion. The district court rejected this claim because it found the MHRA to be a "neutral, generally-applicable law that is rationally related to a legitimate government interest . . ." The district court found that there was no indication that the object of the law was to infringe upon the free exercise of religion when the object was to remedy invidious discrimination in contracting and public accommodations. The district court's analysis of the Larsens' free exercise claim was erroneous because the Larsens stated a meritorious claim pursuant to *Empl. Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

Smith held that, "[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns." 494 U.S. at 882. *Smith* contemplated strict or heightened scrutiny review under the Free Exercise Clause for laws when the rights at issue create a "hybrid situation" – that is, when the case involves both free exercise rights and other constitutionally protected rights. *Id*. For example, some "cases prohibiting compelled expression, decided exclusively upon free speech grounds, have also involved freedom of religion." *Id.*, citing *Wooley v. Maynard*, 430 U.S. 705 (1977).

Smith envisioned that a free exercise challenge could be bolstered by free speech claims; "a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns." *Id*., citing *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). Those are instances where "the conduct itself must be free from governmental regulation." *Id*. at 882. Thus, free exercise claims which are paired, as a hybrid, with any other substantial claim regarding a companion fundamental right (such as free speech) can rise to the level of a First Amendment violation. Requiring the Larsens' free speech claims and free exercise claims to be independently viable is not the result contemplated by Smith. Erasing part of the First Amendment is not the proper analysis. Rather, the proper analysis is to apply heightened scrutiny of the MHRA by considering First Amendment claims of free speech and free exercise together when both claims reinforce the other.

Notwithstanding the fact that the Larsens' compelled speech claim is independently viable, that claim is enhanced in this case by its interplay with the Larsens' right to the free exercise of religion. Throughout history, weddings have often been tied to religious ceremonies. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594 (2015). Clergy usually lead the ceremonies, which often begin in houses of worship. Prayers are offered, solemn vows made, spiritual songs sung and verses from holy literature read. This link not only distinguishes marriage from the goods and services regulated by other forms of public accommodation laws, it prevents Minnesota's

attempt at compelling the Larsens to create customized artistic wedding videos for this ceremony.

The State is not just attempting to compel speech, but is also compelling what the Larsens genuinely understand as religious speech. The Larsens believe that marriage is a God-ordained, lifelong, sacrificial covenant between one man and one woman with profound spiritual and societal implications. The very reason the Larsens want to create wedding videos is because they desire to use the power of film — of great story-telling — to change hearts and minds, and to impact religious, social, and cultural views about marriage by creating compelling stories celebrating God's design for the institution.

So, as *Smith* presaged, this is also case dealing with "the communication of religious beliefs". It goes beyond the district court's erroneous analysis that individuals must conform their behavior to neutral laws of general applicability, where hybrid rights are not in play. We deal here with a hybrid right situation in which the Larsens' religious connected art cannot be compelled by government.

The Larsens have no invidious animus here. The Larsens simply desire to use their storytelling and promotional talents to convey messages that promote aspects of their sincerely held religious beliefs, including messges that are not inconsistent with their religious beliefs. As such, the Larsens are exercising their right to create only artistic expression consistent with the tenets of their faith.

CONCLUSION

The *Amici Curiae* States request this Court to reverse the district court's judgment.

THE STATE OF NEBRASKA

DOUGLAS J. PETERSON
Attorney General of Nebraska
BY: **s/David T. Bydalek**
Chief Deputy Attorney General
Counsel of Record
Office of the Attorney General
2115 State Capitol
Lincoln, Nebraska 68509
(402) 471-2682
dave.bydalek@nebraska.gov

STEVE MARSHALL
Attorney General of Alabama

KEN PAXTON
Attorney General of Texas

LESLIE RUTLEDGE
Attorney General of Arkansas

PATRICK MORRISEY
Attorney General of West Virginia

DEREK SCHMIDT
Attorney General of Kansas

JEFF LANDRY
Attorney General of Louisiana

JOSH HAWLEY
Attorney General of Missouri

MIKE HUNTER
Attorney General of Oklahoma

ALAN WILSON
Attorney General of South Carolina

Certificate of Compliance

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 29(4) and 32 and has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 5273 words, excluding the parts of the brief exempted under Rule 32(f), according to Microsoft Word.

Pursuant to Eighth Cir. R. 28A(h), this brief is in PDF format, has been scanned for viruses, and is virus free.

By: **s/David T. Bydalek**

Certificate of Service

I hereby certify that on February 9, 2018, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Eighth Circuit using the CM/ECF system, causing notice of such filing to be served on counsel of record who are registered CM/ECF users.

By: **s/David T. Bydalek**