
In the Supreme Court of the United States

JASON ADAM TAYLOR,

Petitioner,

v.

TAMMY JEFFERSON, THOMAS MORE, OLIVIA WENDY HOLMES, JOANNA MILTON, and CHRISTOPHER HEFNER,

Respondents.

On Writ of *Certiorari* to The United States Court of Appeals For the Fifteenth Circuit

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BRIEF OF PETITIONER

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JURISDICTION

A. Jurisdiction of the District Court

The United States District Court for the State of Madison had jurisdiction over this action pursuant to 28 U.S.C. Sections 1345 and 1355.

B. Jurisdiction of the Court of Appeals – Timeliness

The Order of the United States District Court for the State of Madison granting defendant-appellee's Motion for Summary Judgment was entered on May 25, 2015. The Order of the United States Court of Appeals for the Fifteenth Circuit reversing the district court's Order and remand was entered on November 12, 2015.

C. Jurisdiction of the Supreme Court of the United States – Timeliness

The petitioner-appellant's Writ of *Certiorari* was granted by the Supreme Court of the United States on August 14, 2015.

ISSUES PRESENTED

I. Whether the Court of Appeals for the Fifteenth Circuit erroneously upheld the District Court of Eastern Madison's granting of the Commission's Motion for Summary Judgment, because Taylors rights have been violated by the enforcement of a public accommodation law that requires a person to provide private business services when doing so violates that person's strongly held beliefs violates the Free Speech clause of the First Amendment of the Constitution.

II. Whether the Court of Appeals for the Fifteenth Circuit erroneously upheld the District court of Eastern Madison's granting of the Commission's Motion for Summary Judgment, because Taylor's rights have been violated by the enforcement of the public accommodation law that requires a person to provide private business services for religious events and which compelled Taylor to enter religious buildings, thus violating the his rights under the Free Exercise Clause and Establishment Clause of the First Amendment.

STATEMENT OF THE CASE

This cause of action arises under the Free Speech Clause contained under the First Amendment of the United States Constitution. Jason Taylor, Petitioner, explained that his Free speech rights were violated and the Commission also violated the Free Exercise and Establishment Clauses of the First Amendment. The Commissioner, Respondent, brought an Enforcement Action against Taylor because he refused to photograph the wedding services of two couples in places of worship. The District Court found in favor of The Commission and granted its Motion for Summary Judgment. Taylor filed an appeal in the United States Court of Appeals for the Fifteenth Circuit. The Court of Appeals affirmed the lower court's decision.

STATEMENT OF FACTS

Petitioner, Jason Adam Taylor (Taylor) is a photographer and owns a business, Taylor's Photographic Solutions, with his wife. *Record* at 3. His business will not photograph an event that is religious in nature. Taylor Aff. At ¶ 8. He refuses to photograph any religious events because of his feelings towards religion. *Id.* Taylor grew up in a mixed-faith household with a Jewish mother and a Catholic father. *Id.* at ¶ 19. He believes that, because of his mixed-faith background and the arguments that occurred between his family members about what Taylor's religion should be, he was "soured of all religion by the time [he] was 18 years old." *Id*. at ¶ 24. Taylor's feelings towards religion are the same, regardless of any religion. *Id.* at ¶ 18.

Taylor offers his photography services to the public for a variety of events, including proms, graduations, birthdays, festivals, photo shoots, and even weddings. *R.* at 3. He is sought out because he is known for his specific talents, including his expertise in the use of lighting for photography indoors, and one of his employees is known for his expertise in photographing outdoor events. Taylor Aff. at ¶ 59. Taylor believes that photography is inherently artistic and expressive. *Id.* at ¶ 58. Customers are aware of this reputation for specific photography styles. Allam Aff. at ¶ 28. However, he refuses to photograph anything that is religious in nature, even though he does not have any personal animosity toward any particular religion or people who follow religion. Taylor Aff. at ¶ 32. In fact, this has been a long-standing practice for his company to refuse to photograph religious events. *Id.* at ¶ 10.

Taylor has been extremely upfront with his business stance on religious events and his refusal to photograph any event regardless of the religion. *Id.* at ¶ 10, 11. He believes that photography is an artistic form of expression, and when someone purchases his photographs, the person purchases more than the print itself – the person is paying for Taylor's talent, or the talent

and creativity of his staff. *Id.* at ¶ 16. He has had many clients comment on the personal talent and creativity that comes from his photographs, and that was why Patrick Johnson was so upset when Taylor refused to photograph Johnson's wedding. *Id.* at ¶ 9; Johnson Aff. at ¶ 20.

Additionally, according to a past employee, Esther Reuben, was always aware of Taylor's policy to not photograph religious events and upfront and consistent. Reuben Aff. at ¶ 16. Reuben practices Modern Orthodox Judaism, and Taylor allowed her to have a specialized work schedule that respected her religion. *Id.* at ¶ 7,8,9. Even though Taylor made some comments about religion, he still allowed Reuben religious accommodations and also had serious conversations about religion with her. *Id.* at ¶ 11,12,13,15. Reuben also asked Taylor to photograph her son's bar mitzvah party and he refused, stating he would not be part of "making religion look good." *Id.* at ¶ 18. Taylor attended the event to congratulate Reuben's son, but did not take any part in the photography that night, nor did his business. *Id.* at ¶ 20, 21. Further, Taylor remains respectful to those who practice a religion, and will accommodate those employees if necessary. Taylor Aff. at ¶ 35, 36.

While Taylor admits he has attended religious services at both synagogues and churches for his own family's events, he blocks out the praying and does not take part in the services. *Id.* at ¶ 27-29. Because of his religious beliefs, he displayed a sign at his business that explained that he believes organized religion is an impediment to the furtherance of humanity and civilization. Taylor Aff. Ex. A. He further stated that he would not perform services for any religious services of any kind because of his beliefs on religion. *Id.* Additionally, Taylor stated in his sign that he does not hold any prejudice against any religions, and anyone who practices any religion is welcome to enter the business, and will not be denied services based solely on their affiliations with any particular religion. *Id.* Taylor will not perform services for any

religious service, he would photograph a party for a religious person, as long as it was not held at a religious place, i.e. a church.

The Respondents, Tammy Jefferson, Thomas More, Olivia Wendy Holmes, Joanna Milton, and Christopher Hefner, as members of the Madison Commission on Human Rights (Commission), began an investigation of Taylor's Photographic Solutions on July 31, 2014, after receiving two complaints filed by Patrick Johnson and Samuel Green. Taylor Aff. Ex. B at 1. Taylor refused to photograph Johnson's wedding that was taking place at a Catholic church. Johnson Aff. at ¶ 9, 10. Taylor further explained that he does not like religion and did not want to endorse it by photographing it. *Id.* at ¶ 12. Johnson was extremely frustrated with the refusal of services and threatened legal action, but Taylor responded by recommending a different photographer. *Id.* at ¶ 16–18. As mentioned earlier, Johnson specifically wanted Taylor because of his reputation for utilizing lighting to create spectacular photography. *Id.* at ¶ 20.

Furthermore, Samuel Green was also denied services because his wedding was at a synagogue. Green Aff. at ¶ 9. Taylor gave the same response and Green was concerned that he was being discriminated against because of his religion. Green Aff. at ¶ 10–12. However, Taylor explained that he used to be Jewish and his father was Catholic, and he does not discriminate because the policy is generally applicable to any religion. Green Aff. at ¶ 10, 12; Taylor Aff. at ¶ 54. Taylor once again suggested Green try the photographer down the street, and then requested that Green leave his store because of Green's demeanor and the commotion he created in Taylor's place of business. Taylor Aff. at ¶ 57.

The state of Madison has a statute addressing freedom of religion and, more specifically, has a section that protects an individual's religious beliefs and requires them not to be substantially burdened, unless the government is targeting a secular purpose, has a compelling

interest, and that interest is narrowly tailored. Mad. Code Ann. § 42-501(d). In addition to the statements by Johnson and Green, the Commission relied on affidavits from past employees that Taylor had made negative comments about both Christianity and Judaism. Reuben Aff. at ¶ 9-14. The Commission also referenced Taylor's sign from the store that stated he would never photograph any religious events as evidence that he was engaged in religious discrimination. Taylor Aff. Ex. A.

Taylor forwent the opportunity to file a position statement with the Commission or engage in the administrative hearing because he believed he did not do anything wrong. Taylor Aff. at ¶ 62-64. However, the Commission then sent him a cease-and-desist letter, imposed a fine upon him of $1,000 per week until he removes the sign, and threated to bring a civil enforcement action in Madison state court against him within 60 days if he did not immediately change his business practices. Taylor Aff. Ex. B. Taylor then filed suit claiming that the Enforcement Action violated his First Amendment rights of Free Speech and Free Exercise, as well as the Establishment Clause. He also claimed that the members of the Madison Commission on Human Rights violated his constitutional rights under color of state law via a policy. Taylor maintains that he did not discriminate and that his rights have been violated.

SUMMARY OF ARGUMENT

First, this analysis shows that the Commission violated Taylor's Free Speech right under the First Amendment of the United States Constitution. The Commission's request for Taylor to provide a business service that simultaneously violates his personal belief of not identifying himself or his business with any particular religion is unconstitutional under the First Amendment.

Second, this analysis assesses why Taylor's rights were violated under the Free Exercise and Establishment Clauses. Specifically, this examination demonstrates that the Commission's fine and requests violated Taylor's religious beliefs. Taylor's Free Exercise rights were violated because the request would compel him to enter religious establishments for work. This analysis also determines that Taylor's rights were violated under the Establishment Clause because the Commission is endorsing a religion and coercing Taylor to enter the religious buildings.

ARGUMENT

I. Standard of Review

In reviewing the findings of the lower courts, it must be determined whether the issues for review are factual, legal, or mixed, and in this case, the First Amendment issue is most appropriately considered an issue of law and thus reviewed *de novo*. *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524, 526 (9th Cir. 1992). Furthermore, in matters of First Amendment challenges, appellate courts have a duty to "make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." *Bose Corp. v. Consumers Union*, 466 U.S. 485, 508 (1984). The *de novo* standard of review permits the appellate court to accept all the factual findings of the lower court and nevertheless hold as a matter of law that the record does not lend itself to the lower court's judgment. *Id*. at 513.

II. The Court of Appeals for the Fifteenth Circuit erroneously upheld the District Court of Eastern Madison's granting of the Commission's Motion for Summary Judgment, because Taylor's rights have been violated by the enforcement of the public accommodation law that violates a persons strongly held beliefs, which violates the Free Speech Clause of the First Amendment.

The First Amendment of the United States Constitution grants all people the right to religion, expression, assembly, and the right to petition. U.S. Const., amdt. 1. Jason Adam

Taylor, (Taylor) has the right to exercise his freedom under the Free Speech clause. Taylor simply expressed himself through his photography and now the State is attempting to wrongfully violate his fundamental right by the enforcement of a public accommodation law.

A. Taylor's First Amendment Free Speech rights have been violated because the commission is compelling speech through excessive fines and threat of enforcement action.

The First Amendment protects "both the right to speak freely and the right to refrain from speaking at all." U.S. Const., Amdt. 1. Speech that is protected under the Frist Amendment must be shown that it conveyed a particular message. *Texas v. Johnson*, 491 U.S. 397, 404 (1989). In *Wooley*, this Court determined that the Maynards had the right to cover up the motto on their license place because their religious and political beliefs. 430 U.S. 705, 708 (1977). Further, in *Riley*, a North Carolina law tried to limit fees solicitors could charge charitable organizations and required disclosure of money charities received. 487 U.S. 781, 791(1988).

The plaintiff has the burden of proving that his conduct constituted speech that is protected by the Constitution. *Texas*, 491 U.S. at 404. This Court created a test to decide whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play. *Id.* This Court held that the court must ask whether "an intent to convey a particularized message was present, and whether the likelihood was great that the message would be understood by those who viewed it." *Id.*

Free speech is protected even in a state motto. *Wooley*, 430 U.S. at 715. In *Wooley*, a citizen of New Hampshire refused to display the state motto of "live free die hard" on his license plate. *Id.* This Court in *Wooley* held that that New Hampshire could not constitutionally require citizens to display the state motto and the State's interests in requiring the motto did not outweigh free speech principles under the First Amendment. *Id.* at 717. This Court reasoned that the free

speech principles include the right of individuals to hold a point of view different from the majority and to refuse to foster an idea they find morally objectionable. *Id.* at 715.

Solicitation of fees is protected speech and is safeguarded under the Frist Amendment. *Riley,* 487 U.S. 781, 791(1988). In *Riley,* the North Carolina Charitable Solicitations Act determined a "reasonable fee" for solicitations, and potential donors brought this lawsuit, disputing the reasonable fees. *Id.* at 787. This Court held that the solicitation of charitable contributions is protected speech under the First Amendment, and laws limiting solicitations must be narrowly tailored to avoid interfering with those rights. *Id.* This Court reasoned that this was a content-based restriction, and needed to be evaluated under the First Amendment because it was restricted speech. *Id.* at 783.

These cases can be compared and contrasted to demonstrate that Taylor's Free Speech rights were violated. A government entity, in this case the Commission, cannot compel Taylor to speak in a way that he does not agree. Its well known that a government entity may speak as it wishes, but they may not use private citizens to further their viewpoint unless it has a compelling reason achieved in a narrowly tailored way. The Commission is engaging in compelled speech because it imposed excessive fines of one thousand dollars per week until Taylor removes the sign on his storefront. The sign in short relays to customers that because of Taylor's own personal beliefs he will not perform services for any religious services of any kind. The sign further welcomes all members of all religions to his business. The Commission imposed such excessive fines to force Taylor to remove the sign, or pay the fines and eventually lose his business. This act by the Commission silences Taylor's Free Speech rights and violates his First Amendment right.

In addition, to the fines of thousand dollars per week, the Commission also threatened enforcement action against Taylor. This enforcement action commenced because Taylor refused to photograph two wedding ceremonies at places of worship, claiming that failure to photograph the ceremonies was unlawful discrimination. However, Taylor did not discriminate when he declined to photograph the religious ceremony, instead, he merely exercised his First Amendment right to Free Speech. Taylor has employees from various religious backgrounds, welcomes all religions in his establishment, and has even been to a Church and Synagogue for family events. It is clear from the facts that Taylor does not discriminate against any religion, and should not have to go against his own beliefs to accommodate another religion. He treats all religions the same in regards to his work and refusing to photograph religious events.

As this Court in *Johnson* determined, Taylor has the burden of proving that his photography constitutes speech that is protected by the Constitution. Taylor's photographs convey a particularized message. Taylor shows intent to convey a particular message with his well-known artistic approach to photography. Although, Taylor engages in commerce by selling photographs, his business is necessarily interwoven with his speech. His customers understood the message Taylor sought to convey because people sought Taylor out instead other photographers in the area.

Similarly to the unconstitutional requirement in *Wooley*, requiring Taylor to remove his storefront sign is unconstitutional because it violates his Free Speech rights. Just as this Court in *Wooley* respected an individual's free speech rights, this Court should also respect Taylor's right to hold a viewpoint different than the majority and the Commission. The Commission holds the burden of proving that they had a compelling interest in imposing excessive fines of one

thousand dollars per week, which ultimately was for the purpose of forcing Taylor to remove his sign and thus restricting his speech.

Similar to the requirement of narrowly tailored means in *Riley,* this Court should also evaluate and conclude that the Commission did not take the least restrictive means. The Commission imposing fines of ones thousand dollars per week was by no means a narrowly tailored way of achieving its interests. The Commission could have started with a more reasonable fine, a warning or citation, or even a monthly fine instead of a weekly fine. These are all example of many different ways to narrowly tailor; however, the Commission holds the burden to find a less restrictive means that does not burden Taylor's free speech rights.

The Respondents may argue that the Commission did not engage in compelled speech because Taylor did not actually speak. According to the Constitution however, protected speech includes expressed ideas or positions. Taylor's sign is a form of expression the Constitution seeks to protect. The sign communicates to the public his personally held beliefs on photographing religious ceremonies. The Commission did not agree with Taylors message, but the Constitution also protects speech that goes against the majority. Therefore, Taylor did actually speak by having the sign on his storefront and the Commission did engage in compelled speech by imposing one thousand dollar per day fines.

B. Taylor's First Amendment Free Speech rights have been violated because the Commission threat of enforcement action alters the content of his speech.

A parade can be considered expressive speech and can have First Amendment free speech protection. *Hurley v. Irish American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 570 (1995). In *Hurley*, the South Boston Allied War Veterans Council refused a place in a St. Patrick Day parade for the Irish American Gay, Lesbian, and Bisexual Group of Boston (GLIB). *Id.* In *Hurley*, the Court held that forcing the Veterans Council to include the GLIB in

the parade violates "the fundamental First Amendment rule that a speaker has the autonomy to choose the content of his own message and, conversely, to decide what not to say." *Id.* at 573. This Court reasoned that claiming that forced inclusion of GLIB members in their parade violated their Free Speech rights. *Id.* at 578.

Refusing to admit a member to the Boy Scouts violates that member's expressive free speech rights. *Boy Scouts of America et al. v. Dale*, 530 U.S. 640, 650 (2000). In *Dale*, an assistant scoutmaster publicly declared he was homosexual and in response, the Boy Scouts of America expelled him because his sexuality was not in line with their values. *Id.* at 644. This Court held that New Jersey's public accommodations law requiring the Boy Scouts to readmit Dale violated the Boy Scouts' First Amendment right of expressive association. *Id.* This Court reasoned that deference should be given to an association as to what would burden or impair its expression. *Id.* at 653.

These cases can be compared and contrasted to the case at bar. Taylor offers photography services to the public for a variety of events, including proms, graduations, birthdays, festivals, photo shoots, and weddings. He is sought out for his artistic and expressive style of photography, but Taylor has always declined to photograph any event, which is religious in nature. The Supreme Court has not directly addressed photography as expressive and being protected under the First Amendment right. However, Taylor's photography is so artistic, expressive, and contains a particular style, so it triggers First Amendment protection through expressive speech.

The Commission forcing Taylor to photograph a religious ceremony violates his right to choose what he desires to say or not say through his photography and thus violates his First Amendment right to Free Speech. Taylor should be allowed to follow his personal beliefs by

declining to photograph the religious ceremonies. This Court in *Boy Scouts of America*, recognized that situations not in line with a persons value should not have to be adapted. The Boy Scouts of America is a private, not-for-profit organization and the lower court found Taylor's photography solution not to be because they operate business to sell photographs and earn money. Similar to Boy Scouts of America, Taylor has long declined to photograph religious ceremonies because it is not in line with his personal beliefs. Therefore, Taylor should not have to photograph the two weddings at the Church and Synagogue.

Similar to the expressive speech in *Hurley*, Taylor has expressive speech through his photography. The Commission attempting to force Taylor to take pictures of religious ceremony in a place of worship infringes on his First Amendment right of Free Speech because it alters how he chooses to speak through his photography. Taylor chooses not to photograph religious ceremonies therefore, he choses not to speak in regards to religious ceremonies.

The fact that Taylor's photography company earns money does not automatically make them a public company. Some of the largest not-for-profit organizations, including the Boy Scouts of America sell products and earn a profit. According to Forbes, some of the not-for-profit organizations include: The YMCA, Livestrong and Museum of Modern Art. If Taylor's Photography company is still considered public and thus subject to the public accommodation law; there still has been no discrimination by Taylor. Discrimination is defined as the unjust or prejudicial treatment of different categories of people or things, especially on the grounds of race, age, or sex. Oxford dictionaries. 2016. http://www.oxforddictionaries.com/us/definition/american_english/discrimination (4 Feb. 2016) Taylor did not discriminate because his denial of service was not based on unjust or prejudicial of a religious group. The denial of service was based on Taylor's personal religious beliefs.

The Respondent will likely argue that they had a compelling interest in forcing Taylor to photograph the religious ceremony because Taylor denied certain members of the public service because they are religious. This is not the case; Taylor denied photographing religious services because of his own personal beliefs. Taylor's photography is expressive speech and the Commission cannot force him to speak in away that he does not agree. Photographing religious ceremonies would in effect be agreeing with or supporting a religion Taylor does not believe in.

In conclusion, Taylor's First Amendment Free Speech rights were violated. Taylor has the right to speak or not speak how he chooses. The Commission engaged in compelled speech, which is unconstitutional. Also, the Commission violated Taylor's First Amendment rights because it forces Taylor to photograph the weddings, which interfered with his personally held beliefs. This Court should find that the Court of Appeals erred in affirming the holding of the District Court in granting summary judgment.

III. The Court of Appeals for the Fifteenth Circuit erroneously upheld the District Court of Eastern Madison's granting of the Commission's Motion for Summary Judgment, because Taylor's rights have been violated by the enforcement of the public accommodation law that requires a person to provide private business services for religious events and which compelled Taylor to enter religious buildings, thus violating the Free Exercise and Establishment Clause of the First Amendment.

A. Taylor's First Amendment rights are also violated under the Free Exercise Clause by compelling Taylor to enter a place with religious ties, pay the fine, or remove his sign.

Under the Free Exercise Clause of the First Amendment, "Congress shall make no law . . . prohibiting the free exercise thereof;" therefore, citizens have the right to believe and profess whatever religious doctrine they desire. U.S. Const., Amdt. 1. This Court, in *Smith*, explained that the "'exercise of religion' often involves not only belief and profession, but the performance of (or abstention from) physical acts: assembling with others for a worship service." *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 877(1990). Congress enacted the Religious Freedom Restoration Act (RFRA), and then states throughout the country,

including Madison, created their own RFRA, holding that the government may not substantially burden a person's exercise of religion, even when the burden results from a rule of general applicability. *Burwell v. Hobby Lobby Stores Inc.*, 134 S. Ct. 2751, 2761 (2014). Additionally, the Madison Code addresses that each citizen has the right to act or refuse to act in a manner motivated by a sincerely held religious belief and cannot be significantly burdened, unless the government proves (1) it targets a secular purpose, (2) it has a compelling interest in infringing upon the specific act, proven with clear and convincing evidence, and (3) it has used the least restrictive means. Mad. Code Ann. § 42-501 (d).

The Free Exercise Clause prevents the government from compelling citizens to participate in a religion they do not believe in. *Smith*, 494 U.S. at 877. In *Smith*, the plaintiffs argued that their individual beliefs should excuse them from compliance with the law. *Id.* at 878–79. This Court held that, because this law was neutral, they were required to comply with the law, regardless of their religious beliefs, because it "incidentally" burdened the exercise of religion. *Id.* However, this law changed after Congress passed the RFRA and requires a substantial burden showing. *Hobby Lobby Stores Inc.*, 134 S. Ct. at 2761. Then Congress struck down the RFRA and now it is only applied federally, but states can create their own RFRA and apply it to their citizens. *Id.*

If a state enacts its own RFRA, the government may not substantially burden a person's free exercise of religion. *Hobby Lobby Stores Inc.*, 134 S. Ct. at 2761. In *Hobby Lobby*, a family owned a business and sought to run the business in accordance with their religious beliefs, and accordingly, did not want to pay for the contraceptive mandate. *Id.* This contraceptive mandate included the contraceptives that operate after the fertilization of an egg, which contradicted the family's beliefs on religion. *Id.* at 2765. This Court held that the state had substantially burdened

this family's exercise of religion because the family was forced to either give up their religious belief on that issue, or drop their employee's insurance coverage. *Id.* Therefore, because a substantial burden was found, this Court next needed to determine whether the government was furthering a compelling interest, and used the least restrictive means. *Id.* at 2761. This Court reasoned that the government did have a compelling interest in promoting public health, but the mandate was not the least restrictive means for achieving that interest. *Id.* at 2780. This Court further reasoned that the least restrictive means standard was not satisfied because the Health and Human Services failed to show that it lacked other means of achieving the goal without imposing a substantial burden on the exercise of religion. *Id.* at 2780. Additionally, this Court reasoned that it was not for this Court to decide whether the religious beliefs of the plaintiffs are mistaken or unreasonable. *Id.* at 2757.

These cases can be compared and contrasted to the present matter. Unlike being incidentally burdened by the law in *Smith*, Taylor's refusal to attend services is not merely incidental but rather goes to the core of his atheist beliefs. Taylor does not believe in ever attending any religious events for work because that would signify that he is endorsing religion, or making it look better, when he believes it is the "detriment to the future of humanity." Taylor Aff. At ¶ 18. Requiring Taylor to enter a church or synagogue for work especially during a service, does not incidentally burden his religious views, it substantially burdens his religious views. Religion is a major component of that service and therefore is the core reason Taylor refuses to attend. Additionally, because the state of Madison has a RFRA in their statute, *Smith*'s law is not controlling. Because the state of Madison has enacted a state RFRA, *Smith's* federal RFRA law is not controlling and is not applied to individuals of the state.

According to the state of Madison's RFRA, the government must not substantially burden Taylor's right to refuse to enter a religious event and photograph people. Similar to the substantial burden placed on the family in *Burwell*, there is also a substantial burden placed on Taylor. He is either forced to give up his atheist beliefs and photograph couples at a wedding, or continue to be fined by the Commission, and essentially lose his business. The Commission wants Taylor to also remove the sign refusing to photograph religious events. This requirement is also a substantial burden because it requires Taylor to give up his beliefs and stance on religion. The RFRA is in place to protect his right to refuse to participate in religious services. Even though he is an atheist, and some may argue that he does not hold a religious belief, the District Court of Eastern Madison already stated, "Courts do not sit as judges of one's 'sincerity of beliefs.'" *Record.* at 11. Therefore, this RFRA should be implemented in order to protect Taylor's rights under the First Amendment Free Exercise Clause.

Further, the Commission is not targeting a secular purpose and does not have a compelling interest. Unlike the compelling interest of public health in *Burwell*, the Commission does not have a secular interest or a compelling interest because they are focusing on Taylor's specific actions. The Commission is requiring that Taylor, against his religious beliefs, photograph events at places he refuses to enter for work. The Commission did not narrowly tailor and use the least restrictive means to further its goal of preventing religious discrimination. Taylor is not the only photographer in his city; in fact, he even recommended other photographers to the disgruntled couples. It is common for other photographers to work at a religious place, and the Commission is currently acting as though Taylor is the only competent photographer in the area. Thus, the Commissioner is ignoring the substantial burden placed on Taylor's sincerely held beliefs. The Commission could have also required Taylor to photograph

the event before or after the actual service, so he would not be compelled to hear, and participate in the service. Overall, there are many other ways to provide the least restrictive means in burdening Taylor's religion; however, the Commission failed to consider other options. Therefore, Taylor's free exercise rights under the First Amendment were violated, as it would be a substantial burden on his beliefs to photograph weddings at both a church and synagogue.

A counterargument could be that the Commission does have a compelling interest in eliminating public discrimination. Taylor's refusal to photograph religious weddings could be seen as discrimination from an outsider's perspective because it seems he is discriminating against Christian and Judaism weddings. However, this is a faulty argument because Taylor refuses to photograph *any* weddings, regardless of the religion. He is not refusing because one couple practices Judaism, and is not discriminating against specific religions. Instead, he refuses to capture any religious event, and he should be allowed to exercise his rights under the Free Exercise Clause.

B. Taylor's First Amendment rights under the Establishment Clause have been violated because the Court is forcing him to embrace religion when he enters churches.

Under the Establishment Clause of the First Amendment, " [C]ongress shall make no law respecting an establishment of religion." U.S. Const. Amend. 1. The Court's ruling in *Lemon* developed a standard of analyzing whether the Establishment clause was violated. *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). First, the law must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster "an excessive government entanglement with religion." *Id.* at 612-13. Additionally, a violation of the Establishment Clause can occur when there is excessive government endorsement, meaning a reasonable, well-informed observer

would perceive the primary purpose to advance religion. *Lynch v. Donnelly*, 465 U.S. 668, 681 (1984); *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 851 (7th Cir. 2012). Finally, the government cannot coerce or force anyone to support or participate in religion or its exercise, or otherwise act in a way, which establishes state, religion, or religious faith, or tends to do so. *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

The Establishment Clause was enacted to create protection against government sponsorship, financial support, and active involvement in religious activities. *Lemon*, 403 U.S. at 612. In *Lemon*, the state paid a salary supplement to aid teachers in nonpublic schools. *Id.* at 607. This Court held that financial support was sufficient entanglement between the state and the nonpublic schools. *Id.* at 625. This Court reasoned that in order to determine whether the government entanglement was excessive, the Court examined the character and purposes of the institutions that were benefited, the nature of the aid that the State provided, and the resulting relationship between the government and religious authority.. *Id.* at 615. However, this Court reasoned that while its primary intent was not to advance religion, it did have sufficient entanglement between religion and the state. *Id.* at 614. Also, this Court used a progression argument that explained there was not a long history of affording aid to church-related educational institutions. Finally, this Court reasoned "the Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn." *Id.* at 625.

Additionally, the Establishment Clause protects against government endorsing and promoting religion. *Lynch v. Donnelly*, 465 U.S. 668, 714 (1984); *Doe ex rel. Doe*, 687 F.3d at 851. In *Lynch*, a city displayed a Christmas Nativity scene in a local park, and some believed this violated the Establishment Clause. *Lynch*, 465 U.S. at 671. This Court held that this

Nativity scene did not violate the Establishment Clause because it did not specifically endorse religion; instead, it simply promoted the origins of the holiday itself. *Id.* at 683. This Court reasoned that in order for the city's actions to constitute sufficient endorsement of a religion, the city would need to supply public money or an endorse a specific religion, instead of an indirect, remote, or incidental relationship with the religion. *Id.* Contrary to *Lynch*, the Seventh Circuit found government endorsement in *Doe*. *Doe*, 687 F.3d at 842. In *Doe*, a school district held high school graduations at a non-denominational, evangelical Christian church. *Id*. The court reasoned that holding the graduation at a church did violate the Establishment Clause because the symbols at the church demonstrated endorsing the religion. *Id.* The court held that this endorsement violated the Establishment Clause because that the district was conveying a message of religious endorsement by hosting graduation there because of all the religious symbols in the building, thus endorsing the Christian religion. *Id.* at 855.

Last, the Establishment Clause protects against the government coercing anyone to support or participate in religion or its exercise. *Lee v. Weisman*, 505 U.S. 577, 587 (1992); *Doe*, 687 F.3d at 854. In *Lee*, it was custom for the school principals to invite clergymen to give invocations at graduation ceremonies; however, a family opposed this display of religion and filed suit. 505 U.S. at 581. This Court held that the Establishment Clause was violated because the prayer coerced students and family members into participating in the ceremony and prayer. *Id.* at 587. This Court reasoned that there were subtle coercive pressures and that students had no real alternatives to avoid the fact or the appearance of participation. *Id.* at 588. Additionally, this Court reasoned that the government was coercing these students and families to participate in religion or acting in a way that "establishes a [state] religious faith." *Id.* at 587. Further, in *Doe*, the court held that the district's use of a church for graduation was religiously coercive

because the government was endorsing Christianity. *Doe*, 687 F.3d at 855. The court reasoned that it was coercive because the government directed the students and families to attend a Christian environment, and that the only way to avoid the religious dynamic was to leave, which is not a valid option. *Id.* at 856.

These cases can be compared with the case at bar to demonstrate that the Commission is violating Taylor's First Amendment rights under the Establishment Clause. Even though these cases are not factually similar, the holdings and rules from the court can be applied broadly here. As this Court determined there was excessive entanglement between the state and the nonpublic schools in *Lemon*, this Court can also find excessive entanglement here. *Lemon* created a three-part test, and the Commission violates all three factors. The first and second factor are violated because, unlike the statute in *Lemon* that at least had legitimate outside concerns, the entire purpose of following the Commission's request to force Taylor to photograph a wedding in a church is to endorse religion. His photography is so personal to him so he cannot ignore the religion and simply photograph two couples celebrating their marriages. The third factor of the *Lemon* test is also violated because excessive entanglement exists between the religion and state. This entanglement exists because Taylor would be forced to photograph in an actual church and synagogue, or pay the excessive fines. Taylor is firmly against entering places of worship for work because he is an atheist and finds it intolerable to photograph an event that is religious in nature. Just like there was excessive entanglement in *Lemon* because the state was providing financial support to religious schools, excessive entanglement exists in this case as well because the Commission specifically wants this Court to force Taylor into churches and synagogues. Both places are religious in nature, and would require Taylor to be there during the ceremony, and take part in the ceremony because of his job.

Furthermore, unlike the lack of endorsement in *Lynch*, there is sufficient endorsement of religion in the present case. The Nativity scene at a park was simply promoting the origins of the holiday itself and only had an incidental relationship with religion. Contrary to the Nativity scene, the Commission's requirement to photograph religious services in church is a specific endorsement of both Christianity and Judaism. This Court would be endorsing both Christianity and Judaism if it required Taylor to photograph the wedding. Unlike a Nativity scene, an actual wedding at a church would have a religious service. The Nativity scene is a silent, passive way to demonstrate the origins of the religion, whereas a religious wedding service is an opportunity for the couple to profess their faith and is integral to their religious wedding service. If this Court would find that the Commission was proper in its punishment of Taylor, this Court would be endorsing religion and compelling Taylor to participate in the wedding service.

Similar to the endorsement of religion by hosting a graduation ceremony at a church in *Doe*, the Commission's request to have Taylor photograph the wedding would also be viewed as endorsement. Here, the endorsement is even greater for Taylor because, instead of just hosting a public high school graduation at a church, an actual church service would occur. The court in *Doe* found that the presence of religious symbols and the mere fact that the secular service was being held in the church were enough to constitute governmental endorsement. In the present matter, both the church and synagogue will be used for religious services; therefore, this Court would be endorsing both religions if Taylor were required to photograph the couples' respective weddings. The service itself would be religious and this is a much stronger reason for actual endorsement by the government. Because the services are religious, Taylor refuses to photograph those events, and even has that sign in his store explaining that he refuses to photograph them. If this Court further requires Taylor to remove his sign, this Court would be

endorsing religion and infringing upon Taylor's personal beliefs. Taylor uses that sign to emphasize his policy on photographing religious events. If he were forced to remove it and photograph religious events, the government would be endorsing religion because Taylor would be required to attend religious services.

Further, the Establishment Clause is violated by the Commission's request, as it is coercing Taylor to participate in religion and its exercise by photographing couples in churches. Similar to the coercion of students in *Lee*, Taylor is also being coerced to participate in the religion because he has no real alternatives to avoid the religious ceremonies. In the past, in order to avoid religious ceremonies, Taylor had refused to photograph them. Even though he attended religious ceremonies for family events, Taylor should not be forced to follow the same practice when he is working. In fact, it would be difficult to photograph successfully if he was attempting to tune out the ceremony and avoid all religious activities in his head. Taylor has a reputation for expressive photography that individuals seek out, and if he is concerned about circumventing the religious service, his photographing skills will decline.

Further, the Commission is not providing Taylor with a choice and is coercing him to attend religious events. The court in *Doe* determined that the only way to avoid the religious dynamic of the church graduation ceremony was to leave, and just like it was an invalid option in that case, it is also invalid here. Taylor normally chooses not to work in any religious environment and treats every customer the same, even his cousin, in denying work held at a church or any other religious event. Therefore, when the Commission attempts to require Taylor to photograph couples in a church and synagogue, Taylor's First Amendment rights are violated under the Establishment Clause.

Respondents may argue that the Commission's requirement for Taylor to photograph religious events and remove his sign does not violate the Establishment Clause. More specifically, respondents may argue that the Commission has a secular purpose in removing discrimination, and Taylor does not actually have to participate in the service because he does not have to adopt the religion or listen to the service in order to take pictures of the wedding. However, this is not a valid argument because Taylor would have to physically tune the service out, which in turn would make his job extremely difficult. Taylor is not discriminating against a specific religion; he refuses to photograph any religious events. This non-discriminatory work policy eliminates the Commission's concern about discrimination. Ultimately, there are many other photographers who could photograph these couples' weddings, and Taylor is the first to suggest alternatives each time. Taylor's religious beliefs should not be compromised here and the Commission should not violate his rights under the Establishment Clause of the First Amendment.

In conclusion, Taylor's Free Speech rights were violated because his photography is expressive speech. Also, the Commission did violate Taylor's First Amendment rights under the Establishment and Free Exercise Clause because they endorsed religion, coerced Taylor by ordering him to photograph the weddings, and substantially burdened his non-religious beliefs. Therefore, this Court should find that the Court of Appeals erred in affirming the holding of the District Court in granting summary judgment to the Madison Commission on Human Rights, and instead find that the Commission did violate Taylor's First Amendment rights.

CONCLUSION

For the foregoing reasons, Petitioner, Taylor, respectfully requests that this Court reverse the First Amendment Free Speech, Establishment, and Free Exercise Clauses ruling of the Fifteenth Circuit Court of Appeals.

Respectfully Submitted,

Date_____ By: _____
February 9, 2016 Team K

CERTIFICATE OF SERVICE

I hereby certify that a copy of Brief of Petitioner has been served by mail delivery, this 9th day of

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