No. 91615-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ARLENE'S FLOWERS, INC., d/b/a/ ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN,

Appellants.

INGERSOLL and FREED,

Respondents,

v.

ARLENE'S FLOWERS, INC., d/b/a/ ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN,

Appellants.

BRIEF OF APPELLANTS

George Ahrend
WSBA no. 25160
AHREND LAW FIRM PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
gahrend@ahrendlaw.com

John R. Connelly
WSBA no. 12183
CONNELLY LAW OFFICES
2301 N. 30th St.
Tacoma, WA 98403
jconnelly@connelly-law.com

Kristen K. Waggoner
WSBA no. 27790
James A. Campbell*
AZ no. 026737
Ryan J. Tucker*
AZ no. 034382
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
kwaggoner@ADFlegal.org

*Admitted *pro hac vice*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

***Cases*:**

***Statutes*:**

***Other Authorities*:**

I. INTRODUCTION

Appellant Barronelle Stutzman, owner of Appellant Arlene's Flowers, Inc. (Arlene's), is a Christian artist who imagines and creates floral designs. Mrs. Stutzman serves everyone, but she cannot personally participate in, or create art that celebrates, sacred events that violate her religious beliefs.[1] Her faith teaches her that marriage is a divine relationship between a man and a woman—symbolic of God's relationship with his people—and that all wedding ceremonies are religious events. Due to those beliefs, Mrs. Stutzman cannot personally participate in same-sex weddings or create custom floral arrangements that celebrate those events.

Mrs. Stutzman had a nearly decade-long relationship with Respondent Robert Ingersoll. During that time, she designed dozens of anniversary, Valentine's Day, and other arrangements for Mr. Ingersoll and his partner, Respondent Curt Freed. Only once did she decline a request from them—when Mr. Ingersoll asked her to "do" the flowers for his same-sex wedding. For that exercise of her faith, the State has prosecuted her in her personal capacity under the Washington Law Against Discrimination (WLAD) and the Consumer Protection Act (CPA). She now faces financial devastation under a judgment demanding that she pay the individual Respondents' attorney fees.

[1] Unless otherwise indicated, references to Mrs. Stutzman include Arlene's.

What the State has done to Mrs. Stutzman violates the First Amendment in three ways. First, disregarding her free-exercise rights, the Attorney General has targeted her because of, and exhibited hostility toward, her religious beliefs about marriage. He devised an admittedly unprecedented use of the CPA to punish Mrs. Stutzman, while refusing to pursue a Seattle coffee-shop owner who viciously berated and expelled Christian customers because of their religious beliefs. This unequal treatment, combined with the Attorney General's dismissive and derisive comments about Mrs. Stutzman's faith, leaves no doubt that he has targeted her because of his animus toward her religious beliefs.

Second, the Superior Court's ruling infringes Mrs. Stutzman's free-exercise rights by compelling her to physically attend and participate in same-sex wedding ceremonies, which she regards as religious events. As part of the full wedding support she provides, Mrs. Stutzman decorates the venue with her floral art, attends the ceremony, ensures the flowers are beautiful during the event, and participates in wedding rituals. Forcing her to attend and personally participate in a same-sex wedding in these ways contravenes the core of what religious freedom protects.

Third, the State violates Mrs. Stutzman's free-speech rights by punishing her for declining to create custom floral art celebrating same-sex weddings. Mrs. Stutzman's wedding arrangements, much like paintings or

sculptures, are artistic expression shielded by the First Amendment. Through those custom creations, she expresses celebration for weddings and marriage. But the State can no more force Mrs. Stutzman to express such celebratory messages through her art than to speak them with her lips.

The First Amendment's free-exercise and free-speech guarantees unite in a common purpose—to ensure "freedom of conscience" for all. *Lee v. Weisman*, 505 U.S. 577, 591, 112 S. Ct. 2649, 120 L. Ed. 2d 467 (1992). Yet the State has no regard for Mrs. Stutzman's conscience, demanding that she violate it by pouring her heart into creating art that conflicts with her faith and by physically participating in inherently religious ceremonies. The State, in other words, has been "neither tolerant nor respectful of [Mrs. Stutzman's] religious beliefs." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1731, 201 L. Ed. 2d 35 (2018).

But there is a better resolution to this case—one that prohibits businesses from refusing to serve customers simply because of who they are, but that protects the conscience rights of people like Mrs. Stutzman who respectfully object to creating custom art for, or personally participating in, ceremonies that violate their religious beliefs. This path is the only one that preserves First Amendment freedoms and protects people with politically unpopular beliefs about important topics like marriage. The Superior Court's judgment should be reversed.

II. ASSIGNMENTS OF ERROR

1. The Superior Court erred in granting summary judgment to the State and the individual Respondents and rejecting Mrs. Stutzman's free-exercise and free-speech defenses under the First Amendment. CP 2601-60.

2. The Superior Court erred in entering judgment and a broad injunction against Mrs. Stutzman. CP 2427-30, 2562-65.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the State's targeting of and hostility toward Mrs. Stutzman's religious beliefs and practices violate her free exercise of religion.

2. Whether requiring Mrs. Stutzman to physically attend and personally participate in same-sex wedding ceremonies violates her free exercise of religion.

3. Whether punishing Mrs. Stutzman for declining to create artistic expression celebrating a same-sex wedding violates her freedom of speech.

IV. STATEMENT OF THE CASE

A. Mrs. Stutzman's Work as a Floral Designer

For over four decades at her small family business, Mrs. Stutzman has been "practicing the art of floral design." CP 535. It's an art form dating to "ancient times," CP 673, "since the early days of recorded history," CP 1083. It incorporates artistic techniques and principles—like "emphasis, balance, proportion, rhythm, harmony, and unity"—"similar" to those used when creating "a painting or sculpture." CP 888.

Like all good artists, Mrs. Stutzman speaks through her custom creations. Flowers "celebrate the happy and joyous occasions of life" and "express emotions from deep within the soul." CP 692. Individual flowers

are also imbued with meaning: for example, a red rose symbolizes love, and ivy represents marriage. CP 947, 956, 1277. Mrs. Stutzman arranges those inherently communicative flowers—together with "fabrics, pictures, and a variety of other objects," CP 673—to convey "expressive message[s]," CP 538; *see also* CP 536, 672. She has her own "recognizable" style that shapes everything she creates. CP 672-73, 1747.

B. Mrs. Stutzman's Religious Beliefs

Mrs. Stutzman is a devout Christian who adheres to Southern Baptist teachings. CP 535. Her faith informs "every aspect of [her] life," including how she runs her business and uses her artistic skills. CP 535, 609. She views her shop as "God's business" and closes on Sunday because it's "God's day." CP 664. She believes that she must use her "artistic skills and [her] floral design business . . . to honor God." CP 536.

Her "religious beliefs about marriage are an important component of [her] faith." CP 539. Consistent with Southern Baptist teaching, she believes that marriage is the "union of one man and one woman as ordained by God." CP 545, and that it is "a sacred covenant" of the utmost significance, CP 637; *see also* CP 543, 606. Her faith teaches her that all "wedding ceremonies [are] religious events," CP 539, "regardless of whether the marriage is performed in a church and regardless of whether the participants" share her faith, CP 606-07.

C. Mrs. Stutzman's Work on Weddings

Mrs. Stutzman loves designing floral arrangements for weddings. It is "one of the most rewarding aspects of [her] job because [she] enjoy[s] celebrating the marriage with the couple" and because marriage is so central to her faith. CP 539. She also likes the artistic "challenge" of designing the full set of wedding arrangements, which include bridal and bridesmaids' bouquets, boutonnieres, corsages, and table centerpieces. CP 539, 541, 674.

Weddings are an "important part of the florist business." CP 907. Over the years, Mrs. Stutzman has designed the arrangements for "a large number of weddings," CP 1591, approximately two to three per month, CP 1672. Through that work, she has received many "referrals to [her] business from guests who see Arlene's work at weddings." CP 539, 657. Her wedding work is critical to promoting her business and adding customers.

Mrs. Stutzman "approaches wedding arrangements as an artist." CP 674. Her artistic designs are tailored for each wedding. CP 540-41, 1283, 1605. That's what "[a]lmost every customer who requests wedding flowers from Arlene's wants," CP 541, and it's uncommon for a customer to order unarranged flowers for a wedding, CP 1587.

Mrs. Stutzman consults with her wedding clients several times to develop a design plan. CP 540, 654, 1579. She asks about the couple's relationship, "get[s] to know their personalities," and learns "their vision"

for the wedding so that she knows "the special point" to convey through her art. CP 1577-78. As one of her clients testified, Mrs. Stutzman's "many questions" shows that she "really partner[s]" with her customers to "design arrangements that celebrate[] [their] marriage." CP 655.

This time spent developing a design plan is "an intense personal investment" that makes Mrs. Stutzman "feel very connected to the wedding ceremony itself." CP 540. That connection "is heightened because of [her] religious beliefs about the importance of marriage." CP 542-43. As attested by a gay floral designer who worked for Arlene's and now does high-end design work in California, Mrs. Stutzman's personal investment is essential to her success. CP 663-64.

Mrs. Stutzman's custom wedding designs, like other arrangements celebrating life's joyous events, express celebration for the couple's union. CP 538-39. Even the individual Respondents admit that wedding flowers convey a "celebratory" message or atmosphere. CP 1752, 1858. By tailoring her designs to each couple and their event, Mrs. Stutzman creates arrangements that express her view of their "relationship and personalities" and her celebratory message for their union. CP 540. And through iconic wedding arrangements like bridal bouquets, her art announces the event as a wedding and the couple's union as a marriage. CP 540-41.

In addition to her design work, Mrs. Stutzman often delivers her floral art in Arlene's vans and provides "full wedding support." CP 541, 581. That support includes "help[ing] before, during, and after the wedding ceremony to ensure that all flowers are beautiful throughout." CP 541. Mrs. Stutzman decorates the venue, attends the ceremony, and removes her art when the event is done. CP 541, 656. She also participates in ceremonial "rituals," such as standing for the processional, clapping for the couple, and joining in prayer. CP 541. Mrs. Stutzman does "whatever it takes," like greeting guests and calming nervous parents, to make the wedding a success. CP 542, 657.

D. Mrs. Stutzman's Relationship with Mr. Ingersoll

Mrs. Stutzman welcomes, serves, and develops "relationships with customers of all different backgrounds and beliefs." CP 538. She "love[s] and respect[s]" all her customers regardless of their personal characteristics. CP 537-38. Her love for people—and desire to treat them with dignity and respect—is a part of her Christian faith. CP 537, 609. A gay man who worked for her testified that "she's one of the nicest women [he's] ever met." CP 664.

One of Mrs. Stutzman's favorite clients was Robert Ingersoll. That is still true to this day. She served him for over nine years, CP 543, 1735-36, during which, as Mr. Ingersoll acknowledged, they built a "warm and

friendly" relationship, CP 1750. It never mattered to Mrs. Stutzman that Mr. Ingersoll is gay. CP 543. His sexual orientation didn't "lessen[] his dignity or worth in [her] eyes, or the respect [she] gave him." CP 46. She willingly designed Valentine's Day and anniversary arrangements that he ordered for Mr. Freed. CP 1607, 1735.

Over the years, Mrs. Stutzman created at least 30 arrangements for Mr. Ingersoll. CP 1735. He almost always requested custom designs. CP 1737. Very rarely did he purchase premade arrangements, *id.*—never did he buy flowers to arrange himself, CP 1797. His practice was to defer to Mrs. Stutzman's artistry. CP 1737-38. They would "pick out a vase together," CP 543; he would give her a general idea of the "message" that he wanted her to "communicate[] through the flowers," CP 1797; and he would say, "Do your thing," CP 1611. Mr. Ingersoll and Mr. Freed were "always . . . happy" with Mrs. Stutzman's "exceptional" work. CP 1740-41, 1852.

E. Mrs. Stutzman's Decision Not to Celebrate or Participate in Mr. Ingersoll's Same-Sex Wedding

Just two months after Washington began recognizing same-sex marriages, Mr. Ingersoll went to Arlene's and told an employee that he was marrying Mr. Freed and that he "wanted Arlene's to do the flowers." CP 350. He specifically asked to speak with Mrs. Stutzman. CP 544, 1611. As he told a reporter at the time: "There was never a question she'd be the one

to do our flowers. She does amazing work." CP 1264. Because Mrs. Stutzman was not at the shop that day, her employee told Mr. Ingersoll to come back and gave him a copy of Mrs. Stutzman's schedule. CP 350.

The employee told Mrs. Stutzman about the conversation with Mr. Ingersoll. CP 544, 1611-12. Because Mr. Ingersoll said that he wanted Mrs. Stutzman to "do" the flowers, CP 350, because he "always requested complex and intricate work," and because he was a longtime customer, Mrs. Stutzman was sure that he wanted her "to custom design his floral arrangements" and "provide full wedding support" at the ceremony. CP 544. Since the State just legalized same-sex marriage, Mrs. Stutzman had never before considered this issue and did not have a policy addressing it. CP 1612-14.

After praying with her husband, Mrs. Stutzman "decided that [she] could not in good conscience participate in [a same-sex] wedding due to [her] religious beliefs." CP 545. Nor could she allow her employees to do it "on [her] behalf without violating [her] religious beliefs." CP 548. Her faith teaches that same-sex marriage conflicts with God's design for marriage and that she must not celebrate or participate in it. CP 607-09.[2]

[2] Because Mrs. Stutzman's faith teaches that the essence of marriage is the union of one man and one woman, she does not consider opposite-sex marriages between non-religious persons (e.g., atheists) or non-Christians (e.g., Muslims) to be morally wrong. CP 607. Custom art for those weddings celebrates the opposite-sex view of marriage, even if Mrs. Stutzman does not share the couple's other views or beliefs. But Mrs. Stutzman cannot create custom art for a same-sex wedding because those designs would celebrate a view of the nature of marriage that is incompatible with her faith.

When Mr. Ingersoll returned to the store, he told Mrs. Stutzman that he and Mr. Freed "would like Arlene's to do the flowers" for their wedding. CP 350. Mrs. Stutzman "gently took his hand, looked him in the eye, and told him that [she] could not do his wedding"—that she couldn't "be a part of his event"—because of her "relationship with Jesus Christ." CP 546, 1615-16. According to Mr. Ingersoll, Mrs. Stutzman was "considerate" in how she communicated her religious conflict—she "did not say it in an unkind way." CP 1763-64. Mr. Ingersoll responded by saying that "he understood." CP 546. Mrs. Stutzman then gave him the names of three other nearby floral shops, and they talked for a few minutes about his engagement and wedding. CP 546, 1618, 1795-96. Then they hugged, and he left. CP 546, 1618. In the nine years that Mrs. Stutzman served Mr. Ingersoll, that was "the only time" she declined one of his requests. CP 1775.

A few days later, Mrs. Stutzman established a policy that Arlene's would not provide full wedding support for same-sex wedding ceremonies and that the shop would refer such requests to another florist who would gladly help celebrate those unions. CP 546-47, 1640. This policy does not apply to unarranged flowers, other materials, or premade arrangements, all of which Mrs. Stutzman will sell for use at same-sex weddings. CP 547, 1616, 1642. And she will continue to sell flowers and create custom

arrangements for same-sex couple's anniversaries, child adoptions, and Valentine's Day celebrations. CP 1607, 1637.

F. The Aftermath of Mrs. Stutzman's Decision

The day after Mr. Ingersoll spoke with Mrs. Stutzman, Mr. Freed posted about it on Facebook, saying that he understood Ms. Stutzman's position from a "political and religious" perspective. CP 1262. The media quickly picked up the story, and Mr. Ingersoll and Mr. Freed received an "overwhelming" and "amazing outpouring of support," CP 1757, 1860, enough "from florists that [they] could get married about 20 times and never pay a dime for flowers," CP 1271. Mrs. Stutzman received a different kind of outpouring—hers took the form of boycotts and "hate-filled phone calls, emails, and Facebook messages" with "explicit threats against [her] safety, including a threat to burn down [her] shop." CP 547, 1812.

A few months later, Mr. Ingersoll and Mr. Freed had a small wedding ceremony where they exchanged vows and rings. CP 1798-99. A minister ordained in the Progressive Christian Alliance presided over the ceremony, CP 1488, during which she explained the meaning of the vows and significance of marriage, CP 1803-04. Mr. Ingersoll and Mr. Freed purchased "custom-designed" boutonnieres and corsages from a florist, CP 351, 1801, who offered them her services in an "unsolicited email," CP

1866-67. And they bought a "beautiful" floral arrangement from one of the floral shops to which Mrs. Stutzman referred them. CP 1747-48.

G. The Attorney General's Unprecedented Efforts to Punish Mrs. Stutzman in Her Personal Capacity

As a result of the media coverage, the Attorney General became aware of Mrs. Stutzman's religious conflict. CP 1296-97. His office "did not receive a complaint" from Mr. Ingersoll, Mr. Freed, or any other "party claiming to have been aggrieved by Arlene's." CP 1503-04. Rather, it was the Attorney General who personally contacted Mr. Freed three times, offered his support, and said that his team was "research[ing] . . . options . . . to pursue this issue." CP 1476-77, 1886-88.

After the first of those discussions, the Attorney General's Office sent Mrs. Stutzman a certified letter threatening to sue her unless she agreed to either celebrate same-sex marriages or give up her wedding business. CP 1325-26. The letter, which included an Assurance of Discontinuance that the State demanded she sign, CP 1327-29, also said that failure to respond would prompt the State "to pursue more formal options," CP 1326.

When Mrs. Stutzman declined the State's ultimatum, the Attorney General filed suit against Arlene's as a corporation and Mrs. Stutzman as an individual, asking that they be enjoined, assessed penalties, and ordered to pay his office's attorney fees. CP 1-5. The Attorney General admits that

his office has never before "filed suit for a violation of the [CPA] that is based in part on a violation of [the WLAD]." CP 1503. By adopting that course, the Attorney General bypassed the Washington State Human Rights Commission, which, according to Mr. Freed, had commissioners "of a political or religious affiliation" that didn't support "gay rights." CP 1885-86. Soon after the State filed suit, the individual Respondents filed a lawsuit of their own, CP 2526-2532; and the cases were consolidated.

H. Enjoining Mrs. Stutzman's Policy on Same-Sex Marriage and Full Wedding Support

Plaintiffs eventually moved for summary judgment. The State's motion challenged not only Mrs. Stutzman's respectful response to Mr. Ingersoll's request but also her subsequently created policy on full wedding support for same-sex marriages. CP 370-71, 375. Mrs. Stutzman argued that applying the WLAD or CPA to force her to physically participate in, or create floral designs celebrating, a same-sex marriage would violate her free-exercise and free-speech rights under the First Amendment. CP 512-24. The Superior Court disagreed and granted summary judgment to Plaintiffs. CP 2601-60. The Superior Court made clear that *any* wedding "service" Mrs. Stutzman "provide[s] for a fee"—including her full wedding support—"must be offered" for same-sex marriages. CP 2630-31 n.19.

The State then requested a broad injunction requiring, among other things, that "[a]ll goods, merchandise and services offered or sold to opposite sex couples shall be offered or sold on the same terms to same-sex couples, including but not limited to goods, merchandise and services for weddings and commitment ceremonies." CP 2401. Mrs. Stutzman objected that this sweeping language apparently covers her "full wedding support services" and thus mandates that she "physically appear at" and participate in same-sex wedding ceremonies. CP 2395.

The Superior Court nonetheless included that language in its injunction, thereby compelling Mrs. Stutzman to personally attend and participate in same-sex wedding ceremonies if she continues her wedding business. CP 2419-20. The Superior Court also found Mrs. Stutzman personally liable and ordered her to pay an undetermined amount of actual damages and attorney fees to the individual Respondents, CP 2555, and $1,000 in penalties to the State, CP 2419-20. Because Mrs. Stutzman is personally liable and the individual Respondents likely have hundreds of thousands of dollars in attorney fees for more than five years of litigation, the judgment threatens to bankrupt her.

I. Appellate History and the *Masterpiece* Ruling

Mrs. Stutzman appealed to this Court, CP 2422-2525, 2557-2660, which held that her religious objection to designing "custom floral

arrangements for a same-sex wedding" violates the WLAD, *State v. Arlene's Flowers, Inc.*, 187 Wn.2d 804, 820-25, 389 P.3d 543 (2017), *cert. granted, judgment vacated*, 138 S. Ct. 2671 (2018). The Court rejected Mrs. Stutzman's free-speech claim by focusing not on the expressiveness of her wedding floral arrangements, but on her "conduct" of selling those arrangements, which it found was not "inherently expressive." *Id.* at 831-38. And this Court held that her free-exercise claim lacked merit because "[t]he WLAD is a neutral, generally applicable law." *Id.* at 843.

Ms. Stutzman then filed a petition for a writ of certiorari with the U.S. Supreme Court raising her free-exercise and free-speech claims. Pet. for a Writ of Cert., *Arlene's Flowers, Inc. v. Washington*, 138 S. Ct. 2671 (2018) (No. 17-108), 2017 WL 3126218. While that petition was pending, the Supreme Court decided *Masterpiece*.

In that ruling, the Court held that the State of Colorado violated the free-exercise rights of cake artist Jack Phillips and his business when it punished them for declining—based on their sincere religious beliefs—to create a custom wedding cake celebrating a same-sex marriage. *Masterpiece*, 138 S. Ct. at 1729-32. The Court concluded that Colorado acted "inconsistent with [its] obligation of religious neutrality" by exhibiting "elements of a clear and impermissible hostility" toward Mr. Phillips's faith. *Id.* at 1723, 1729.

The Court also provided general guidance for lower courts tasked with deciding the "difficult" and "delicate" free-exercise and free-speech questions raised in cases like this one. *Id.* at 1723-24, 1727-29. The opinion recognized the important distinction between "customers' rights to goods and services" and customers' demands that creators of custom art "exercise the right of [their] own personal expression for . . . a message [they cannot] express in a way consistent with [their] religious beliefs." *Id.* at 1728. And the Court questioned the government's power to compel people of faith, including clergy and perhaps even custom-design artists, to violate their beliefs by physically attending and participating in a same-sex wedding celebration. *Id.* at 1723, 1727.

Soon after the *Masterpiece* ruling, the Supreme Court granted Mrs. Stutzman's petition, vacated this Court's prior decision, and remanded for further consideration in light of *Masterpiece*. *Arlene's Flowers, Inc. v. Washington*, 138 S. Ct. 2671 (2018). That order requires this Court to "reconsider the entire case" through the prism of *Masterpiece*. Stephen M. Shapiro et al., *Supreme Court Practice* 350 (10th ed. 2013). Respondents have conceded this obligation. Pls.' Mot. to Recall the Mandate & Set a Briefing Schedule 2 (noting that this Court must "reconsider *the entire case* in light of the intervening precedent") (emphasis added).

V. ARGUMENT

A. Targeting Mrs. Stutzman because of the State's hostility toward her religious beliefs and requiring her to physically attend and participate in same-sex weddings violate her free exercise of religion.

The State violates Mrs. Stutzman's free-exercise rights in two ways.[3] First, the Attorney General has targeted her because of, and shown hostility toward, her religious beliefs about marriage—beliefs that the U.S. Supreme Court has described as "decent and honorable" and held "in good faith by reasonable and sincere people." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594, 2602, 192 L. Ed. 2d 609 (2015). Second, the Superior Court's order requires Mrs. Stutzman to physically attend and participate in wedding ceremonies—events she considers sacred—that violate her faith.

1. The State's targeting of and hostility toward Mrs. Stutzman's religious beliefs and practices violate her free exercise of religion.

Masterpiece held that the government violates the Free Exercise Clause when it exhibits "hostility toward the sincere religious beliefs" of people who cannot in good conscience celebrate same-sex marriages. 138 S. Ct. at 1729. Where such hostility exists, the State fails in its obligation to

[3] Arlene's free-exercise rights are synonymous with Mrs. Stutzman's. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768, 189 L. Ed. 2d 675 (2014) ("[P]rotecting the free-exercise rights of [closely held] corporations . . . protects the religious liberty of the humans who own and control those companies."); *Masterpiece*, 138 S. Ct. at 1732 (ruling in favor of a free-exercise claim brought by a small business and its owner).

act "in a manner that is neutral toward religion." *Id.* at 1732. Given the importance of free-exercise rights, the threshold for establishing such a violation is low. "The Free Exercise Clause bars even '*subtle* departures from neutrality' on matters of religion," and its protection applies "upon even *slight* suspicion that . . . state [actions] stem from animosity to religion or distrust of its practices." *Id.* at 1731 (citation omitted) (emphasis added).

One of the easiest ways to demonstrate an absence of neutrality—and the presence of anti-religious hostility—is by showing a "difference in treatment" that disfavors people with certain religious beliefs. *Id.* at 1730. It has long been true that "[o]fficial action that targets religious conduct for distinctive treatment" violates the neutrality requirement. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993). Likewise, selectively burdening conduct motivated by a specific religious belief demonstrates a failure to generally apply the law. *Id.* at 543.

In *Masterpiece*, the Court found an "indication of hostility [in] the difference in treatment between Phillips'[s] case"—in which he declined to create a custom wedding cake celebrating a same-sex marriage—and three other cake artists "who objected . . . on the basis of conscience" to requests for "cakes with images that conveyed disapproval of same-sex marriage." 138 S. Ct. at 1730. The government punished Mr. Phillips, but declined to

act against the other cake artists. That unequal treatment violated the Free Exercise Clause.

The Attorney General has exhibited the same unequal treatment here. After learning about Mrs. Stutzman's religious conflict through media reports, but without any complaint from the individual Respondents, the Attorney General contacted Mr. Freed to express his concern, sent a letter threatening to sue Mrs. Stutzman, had his office devise a novel way to bring this lawsuit, employed an admittedly unprecedented use of the CPA to do so, and sued Mrs. Stutzman in her personal capacity.

In marked contrast, the Attorney General responded very differently when a media story went viral about the gay owner of Bedlam Coffee in Seattle profanely berating, ejecting, and discriminating against a group of Christian customers in October 2017.[4] After learning that the customers had distributed flyers advocating their religious beliefs in the streets outside his shop, Bedlam's owner (as shown in a widely disseminated video) told them that he was denying them service, repeatedly ordered them to "shut up," and angrily yelled: "Leave, all of you! Tell all your f---ing friends, 'Don't f---ing come here!'"[5] While departing, one of the customers politely said

[4] *Gay business owner in Seattle accused of discriminating against Christian customers*, Talk Radio 570 KVI (Oct. 12, 2017), https://bit.ly/2DnNqqy.

[5] Bedlam Coffee Video, Vimeo, https://vimeo.com/user40726072/review/292380783/0c7f9182eb (last visited Nov. 13, 2018).

something about Jesus Christ, and the owner responded: "I'd f--k Christ in the a--, okay. He's hot."[6]

The Attorney General received dozens of complaints about this outrageous behavior asking if he was planning to file suit against Bedlam like he did against Mrs. Stutzman. *See* Appellants Motion to Supplement Record, Ex. A at Mot.Supp.0004, 0011, 0024, 0041, 0044-88. But the Attorney General sent no letter threatening to sue Bedlam and filed no suit against the business, let alone against the owner in his personal capacity. The Attorney General's Office merely sent Bedlam a few standard form letters pursuant to its voluntary complaint-resolution process, advising the owner that people had filed complaints and offering to act as a neutral party in resolving the matter. *Id.* at Mot.Supp.0005-08, 0025-28. When Bedlam didn't respond, the Attorney General did nothing—he simply closed the files. *Id.* at Mot.Supp.0018-19, 0035-36.

Bedlam's actions are an extreme violation of the WLAD, which bans discrimination based on creed, RCW 49.60.215, and which the Attorney General has power to enforce through the CPA. Given the Attorney General's prior arguments and this Court's holding in this case, the State cannot legitimately claim that Bedlam's behavior was lawful:

[6] *Id.*

> [T]he language of the WLAD itself . . . states that it is to be construed liberally, RCW 49.60.020; that all people, regardless of [creed] are to have "*full enjoyment* of any of the accommodations, advantages, facilities, or privileges" of any place of public accommodation, RCW 49.60.030 (emphasis added); and that *all* discriminatory acts, including any act "which directly *or indirectly* results in any distinction, restriction, or discrimination" based on a person's [creed] is an unfair practice in violation of the WLAD, RCW 49.60.215 (emphasis added).

Arlene's, 187 Wn.2d at 825; *see also* RCW 49.60.040(14) (forbidding public accommodations from "directly or indirectly causing persons of any particular . . . creed . . . to be treated as not welcome"). To paraphrase the Attorney General's argument below, expelling Christian customers for expressing their religious beliefs "at the very least *indirectly* resulted in discrimination" based on creed, CP 377, and undeniably treated Christians as "unwelcome," RCW 49.60.040(14).

While Bedlam's shocking WLAD violation didn't prompt the Attorney General to action, Mrs. Stutzman's respectfully expressed and narrowly confined religious conflict unleashed the full power of the State. That disparate treatment demonstrates governmental animosity toward Mrs. Stutzman's religious exercise. The Attorney General's crusade against her has never been about neutrally enforcing the law; he has publicly decried the morality of her decision not to celebrate same-sex marriages, labeling it

as discrimination that is both "illegal—and wrong."[7] In other words, the Attorney General "passe[d] judgment upon" and "presuppose[d] the illegitimacy of" Mrs. Stutzman's "religious beliefs and practices." *Masterpiece*, 138 S. Ct. at 1731.

In addition to subjecting people of faith to disfavored treatment, *Masterpiece* highlighted other indicia of anti-religious animus. One is dismissing religious beliefs as a mere excuse for discrimination. 138 S. Ct. at 1729. A state official charged with enforcing the public-accommodation law in *Masterpiece* impugned "[f]reedom of religion and religion" as "despicable pieces of rhetoric" that people have used "to justify all kinds of discrimination." *Id.* Likewise here, the Attorney General has derided Mrs. Stutzman's religious beliefs as a mere "mechanism or a means to discriminate,"[8] thereby making "a negative normative evaluation" of her religious convictions. *Id.* at 1731 (quotation marks omitted). And his briefing has even dismissed her religious beliefs as irrelevant and equated them with bigotry, arguing that religion does not "excuse[]" discrimination because "[d]iscrimination is discrimination, whether motivated by religion . . . or simple bigotry." CP 2118.

---

[7] Letter from Bob Ferguson to John Trumbo and Bob Hoffmann at 2 (Aug. 11, 2015), *available at* https://bit.ly/2Rw6mGu.

[8] *Dori at odds with AG's explanation of florist-gay wedding lawsuit*, Kiro Radio (Jan. 9, 2015), https://bit.ly/2AM3bVA.

Another indicator of impermissible animus is comparing a person's religious conflict with celebrating same-sex marriage to racism. *Masterpiece*, 138 S. Ct. at 1729. A state official in *Masterpiece* "compare[d]" Mr. Phillips's "invocation of his sincerely held religious beliefs" to egregious historical examples of racism like "slavery and the Holocaust." *Id.* The Attorney General has drawn similar comparisons here. After oral argument before this Court, the Attorney General defended the State's position by saying that "[w]e can't go back to the 1960s and lunch counters."[9] And he gratuitously slammed Mrs. Stutzman's faith in past briefs, scoffing that some who share her "Southern Baptist faith for decades offered a purportedly 'reasoned religious distinction' for race discrimination." State's Br. in Opp'n at 20 n.6, *Arlene's Flowers, Inc. v. Washington*, 138 S. Ct. 2671 (2018) (No. 17-108), 2017 WL 4805387. This obvious attempt to demean Mrs. Stutzman's faith is deeply offensive and highly inappropriate for a state official.

A final factor demonstrating a lack of religious neutrality takes the form of government statements "implying that religious beliefs and persons are less than fully welcome in [the] business community." *Masterpiece*, 138 S. Ct. at 1729. In *Masterpiece*, this appeared in comments declaring that

[9] Nicole Fierro, *Arlene's Flowers owner speaks out after Supreme Court hearing*, KEPR (Nov. 16, 2016), https://bit.ly/2RDLc9H.

Mr. Phillips "can believe 'what he wants to believe,' but cannot act on his religious beliefs 'if he decides to do business in the state.'" *Id.* Here, the Attorney General has likewise stated that "Ms. Stutzman is free to hold her religious beliefs about marriage, but she is not entitled to invoke them" when running her business. CP 2069. And he explained that he sued Mrs. Stutzman in her personal capacity because she made decisions for her business based on "her *personal* belief 'that marriage is a union of a man and a woman.'" CP 219. This sends a chilling message to business owners acting on their own religious beliefs: should they persist, they face the prospect of not only professional hardship but personal financial ruin.

All these facts show that the State has acted with hostility toward Mrs. Stutzman's religious exercise and that it has been "neither tolerant nor respectful" of her beliefs. *Masterpiece*, 138 S. Ct. at 1731. The record creates far more than a "slight suspicion" of governmental animosity to her faith. *Id.* The State has violated the Free Exercise Clause, and the Superior Court's decision must be reversed.

2. Requiring Mrs. Stutzman to physically attend and personally participate in same-sex weddings violates her free exercise of religion.

The Superior Court's injunction requires Mrs. Stutzman either to personally attend and participate in same-sex weddings or to exit the wedding industry and abandon work with deep religious significance to her.

Forcing her to make that choice violates the Free Exercise Clause. *Masterpiece* itself identified personal attendance at a wedding as a factor impacting a free-exercise claim like Mrs. Stutzman's. 138 S. Ct. at 1723. It did so for good reason: no U.S. Supreme Court authority suggests that the State may require attendance at and participation in sacred ceremonies.

Marriage and weddings, in the eyes of many, have deep "spiritual significance," *Turner v. Safley*, 482 U.S. 78, 96, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987), to the point of being "sacred," *Obergefell*, 135 S. Ct. at 2594. Mrs. Stutzman is among the many people of faith who believe that marriage and weddings are innately religious. CP 539, 606-07. Regardless of whether her customers have overtly religious weddings presided over by clergy, like the individual Respondents did, CP 1488, 1803-04, she views all weddings as religious in nature, CP 606-07. The religious significance that she ascribes to marriage is the reason why her wedding work is so meaningful to her and why she cannot defy her faith by celebrating same-sex unions.

Mrs. Stutzman is an active participant in her clients' weddings. She meets with the couple to learn their vision for the wedding and to develop design ideas—a process that personally invests her in, and connects her to, "the wedding ceremony itself." CP 540, 654, 1577-79. Next, she creates with her own hands the custom floral designs that celebrate the wedding. CP 540-41. Then she and a driver deliver the flowers in an Arlene's van.

CP 541. Once there, she provides full wedding support by decorating the venue, attending the ceremony, ensuring that "all flowers are beautiful," and "participat[ing] in rituals," including standing for the processional, clapping for the couple, and joining in the officiant's prayer. *Id.*

Mrs. Stutzman's full wedding support is squarely at issue in this case, as demonstrated by four facts. First, Mrs. Stutzman understood that Mr. Ingersoll was seeking—like her longtime customers often do—full wedding support at the ceremony, and that is what she intended to decline. CP 542, 544. Second, the State challenged Mrs. Stutzman's same-sex-marriage policy, which precludes her from providing full wedding support for those events. CP 370-71, 546-47. Third, the Superior Court explicitly held that *any* wedding "service" Mrs. Stutzman "provide[s] for a fee"—such as her full wedding support—"must be offered" for same-sex weddings. CP 2630-31 n.19. Fourth, the injunction's expansive language encompasses Mrs. Stutzman's full wedding support, thereby requiring her to personally attend and participate in same-sex wedding ceremonies as she does for other weddings. CP 2419-20.

But the First Amendment prohibits government action that "force[s] . . . a person to go to" a religious event "against [her] will," *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15, 67 S. Ct. 504, 91 L. Ed. 711 (1947), or that "in effect require[s] participation in a religious exercise," *Lee*, 505

U.S. at 594. Both the Free Exercise and Establishment Clauses promise this basic liberty. *See id.* (discussing Establishment Clause); *Masterpiece*, 138 S. Ct. at 1727 (compelling clergy to perform same-sex wedding ceremony would deny their "right to the free exercise of religion"). When the State violates this fundamental guarantee, it "disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people." *Lee*, 505 U.S. at 592.

Compelling attendance at and participation in religious events is so odious that the U.S. Supreme Court has adopted broad standards to ensure that it will not happen. Litigants need not show an "official decree" demanding their presence at the event. *Id.* at 595. The First Amendment forbids the State from "requir[ing] one of its citizens to forfeit his or her rights and benefits"—even "intangible benefits"—as the price of declining to attend a ceremony with religious meaning. *Id.* at 595-96; *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022, 198 L. Ed. 2d 551 (2017) (First Amendment protects against "indirect coercion or penalties on the free exercise of religion").

The State demands that Mrs. Stutzman give up her wedding business as the cost of adhering to her faith. But her wedding work is crucially important to her. CP 539. From a religious perspective, it holds deep spiritual significance and meaning. *Id.* And from a business perspective, it

generates vital customer referrals and marketing. *Id.* The State cannot force her to abandon that faith-inspired work to protect her conscience. That is an unconstitutional demand.

Nor do First Amendment violations require formal participation in an official religious exercise, like reciting a prayer or bowing before a statue. Just as "the act of standing or [respectfully] remaining silent [is] an expression of participation in [a graduation] prayer," *Lee*, 505 U.S. at 593, Mrs. Stutzman's acts of standing when the officiant offers a prayer, clapping for the couple, and rising during the wedding party's processional constitute participation. But that is not all she does. She also participates by personally investing in the ceremony through design consultations, hand-crafting arrangements, and adorning the event with art that celebrates the couple's union. Taken together, these acts easily qualify as participation in a wedding ceremony of the kind that the government cannot compel.

History confirms that the First Amendment outlaws compelled participation in ceremonies with religious significance. Objection to such government coercion was "well known to the framers of the Bill of Rights." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 633, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943). In England, when many colonists fled, the law

compelled attendance at religious services.[10] But the Framers repudiated that practice, and the U.S. Supreme Court's precedents stand firm against it. *E.g.*, *Lee*, 505 U.S. at 587; *Masterpiece*, 138 S. Ct. at 1727.

As discussed above, Mrs. Stutzman's only alternative is to abandon her wedding art. But like compelled participation in religious ceremonies, forcing individuals to choose between their profession and adherence to their conscience is a historic means of religious persecution that the Framers rejected. They lived under British laws that excluded Catholics and others who did not take communion in the Church of England from holding civil, military, academic, or municipal office.[11] So "abhorrent" did the Framers consider this practice, *Torcaso v. Watkins*, 367 U.S. 488, 491, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961), that they adopted the Religious Test Clause, *see* U.S. Const. art. VI, cl. 3.

Employment Division v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990), does not bar Mrs. Stutzman's free-exercise claim, for at least three reasons. First, practices clearly at odds with our Nation's history and traditions are not subject to *Smith*'s neutrality and general-applicability rule. *See Hosanna-Tabor Evangelical Lutheran Church & Sch.*

---

[10] Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2144 (2003).

[11] Br. of Christian Legal Soc'y et al. as Amici Curiae in Supp. of Pet'rs at 32-33, *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018) (No. 16-111), 2017 WL 4005662.

v. EEOC, 565 U.S. 171, 190, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012) ("The contention that *Smith* forecloses recognition of" well-established historical precepts "rooted in the Religion Clauses has no merit"); *Trinity Lutheran*, 137 S. Ct. at 2021 n.2 (refuting the notion "that any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause"); *Masterpiece*, 138 S. Ct. at 1727 (noting that clergy cannot "be compelled to perform [a same-sex wedding] ceremony without denial of his or her right to the free exercise of religion").[12] That includes state action requiring attendance at and participation in a sacred event. Because the State demands that here, *Smith*'s rule does not govern.

Nor does *Smith*'s rule control when governments "impose special disabilities on the basis of religious views." *Smith*, 494 U.S. at 877; *accord Trinity Lutheran*, 137 S. Ct. at 2021. The State uniquely disadvantages religious wedding professionals who believe that marriage is an opposite-sex union and who are unable to participate in sacred events contradicting that belief. Unlike others, they are unwelcome in, and categorically driven from, the custom-wedding-art industry. As a result, *Smith* doesn't apply.

Finally, *Smith*'s rule is displaced in "hybrid situation[s]" where a free-exercise claim is linked with "other constitutional protections, such as

[12] *Cf. Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 576, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014) ("[T]he Establishment Clause must be interpreted by reference to historical practices and understandings.") (quotation marks omitted).

freedom of speech." *Smith*, 494 U.S. at 881-82. The hybrid-rights doctrine applies when a person of faith "make[s] out a 'colorable claim' that a companion right has been violated." *Miller v. Reed*, 176 F.3d 1202, 1207 (9th Cir. 1999). The next section demonstrates Mrs. Stutzman's strong free-speech interest in declining to create artistic expression that violates her beliefs about marriage. Combining that with her free-exercise claim suffices to displace *Smith*'s rule and to subject the State's actions to strict scrutiny.

B. Punishing Mrs. Stutzman for declining to create custom floral arrangements celebrating a same-sex wedding violates her freedom from compelled artistic expression.

The U.S. Supreme Court just reaffirmed that compelling people to support—let alone create—expression that "they find objectionable violates [a] cardinal constitutional command" and is "universally condemned." *Janus v. Am. Fed'n of State, Cty., and Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463, 201 L. Ed. 2d 924 (2018). Thus, the State cannot require Mrs. Stutzman—an artist who serves all people and sells her non-expressive goods and already-created expression to anyone—to design custom floral arrangements celebrating same-sex marriage against her conscience.

Masterpiece is fully consistent with—and in fact provides direct support for—affording that protection to Mrs. Stutzman. "[R]eligious and philosophical" views about marriage, *Masterpiece* explained, are "in some instances protected forms of expression." 138 S. Ct. at 1727. While noting

that public-accommodation laws like the WLAD generally do not violate the First Amendment, the Court acknowledged that compelled-speech concerns might exist when a customer's request requires a business owner to "exercise the right of his own personal expression for . . . a message he [cannot] express in a way consistent with his religious beliefs." *Id.* at 1728. Protecting creators of expression in those limited instances—as opposed to someone, very much unlike Mrs. Stutzman, who would post a sign saying "no goods or services will be sold if they will be used for gay marriages," *id.* at 1729—would be "sufficiently constrained" because there are "innumerable goods and services that no one could argue implicate the First Amendment." *Id.* at 1728.

In its now-vacated opinion, this Court rejected Mrs. Stutzman's free-speech claim. But as explained below, the U.S. Supreme Court's later decisions in *Masterpiece*, *Janus*, and *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018) (*NIFLA*), call for this Court to reconsider its prior analysis.

1. Compelled-speech protection applies here because Mrs. Stutzman's custom wedding arrangements are a form of artistic expression.

"[T]he Constitution looks beyond written or spoken words as mediums of expression." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995). It

protects artistic expression, a broad category that includes traditional forms of visual art such as "pictures, films, paintings, drawing, and engravings," *Kaplan v. California*, 413 U.S. 115, 119-20, 93 S. Ct. 2680, 37 L. Ed. 2d 492 (1973), encompassing abstract works like the unintelligible "painting[s] of Jackson Pollock," *Hurley*, 515 U.S. at 569. It extends further still, shielding atonal instrumentals, *see id.* (Arnold Schöenberg's music), and tattoos with "abstract images," *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061 (9th Cir. 2010). And *Masterpiece* suggested that custom wedding cakes might be protected expression because "the application of constitutional freedoms in new contexts can deepen our understanding of their meaning." 138 S. Ct. at 1723. Notably, to qualify for constitutional protection, artistic expression need not contain a "succinctly articulable" or "particularized message." *Hurley*, 515 U.S. at 569.

Floral design is an art form dating to "ancient times," CP 673, that incorporates artistic techniques akin to those used in "the creation of a painting or sculpture." CP 888. Much like paintings, floral arrangements—made with flowers that themselves often convey meaning (e.g., red roses symbolize love), CP 933-81—exist only to express messages and convey beauty. That is what Mrs. Stutzman's customers pay her to do.

Her custom wedding arrangements—which consist of bridal and bridesmaids' bouquets, boutonnieres, corsages, table centerpieces, and

other items—are her protected expression because she intends to, and does in fact, communicate through them. *See Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 790, 131 S. Ct. 2729, 180 L. Ed. 2d 708 (2011) (video games are speech because they "communicate"). As to intent, Mrs. Stutzman testified that she designs her wedding arrangements to "convey an expressive message." CP 538. And as to effect, those floral designs express messages to their viewers. That is their sole purpose; they have no "non-expressive purpose or utility." *Mastrovincenzo v. City of New York*, 435 F.3d 78, 95 (2d Cir. 2006) (custom artistic goods with a "dominant expressive purpose" have a strong claim to speech protection).

When viewed *in their context*, which is what case law requires, Mrs. Stutzman's wedding arrangements express celebration for the couple's marriage. *See, e.g., Texas v. Johnson*, 491 U.S. 397, 405, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989) (speech analysis "consider[s] the context in which [the speech] occur[s]"); *Spence v. Washington*, 418 U.S. 405, 410, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974) ("[T]he context in which a symbol is used for purposes of expression is important, for the context may give [it] meaning"). Floral arrangements in general are understood to "celebrate the happy and joyous occasions of life." CP 692. And Mrs. Stutzman's wedding designs in particular are created for, and place amidst, an expressive event whose "core" message "is a celebration of marriage and the uniting of two

people." *Kaahumanu v. Hawaii*, 682 F.3d 789, 799 (9th Cir. 2012). Even the individual Respondents admit that wedding arrangements convey a "celebratory" message or atmosphere. CP 1752, 1858.

Mrs. Stutzman's celebratory message is not generic—she tailors it to each wedding. Following multiple client consultations that invest her in, and connect her to, the wedding ceremony, Mrs. Stutzman creates unique designs that express her view of the couple's "relationship and personalities." CP 540. Her wedding arrangements thus call for the celebration of a specific wedding for a specific couple.

Those floral designs also announce the event as a wedding and declare the couple's union as a marriage. This message comes through clear from quintessential wedding arrangements like the bridal bouquet. Such creations are markers for marriage and tell their viewers that the event is a wedding, that the couple is marrying, and that celebration is in order.

Given the obviously artistic and expressive nature of Mrs. Stutzman's custom wedding designs, even the Attorney General admitted during oral argument before this Court that those wedding arrangements are "a form of expression." Oral Argument Video at 40:49-40:53, *available at* https://bit.ly/2SP3aaj.

This Court rejected Mrs. Stutzman's compelled-speech claim by misplacing its analytical focus. *Arlene's*, 187 Wn.2d at 831-38. The prior

opinion asked whether the "conduct" of selling wedding flowers—"[t]he decision to either provide or refuse to provide" them—is "inherently expressive." *Id.* at 831-33. Instead, it should have considered the expressiveness of the wedding arrangements themselves.

Masterpiece and *Hurley* confirm that the analysis should focus on the expression itself rather than the conduct of selling or accepting a request. When discussing the free-speech claim in *Masterpiece*, the Court viewed the relevant question as whether "a beautiful wedding cake" is "an exercise of protected speech"—not whether the conduct of selling cakes is. 138 S. Ct. at 1723 (also asking "whether a baker's creation can be protected"). In *Hurley*, too, when the Court held that the government could not apply its public-accommodation law to force parade organizers to include an LGBT group's message in its parade, the Court did not ask whether the parade organizers' "conduct" in declining the LGBT group's request was expressive; it assessed whether the parade itself was. 515 U.S. at 568-69.

2. Compelled-speech protection forbids the State from punishing Mrs. Stutzman under these circumstances.

A long line of U.S. Supreme Court cases has established that the government may not compel individuals or businesses to express messages they deem objectionable or punish them for declining to do so.[13] This right

[13] *E.g.*, *Janus*, 138 S. Ct. at 2463-64 (requiring public employees to fund union speech that they deemed objectionable); *NIFLA*, 138 S. Ct. at 2371-76 (requiring pro-life pregnancy

to be free from compelled speech protects freedom of conscience by shielding "the sphere of intellect" and the "individual freedom of mind" from governmental intrusion. *Wooley*, 430 U.S. at 714-15. And it protects "individual dignity," *Cohen v. California*, 403 U.S. 15, 24, 91 S. Ct. 1780, 29 L. Ed. 2d 284 (1971), because "[f]orcing free and independent individuals" to express ideas they find objectionable—to "betray[] their convictions" in that way—"is always demeaning," *Janus*, 138 S. Ct. at 2464.

Hurley illustrates two key principles supporting Mrs. Stutzman's free-speech claim. First, the government may not apply a public-accommodation law to force speakers—the parade organizers there—to express what they deem objectionable. *Hurley*, 515 U.S. at 572-75. Disregarding that rule, the State has used the WLAD to compel not the mere sale of Mrs. Stutzman's products—which are available to anyone, including unarranged flowers and premade arrangements for same-sex weddings, CP 547, 1616, 1642—but the creation of art celebrating a view of marriage that

---

centers to tell women how to access state-funded abortions); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795-801, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988) (requiring paid commercial fundraisers to disclose how much money they give to their clients); *Pac. Gas and Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 20-21, 106 S. Ct. 903, 89 L. Ed. 2d 1 (1986) (*PG&E*) (plurality) (requiring business to include third party's expression in its billing envelope); *Wooley v. Maynard*, 430 U.S. 705, 717, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977) (requiring citizens to display state motto on their license plates); *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258, 94 S. Ct. 2831, 41 L. Ed. 2d 730 (1974) (requiring newspaper to include politician's writings); *Barnette*, 319 U.S. at 642 (requiring students to recite Pledge of Allegiance and salute the flag).

conflicts with her faith. In so doing, the State violated her right to decide for herself which views about marriage "merit[] celebration" through her custom artwork. *Hurley*, 515 U.S. at 574.

Second, compelled-speech protection applies when individuals decline to speak because of a "disagreement" with what they're forced to express rather than an "intent to exclude" a class of people from their speech. *Id.* at 572; *see also Boy Scouts of Am. v. Dale*, 530 U.S. 640, 653, 120 S. Ct. 2446, 147 L. Ed. 2d 554 (2000) (parade organizers in *Hurley* did not exclude LGBT group "because of their [members'] sexual orientations," but because of what they communicated "march[ing] behind a . . . banner"). Mrs. Stutzman has no desire to—and does not—exclude LGBT individuals from her custom floral art. In fact, she has created dozens of custom designs for Mr. Ingersoll, including many for Mr. Freed. She objects only to designing custom art for same-sex weddings because of the celebratory message that those arrangements would convey about marriage. Given that Mrs. Stutzman does not refuse to serve people simply because of who they are, compelled-speech principles protect her.

This Court previously distinguished *Hurley* because that case did not involve a "paradigmatic public accommodation" that sells goods and services. *Arlene's*, 187 Wn.2d at 834-35 & n.11. That analysis suggests that the compelled-speech doctrine does not apply when the State uses the

WLAD to punish businesses. But *Hurley* itself rejected that view. It recognized that "the fundamental rule . . . that a speaker has the autonomy to choose the content of his own message" is "enjoyed by business corporations generally," 515 U.S. at 573-74, including for-profit speakers that collaborate on the "item[s] featured in the[ir] communication[s]," *id.* at 570. *Hurley* applied the compelled-speech doctrine not because the case arose outside of commerce, but because the state applied the public-accommodation statute "in a peculiar way," "produc[ing] an order essentially requiring [a group] to alter [its expression]." *Id.* at 572-73.[14]

Rather than following *Hurley*, this Court held that the controlling precedent is *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006) ("*FAIR*"). It is not. The *FAIR* Court said that law schools that objected to hosting military recruiters did not establish a compelled-speech violation because they are "not speaking when they host interviews and recruiting receptions." *Id.* at 64. But here, Mrs. Stutzman engages in expression through her custom wedding arrangements. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 457 n.10, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008)

[14] The U.S. Supreme Court has protected for-profit businesses from compelled speech at least three times. *See Riley*, 487 U.S. at 795-801; *PG&E*, 475 U.S. at 9-21 (plurality); *Tornillo*, 418 U.S. at 254-58 (1974); *supra* at n.13 (mentioning these cases). Also, the Court has confirmed that "a speaker is no less a speaker because he or she is paid to speak." *Riley*, 487 U.S. at 801.

(distinguishing the "[f]acilitation of speech" in *FAIR* from "co-opt[ing] the parties' own conduits for speech"); *Masterpiece*, 138 S. Ct. at 1744-45 (Thomas, J., concurring) (distinguishing the demand "to provide a forum for a third party's speech" in *FAIR* from "forc[ing] speakers to alter their *own* message"). It was only by looking for expression in her conduct of selling flowers—rather than her wedding designs themselves—that this Court found an absence of speech. *Arlene's*, 187 Wn.2d at 833. But that incorrectly focuses on the conduct of selling instead of the custom artistic expression that is sold. *Supra* at 36-37.

Rejecting Mrs. Stutzman's free-speech claim, this Court said that it "cannot be in the business of deciding which businesses are sufficiently artistic" to warrant speech protection. *Arlene's*, 187 Wn.2d at 837 (citation omitted). This misperceives the relevant question, which is whether the State applies the WLAD to force a business owner to create expression—not whether a business is "sufficiently artistic." Distinguishing speech from non-speech is a task required by the First Amendment itself. While drawing that line "can be difficult," the U.S. Supreme Court recently said, "precedents have long drawn it, and the line is long familiar to the bar," so courts must protect it. *NIFLA*, 138 S. Ct. at 2373 (quotation marks omitted).

3. Strict scrutiny applies to Mrs. Stutzman's compelled-speech claim.

Forcing Mrs. Stutzman to create artistic expression that violates her conscience requires strict scrutiny for two reasons. First, compelling speech "is always demeaning," *Janus*, 138 S. Ct. at 2464, and justifiable "only on even more immediate and urgent grounds than [compelled] silence," *Barnette*, 319 U.S. at 633. Second, the State applies WLAD in a content- and viewpoint-based manner, which requires strict scrutiny. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2231, 192 L. Ed. 2d 236 (2015).

The content-based application of the WLAD occurs in three ways. First, the U.S. Supreme Court has recognized—and just reaffirmed—that "[m]andating speech that a speaker would not otherwise make necessarily alters . . . content" and constitutes "a content-based regulation of speech." *Riley*, 487 U.S. at 795; *accord NIFLA*, 138 S. Ct. at 2371. Because the State requires Mrs. Stutzman to create artistic expression that she would not otherwise design, it applies the WLAD in a content-based manner.

Second, "regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S. Ct. at 2227. In compelled-speech cases, this occurs when a person's obligation to speak is triggered by the content of what she has already said. *Tornillo*, 418 U.S. at 256-57 (statute was content based

because business's obligation to speak was triggered only when it spoke on a specific topic). Mrs. Stutzman triggered the WLAD here because she otherwise creates art celebrating marriages. If she didn't do that, the law would not have applied in this case. The WLAD is thus content based.

Third, a law is content based if it requires a speaker to express another's message because of that message's content. *PG&E*, 475 U.S. at 13-14 (plurality) (giving a person "access" to a speaker's expression because of that person's "views" is "content based"). The WLAD compels Mrs. Stutzman's art because, according to the State, the requested speech's message—celebration for a same-sex wedding—implicates a protected classification. *Arlene's*, 187 Wn.2d at 823 n.3 (same-sex marriage is "closely correlated with sexual orientation"). Were Mrs. Stutzman asked for messages unrelated to such a classification, the statute wouldn't apply. The WLAD thus applies in a content-based manner. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 391, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992) (finding a similar law content based). And since the State "is punishing [Mrs. Stutzman] because [s]he refuses to create custom wedding [arrangements]" that celebrate "same-sex marriage," it must satisfy "the most exacting scrutiny." *Masterpiece*, 138 S. Ct. at 1746 (Thomas, J., concurring).

Worse, the WLAD is viewpoint discriminatory in operation. Floral designers who want to create arrangements celebrating same-sex marriage

are allowed, but artists who decline to celebrate those unions are punished. Such viewpoint discrimination demands strict scrutiny. *See R.A.V.*, 505 U.S. at 391-92 (finding similar law viewpoint based in operation).

C. Forcing Mrs. Stutzman to create custom floral arrangements celebrating a same-sex wedding and to personally participate in that event does not satisfy strict scrutiny.

Strict scrutiny requires the State to show that forcing Mrs. Stutzman to create custom wedding arrangements celebrating same-sex weddings and to personally participate in those ceremonies "furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed*, 135 S. Ct. at 2231 (quotation marks omitted). Governments that have applied public-accommodation laws to infringe First Amendment liberties have repeatedly been unable to satisfy heightened forms of constitutional scrutiny. *See, e.g.*, *Hurley*, 515 U.S. at 578-79; *Dale*, 530 U.S. at 659. Here, the State—which must justify a sweeping injunction that mandates physical attendance at and participation in sacred events—fares no better in this case.

Applying the State's constitutional protection for religious exercise, this Court held that the WLAD serves the "broad[] societal purpose" of "eradicating barriers to the equal treatment of all citizens in the commercial marketplace." *Arlene's*, 187 Wn.2d at 851. That broad characterization of the State's interest will not suffice for federal strict-scrutiny analysis, which "look[s] beyond broadly formulated interests justifying the general

applicability of government mandates" to see whether strict scrutiny "is satisfied through application of the challenged law" to "the particular" party. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006); *see, e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 221-22, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972) (assessing government's specific interest in forcing Amish children to attend school from ages 14 to 16 rather than its general interest in mandating school attendance). As *Hurley* illustrates, the analysis here focuses not on the WLAD's general purpose of preventing "denial[s] of access to (or discriminatory treatment in) public accommodations," but on its "apparent object" when "applied to [the] expressive activity" and inherently sacred event at issue here. 515 U.S. at 578.[15]

The State, therefore, must show that it has a compelling interest in forcing Mrs. Stutzman—a floral designer who serves all people, including LGBT customers—to violate her conscience by creating custom art celebrating same-sex weddings and by personally participating in those ceremonies. Unlike most applications of the WLAD, this has the "apparent

[15] The Attorney General has shown that he does not consider the interest that this Court previously identified—"eradicating barriers to the equal treatment of all citizens," *Arlene's*, 187 Wn.2d at 851—to be compelling because he did not attempt to punish Bedlam Coffee when it demeaned and discriminated against Christian customers. *See Lukumi*, 508 U.S. at 547 ("[A] law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest") (quotation marks and alterations omitted).

object" of forcing Mrs. Stutzman to create speech and to physically participate in a religious event. *Id.* But permitting that would "allow exactly what the general rule of speaker's autonomy forbids" and what free-exercise guarantees prohibit. *Id.* The State itself, through its WLAD exemptions, recognizes that its nondiscrimination interests are decreased when the context is "the solemnization or celebration of a marriage." RCW 26.04.010(6). Strict scrutiny is not satisfied here.

The State does not advance its cause by invoking concerns for consumers' dignity. *See* CP 393. *Hurley* established that eliminating dignitary harm is *not* a compelling state interest where, as here, that harm is caused by a decision not to express a message. "[T]he point of all speech protection . . . is to shield just those choices of content that in someone's eyes are . . . hurtful." *Hurley*, 515 U.S. at 574. Because the offensiveness of a decision not to speak cannot be the reason "for according it constitutional protection" and for stripping it of protection, *Johnson*, 491 U.S. at 409, the State's dignitary concerns are not a compelling basis for infringing free speech. *Masterpiece*, 138 S. Ct. at 1746-47 (Thomas, J., concurring).[16]

[16] *See also Matal v. Tam*, 137 S. Ct. 1744, 1764, 198 L. Ed. 2d 366 (2017) (plurality) (rejecting an asserted "interest in preventing speech expressing ideas that offend" because "we protect the freedom to express the thought that we hate") (quotation marks omitted); *Snyder v. Phelps*, 562 U.S. 443, 458, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.") (quoting *Johnson*, 491 U.S. at 414); *Boos v. Barry*, 485 U.S. 312, 322, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988) (explaining that a government "interest in protecting

Nor may dignitary interests override Mrs. Stutzman's free-exercise rights. To allow that would empower the State to punish religious exercise simply because its communicative impact offends. *See* CP 1763 (Mr. Ingersoll testified that it "hurt [his] feelings" when Mrs. Stutzman said that "her relationship with Jesus Christ wouldn't allow her to do [his] flowers"). But the State has no legitimate interest in "prescrib[ing] what [is] offensive" or "signal[ing] . . . official disapproval of . . . religious beliefs." *Masterpiece,* 138 S. Ct. at 1731.

Notably, the State has not eliminated dignitary harm through its actions, but simply shifted that harm to Mrs. Stutzman. Free-speech and free-exercise rights exist to protect the dignity of speakers and people of faith. *See Janus*, 138 S. Ct. at 2464 (compelled speech "is always demeaning" to the speaker); *Hobby Lobby*, 134 S. Ct. at 2785 (Kennedy, J., concurring) ("free exercise is essential in preserving the[] . . . dignity" of religious adherents). But the State has outlawed Mrs. Stutzman's religious exercise, demeaned her religious beliefs as discriminatory, and stigmatized her in the community. That inflicts dignitary harm that cannot be ignored.

The facts of this case confirm that the State's dignitary interest does not satisfy strict scrutiny. *See Gonzales*, 546 U.S. at 431 ("'[C]ontext

---

the dignity" of listeners from harmful speech is "inconsistent with our longstanding refusal to punish speech because the speech in question may have an adverse emotional impact on the audience") (quotation marks and alterations omitted).

matters' in applying the compelling interest test."). Mrs. Stutzman took the hand of a longtime customer and politely told him that she "could not do his wedding"—that she couldn't "be a part of his event"—because of her religious beliefs. CP 546, 1615-16, 1763-64. And she did this just two months after Washington legalized same-sex marriage, before she developed a policy on the issue. For this, she faces a crushing penalty—personal liability for an attorney-fees award that will be many hundreds of thousands of dollars, putting her at risk of bankruptcy. Given Mrs. Stutzman's polite response to Mr. Ingersoll and the State's severe punishment of her, the State's dignitary interest is not sufficiently compelling.

Nor can the State satisfy narrow tailoring. Mrs. Stutzman seeks protection for a limited religious conflict arising solely from "decent and honorable" beliefs about marriage. *Obergefell*, 135 S. Ct. at 2602. That conflict exists only when a customer asks her to design custom arrangements celebrating a same-sex wedding or to physically attend that ceremony. She will sell unarranged flowers, other materials, and premade arrangements for use at same-sex weddings. CP 547, 1616, 1642. And she creates custom arrangements for LGBT customers, including for Valentine's Day, anniversary, and adoption celebrations. CP 1607, 1637.

If Mrs. Stutzman's rights are protected, the WLAD would still apply to the vast majority of commercial transactions. *See Masterpiece*, 138 S. Ct.

at 1728 (there are "innumerable goods and services that no one could argue implicate the First Amendment"). Wedding sales make up a miniscule percentage of all purchases. And even in the wedding context, business owners cannot "refuse[] to sell" non-expressive items or ready-to-purchase expressive items "for gay weddings," *id.*; nor could they decline services that lack personal participation at the ceremony. Allowing Mrs. Stutzman to live according to her conscience will not inflict "a community-wide stigma" on, or result in a "serious diminishment to [the] dignity and worth" of, LGBT individuals. *Id.* at 1727.

Other factors confirm that upholding Mrs. Stutzman's freedoms will not materially impede the WLAD. First, market forces—like the desire to earn revenue and avoid risk of boycotts—dissuade others from following Mrs. Stutzman's path. Second, noneconomic deterrents—such as the death threats and constant harassment that Mrs. Stutzman has endured—have the same effect. Third, the State has no demonstrated problem with businesses declining to celebrate same-sex ceremonies. Of the 70 complaints alleging sexual-orientation discrimination against a place of public accommodation filed in the eight years preceding this case, not a single one was substantiated; nor was one filed against a wedding business. CP 1508-34.

Finally, the availability of less restrictive alternatives confirms the absence of narrow tailoring. *United States v. Playboy Entm't Grp., Inc.*, 529

U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000) ("a less restrictive alternative" must be used). For example, the State could protect artists who create custom expression for weddings or physically attend and personally participate in those ceremonies. It could do that by expanding the existing protection for religious groups that object to "the solemnization or celebration of a marriage." RCW 26.04.010(6). The State thus cannot establish that punishing Mrs. Stutzman is the narrowest way to achieve its interests.

VI. CONCLUSION

Marriage and weddings are inherently religious for people like Mrs. Stutzman. She should not be forced to create art that violates her religious beliefs, abandon work inspired by her faith, or face personal financial ruin simply for following her decent and honorable beliefs about such sacred matters. LGBT individuals are free to live out their beliefs about marriage without the State violating their conscience, taking away their professions, or imposing financial hardship. Mrs. Stutzman seeks that same freedom—one that the First Amendment guarantees her. She requests that this Court reverse the Superior Court's judgment and enter judgment in her favor.

Respectfully submitted this the 13th day of November, 2018.

s/ Kristen K. Waggoner

George Ahrend
WSBA no. 25160
AHREND LAW FIRM PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
gahrend@ahrendlaw.com

John R. Connelly
WSBA no. 12183
CONNELLY LAW OFFICES
2301 N. 30th St.
Tacoma, WA 98403
jconnelly@connelly-law.com

Kristen K. Waggoner
WSBA no. 27790
James A. Campbell*
AZ no. 026737
Ryan J. Tucker*
AZ no. 034382
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
kwaggoner@ADFlegal.org

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

On November 13, 2018, the Brief of Appellants was served via email on the following:

Noah G. Purcell at NoahP@atg.wa.gov
Alan D. Copsey at AlanC@atg.wa.gov
Todd Bowers at toddb@atg.wa.gov
Attorneys for State of Washington

Amit D. Ranade at amit.ranade@hcmp.com
Jake Ewart at mje@hcmp.com
Emily Chiang at echiang@aclu-wa.org
Elizabeth Gill at egill@aclunc.org
Lisa Nowlin at lnowlin@aclu-wa.org
Attorneys for Plaintiffs Robert Ingersoll and Curt Freed

Richard B. Katskee at katskee@au.org
Carmen N. Green at green@au.org
Hank L. Balson at Hank@budgeandheipt.com
Attorneys for Amicus Curiae Americans United for Separation of Church and State

Sherrilyn Ifill at sifill@naacpldf.org
Janai Nelson at jnelson@naacpldf.org
Christina Swarns at cswarns@naacpldf.org
Coty Montag at cmontag@naacpldf.org
Charles C. Sipos at csipos@perkinscoie.com
David A. Perez at dperez@perkinscoie.com
Attorneys for Amicus Curiae NAACP Legal Defense and Educational Fund, Inc.

Jessica L. Ellsworth at jessica.ellsworth@hoganlovells.com
Laura A. Szarmach at laura.szarmach@hoganlovells.com
Nicole E. Schiavo at nicole.schiavo@hoganlovells.com
Steven M. Freeman at sfreeman@adl.org
Seth M. Marnin at smarnin@adl.org
Michelle N. Deutchman at mdeutchman@adl.org
Christian E. Mammen at chris.mammen@hoganlovells.com

Kaitlyn A. Golden at kaitlyn.golden@hoganlovells.com
Attorneys for Amici Curiae Anti-Defamation League and Twenty-Six Other Organizations

Daniel J. Shih atdshih@susmangodfrey.com
Lindsey G. Eccles at leccles@susmangodfrey.com
Jennifer C. Pizer at jpizer@lambdalegal.org
Attorneys for Amici Curiae Lambda Legal Defense and Education Fund, Inc. and Other Groups

Karolyn A. Hicks at kah@stokeslaw.com
Shannon P. Minter at sminter@nclrights.org
Christopher Stoll at cstoll@nclrights.org
Attorneys for Amici Curiae National Center for Lesbian Rights, Legal Voice, and the National Lesbian, Gay, Bisexual and Transgender Bar Association.

Leonard J. Feldman at feldman@pwrlk.com
Jamila Asha Johnson at jajohnson@schwabe.com
Attorneys for Amici Curiae Washington Businesses

Daniel E. Huntington at danhuntington@richter-wimberley.com
Valerie Mcomie at valeriemcomie@gmail.com
Attorneys for Amicus Curiae Washington State Association of Justice Foundation

Jesse Wing at jessew@mhb.com
Jeffrey Needle at jneedle@wolfenet.com
Attorneys for Amicus Curiae Washington Employment Lawyers Association

Rebecca A. Zotti at rebecca.zotti@sedgwicklaw.com
Attorney for Amici Curiae Professor Tobias Wolff

Beth E. Terrell at bterrell@terrellmarshall.com
Blythe H. Chandler at bchandler@terrellmarshall.com
Isaac Ruiz at iruiz@kellerrohrback.com
Benjamin Gould at bgould@kellerrohrback.com
Attorneys for Amicus Curiae Northwest Consumer Law Center

Michael A. Patterson at map@pattersonbuchanan.com
Adèle Auxier Keim at akeim@becketfund.org
Mark Rienzi at mrienzi@becketfund.org
Diana Verm at dverm@becketfund.org
Attorneys for Amicus Curiae Becket Fund for Religious Liberty

David M. S. Dewhirst at ddewhirst@myfreedomfoundation.com
Stephanie D. Olson at stephanie.diane.olson@gmail.com
Attorneys for Amicus Curiae International Christian Photographers

Jeffrey P. Helsdon at jhelsdon@tacomalawfirm.com
Ilya Shapiro at ishapiro@cato.org
Jayme Weber at jweber@cato.org
Attorneys for Amicus Curiae Cato Institute

Floyd E. Ivey at feivey@3-cities.com
Attorney for Amicus Curiae Protecting Constitutional Freedoms, Inc.

Thomas Olmstead at lawoffice@tomolmstead.com
Attorney for Amicus Curiae Ethics and Religious Liberty Commission of the Southern Baptist Convention

Mark J. Holady at mark@holadylaw.com
Thomas C. Berg at tcberg@stthomas.edu
Kimberlee W. Colby at kcolby@clsnet.org
Douglas Laycock at dlaycock@virginia.edu
Attorneys for Amici Curiae Christian Legal Society, the Association of Christian Schools International, and the National Association of Evangelicals

Anton Sorkin at anton.sorkin@emory.edu
Mark Goldfedder at mark.aaron.goldfedder@emory.edu
James Abernathy at jga.attorney@yahoo.com
Attorneys for Amicus Curiae Restoring Religious Freedom Project, Emory University

Seth L. Cooper at Amici.cooper@outlook.com
John C. Eastman at jeastman@chapman.edu

Anthony T. Caso at caso@chapman.edu
Attorneys for Amicus Curiae Center for Constitutional Jurisprudence

Leslie Rutledge at leslie.rutledge@arkansasag.gov
Lee P. Rudofsky at lee.rudofsky@arkansasag.gov
Ryan Owsley at ryan.owsley@arkansasag.gov
Bryce P. McPartland at mcpartland.bryce@mcpartlandlaw.com
Attorneys for Amici Curiae States of Arkansas, Alabama, Arizona, Kentucky, Louisiana, Nebraska, Nevada, Oklahoma, South Carolina, Texas, Utah, and West Virginian and the Governor of Kansas

Daniel J. Appel at Daniel@fahzlaw.com
Attorney for Amicus Curiae Legal Scholars

Keith Kemper at kkemper@elmlaw.com
Attorney for Amici Curiae Frederick Douglass Foundation, the National Hispanic, Christian Leadership Conference, the National Black Church, Initiative, the Coalition of African American Pastors USA, the National Black Religious Broadcasters, Alveda King Ministries, the Radiance Foundation, Mount Calvary Christian Center, Church of God in Christ, Hosanna Asamblea De Dios, New Hope International Church, and Ryan T. Anderson

Adam J MacLeod amacleod@faulkner.edu
Marshall W. Casey marshall@mcaseylawfirm.com
Attorneys for Amicus Curiae Adam J. MacLeod

s/ Kristen K. Waggoner
Kristen K. Waggoner

ALLIANCE DEFENDING FREEDOM

November 13, 2018 - 3:30 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	91615-2
Appellate Court Case Title:	Robert Ingersoll, et al. v. Arlene's Flowers, Inc., et al.
Superior Court Case Number:	13-2-00953-3

The following documents have been uploaded:

- 916152_Briefs_Plus_20181113152705SC766780_6331.pdf
  This File Contains:
  Briefs - Appellants
  Certificate of Service
  The Original File Name was 2018.11.13 WvAF Brief of Appellants.FINAL.pdf

A copy of the uploaded files will be sent to:

- EGill@aclunc.org
- JAbernathy@FreedomFoundation.com
- Jamila.johnson@splcenter.org
- VLBabani@perkinscoie.com
- akeim@becketfund.org
- alanc@atg.wa.gov
- amit.ranade@hcmp.com
- anton.sorkin@emory.edu
- attorneyappel@gmail.com
- bchandler@terrellmarshall.com
- beth@terrellmarshall.com
- bgould@kellerrohrback.com
- bmarvin@connelly-law.com
- caso@chapman.edu
- chris.mammen@hoganlovells.com
- cmontag@naacpldf.org
- csipos@perkinscoie.com
- cstoll@nclrights.org
- cswarns@naacpldf.org
- danhuntington@richter-wimberley.com
- daniel@fahzlaw.com
- ddewhirst@freedomfoundation.com
- dlaycock@virginia.edu
- dperez@perkinscoie.com
- dshih@susmangodfrey.com
- dverm@becketfund.org
- echiang@aclu-wa.org
- feivey@3-cities.com
- feldman@pwrfl-law.com
- gahrend@ahrendlaw.com
- green@au.org
- hank@budgeandheipt.com

- hbalson@pilg.org
- iruiz@kellerrohrback.com
- ishapiro@cato.org
- jake.ewart@hcmp.com
- jcampbell@ADFlegal.org
- jconnelly@connelly-law.com
- jeastman@chapman.edu
- jessew@mhb.com
- jessica.ellsworth@hoganlovells.com
- jhelsdon@thehelsdonlawfirm.com
- jneedlel@wolfenet.com
- jnelson@naacpldf.org
- jpizer@lambdalegal.org
- jtedesco@ADFlegal.org
- judyg@atg.wa.gov
- jweber@cato.org
- kah@stokeslaw.com
- kaitlyn.golden@hoganlovells.com
- katskee@au.org
- kcolby@clsnet.org
- kim.gunning@columbialegal.org
- kkemper@elmlaw.com
- krista.stokes@hcmp.com
- laura.szarmach@hoganlovells.com
- lawoffice@tomolmstead.com
- leccles@susmangodfrey.com
- lnowlin@aclu-wa.org
- map@pattersonbuchanan.com
- mark.aaron.goldfeder@emory.edu
- mark@holadylaw.com
- marshall@mcaseylawfirm.com
- mcpartland.bryce@mcpartlandlaw.com
- mdeutchman@adl.org
- mpr@stokeslaw.com
- mrienzi@becketfund.org
- nicole.schiavo@hoganlovells.com
- noahp@atg.wa.gov
- noemiv@mhb.com
- pleadings@aclu-wa.org
- pmr@pattersonbuchanan.com
- rtucker@adflegal.org
- rzotti@maronmarvel.com
- scanet@ahrendlaw.com
- seth@newtonkight.com
- sfreeman@adl.org
- shendricks@klinedinstlaw.com
- sifill@naacpldf.org
- smarnin@adl.org
- sminter@nclrights.org
- solson@klinedinstlaw.com
- tcberg@stthomas.edu
- toddb@atg.wa.gov
- valeriemcomie@gmail.com

Comments:

Sender Name: Amanda Rossiter - Email: arossiter@adflegal.org
Filing on Behalf of: Kristen Kellie Waggoner - Email: kwaggoner@adflegal.org (Alternate Email: arossiter@adflegal.org)

Address:
15100 N. 90th Street
Scottsdale, WA, 85260
Phone: (480) 388-8026

Note: The Filing Id is 20181113152705SC766780