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SUPREME COURT
STATE OF WASHINGTON
3/5/2019 2:09 PM
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No. 91615-2

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff-Respondent,

v.

ARLENE'S FLOWERS, INC., et al.,

Defendants-Appellants.

ROBERT INGERSOLL et al.,

Plaintiffs-Respondents,

v.

ARLENE'S FLOWERS, INC., et al.,

Defendants-Appellants.

**UNOPPOSED MOTION BY
THE EPISCOPAL BISHOPS
OF THE DIOCESES OF
SPOKANE AND OLYMPIA,
ET AL., FOR LEAVE TO
FILE AMICUS CURIAE
BRIEF**

I. RELIEF REQUESTED

Pursuant to RAP 10.6 and the Order dated October 3, 2018, the Rt. Rev. Gretchen M. Rehberg, Bishop of the Episcopal Diocese of Spokane; the Rt. Rev. Greg Rickel, Bishop of the Episcopal Diocese of Olympia; the Pacific Northwest Conference of the United Church of Christ; the Rev. Dr. J. Herbert Nelson, II, Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.); Central Conference of American Rabbis; Reconstructionist Rabbinical Association; Union for Reform Judaism; Unitarian Universalist Association; Covenant Network of Presbyterians; Faith Action Network – Washington; Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns; Men of Reform Judaism; Methodist Federation for Social Action; More Light Presbyterians; Muslims for Progressive Values; ReconcilingWorks: Lutherans for Full Participation; Religious Institute, Inc.; and Women of Reform Judaism (collectively, “Amici”), move for leave to file an amicus curiae brief. The parties do not object to this motion and the filing of Amici’s proposed brief.

II. IDENTITY AND INTEREST OF AMICI

The Rt. Rev. Gretchen M. Rehberg, Bishop of the Episcopal Diocese of Spokane and the Rt. Rev. Greg Rickel, Bishop of the Episcopal Diocese of Olympia are members of the House of Bishops of the General

Convention of the Episcopal Church. They have authorized the blessing of same-sex couples in Episcopal churches in their respective jurisdictions.

The Pacific Northwest Conference of the United Church of Christ (“PNCUCC”) is an organization of approximately 80 churches in Washington State, North Idaho, and Alaska. PNCUCC’s Constitution and Bylaws open with this scriptural guidance: “What God requires of us is this: to do what is just, to show constant love, and to live in humble fellowship with our God.” Out of this call from God, PNCUCC made the decision in 2010 to become an Open and Affirming Conference. In its essence, this means that it recognizes that the UCC faith calls them to equally include and welcome all God’s children to participate in all facets of life together regardless of sexual orientation or gender.

The Rev. Dr. J. Herbert Nelson, II, Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) (“PCUSA”) is the senior ecclesiastical officer of the PCUSA. The PCUSA is a national Christian denomination with nearly 1.6 million members in over 9,500 congregations, organized into 170 presbyteries under the jurisdiction of 16 synods. Through its antecedent religious bodies, it has existed as an organized religious denomination within the current boundaries of the United States since 1706. Since 1968, the PCUSA has been engaged in extensive discussion and debate about sexuality, and the fact that people of

deep faith and honest intelligence can and do differ on how they understand Scripture and the voice of the Holy Spirit on this subject. Since 1978, this denomination has called and advocated for civil rights for all people, regardless of sexual orientation. The proposed amicus brief is consistent with the policies adopted by the General Assembly of the PCUSA wherein they have affirmed as appropriate boundaries of religious liberties, that religious freedom is not a license for discrimination against any of God's people, and cannot justify the denial of secular employment or benefits, healthcare, public or commercial services or goods, or parental rights to persons based on race, ethnicity, sex, gender, sexual orientation, gender identity, religion or gender expression. The 223rd General Assembly encourages all Presbyterians to distinguish between their historical understanding of their religious freedom to practice the essential tenets of their faith, and the misuse of the term religious freedom as a justification for discrimination in the provision of these same considerations. The General Assembly does not claim to speak for all Presbyterians, nor are its policies binding on the membership of the Presbyterian Church. However, the General Assembly is the highest legislative and interpretive body for the denomination, and it is the final point of decision in all disputes. As such, its statements are considered

worthy of the respect and prayerful consideration of all the denomination's members.

Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis, opposes discrimination against all individuals, including gays and lesbians, for the stamp of the Divine is present in each and every human being.

Reconstructionist Rabbinical Association ("RRA"), established in 1974, is the professional association of Reconstructionist rabbis. Comprised of over 300 rabbis, the RRA represents the rabbinic voice within the Reconstructionist movement.

Union for Reform Judaism, whose 900 congregations across North America include 1.5 million Reform Jews, is committed to ensuring equality for all of God's children, regardless of sexual orientation.

Unitarian Universalist Association was founded in 1961 and has nurtured a heritage of providing a strong voice for social justice and liberal religion. Unitarian Universalism is a caring, open-minded faith community that traces its roots in North America back to the Pilgrims and the Puritans.

Covenant Network of Presbyterians, a broad-based, national group of clergy and lay leaders, seeks to support the mission and unity of the PCUSA, articulate and act on the church's historic, progressive vision,

work for a fully inclusive church, and find ways to live out the graciously hospitable gospel by living together with all fellow members in the PCUSA.

Faith Action Network – Washington is an interfaith statewide partnership, striving for a just, compassionate, and sustainable world through community building, education, and courageous public action. They are a widely-diverse coalition of people of faith which allies with like-minded communities and organizations across the state to advocate for and create a more just and peaceful world.

Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns (“FLGBTQC”) is a faith community within the Religious Society of Friends (Quakers). FLGBTQC deeply honors, affirms, and upholds that of God in all people.

Men of Reform Judaism comes to this issue out of deep commitment to ensuring equality for all of God’s children, regardless of sexual orientation.

Methodist Federation for Social Action mobilizes clergy and laity within The United Methodist Church to take action on issues of peace, poverty and people’s rights within the church, the nation, and the world.

More Light Presbyterians represents lesbian, gay, bisexual, and transgender (“LGBT”) people in the life, ministry, and witness of the PCUSA and in society.

Muslims for Progressive Values is guided by the following ten principles, each of which is rooted in Islam: collective identity, equality, separation of religious and state authorities, freedom of speech, universal human rights, gender equality, LGBTQ inclusion, critical analysis and interpretation, compassion, and diversity.

ReconcilingWorks: Lutherans for Full Participation embodies, inspires, advocates, and organizes for the acceptance and full participation of people of all sexual orientations and gender identities within the Lutheran communion, its ecumenical and global partners, and society at large.

Religious Institute, Inc. is a multi-faith organization whose thousands of supporters include clergy and other religious leaders from more than 50 faith traditions. The Religious Institute partners with the leading mainstream and progressive religious institutions in the United States.

Women of Reform Judaism represents more than 65,000 women in nearly 500 women’s groups in North America and around the world and

comes to this issue rooted in a commitment to speaking and acting forcefully against discrimination.

* * *

Amici, identified above, are religious stakeholders that represent traditions rooted in centuries of American history and that affirm religious liberty and equal rights. Amici represent faiths that have addressed social and religious questions affecting LGBT people and their families in different ways over time. But Amici unite in believing that it is both morally wrong and not constitutionally required to permit blanket discrimination in the public marketplace for goods and services based on the personal religious beliefs of merchants concerning the rights and relationships of same-sex couples.

Amici have a strong interest in ensuring that civil rights laws and regulations protecting persons from discrimination based on, among other things, race, creed, color, national origin, sex, and sexual orientation, are not undermined in the name of “religious freedom.”

Amici believe that this Court’s prior decision affirming the judgment of the superior court was correct and that *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), in light of which this case was remanded for further consideration, does not require a different outcome.

III. FAMILIARITY WITH THE ISSUES AND SCOPE OF ARGUMENT ON REVIEW

Counsel for Amici has reviewed the Court's opinions and orders in this case and the parties' briefs and other submissions to the Court to date. Counsel is familiar with the scope of the parties' arguments and will not unduly repeat arguments raised or likely to be raised by the parties.

IV. ISSUES TO BE ADDESED BY AMICI

Defendants-Appellants Barronelle Stutzman and Arlene's Flowers, Inc. (together, "Stutzman") refused to sell flowers to Plaintiffs-Respondents Robert Ingersoll and Curt Freed for their same-sex wedding based on Stutzman's religious belief that marriage is limited to the union of one man and one woman. Stutzman's conduct violated the Washington Law Against Discrimination and Consumer Protection Act, but Stutzman seeks a constitutional exemption from those neutral, generally applicable antidiscrimination laws so that merchants may refuse to provide goods and services to same-sex couples based on their personal religious beliefs. In these circumstances, Amici respectfully request leave to file an amicus brief addressing the following questions:

- Does the purported dichotomy between the rights of LGBT persons and the rights of people of faith underlying Stutzman's requested exemption actually exist?

- Did *Masterpiece* alter free exercise jurisprudence to now permit broad religious exemptions from neutral, generally applicable antidiscrimination laws?
- Would Stutzman’s requested exemption undermine civil rights laws and open the door for discrimination against not just LGBT persons but also people of faith and other protected classes?
- Would affirming the superior court’s judgment threaten religious liberty simply by enforcing civil rights laws in an evenhanded manner that declines to give special status to any one set of religious views?

V. WHY AMICUS BRIEFING WILL ASSIST THE COURT

As religious stakeholders from diverse traditions, Amici believe that they can provide insight and perspective on significant issues of public interest that will benefit the Court.

VI. CONCLUSION

For the foregoing reasons, Amici respectfully request leave to file an amicus brief addressing whether or not this Court should create a broad constitutional exemption from Washington’s neutral, generally applicable antidiscrimination laws based on the personal religious beliefs of merchants.

RESPECTFULLY SUBMITTED this 5th day of March, 2019.

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PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, over the age of 21 years, and not a party to this action. On the 5th day of March, 2019, I caused to be served, via the Washington State Appellate Court's Portal System, which will send notification of such filing to all parties of record, a true copy of the foregoing document.

DATED this 5th day of March, 2019



Sydney Henderson

PACIFICA LAW GROUP

March 05, 2019 - 2:09 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

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BRIEF OF AMICI CURIAE THE EPISCOPAL BISHOPS OF THE
DIOCESES OF SPOKANE AND OLYMPIA; THE PACIFIC
NORTHWEST CONFERENCE OF THE UNITED CHURCH OF
CHRIST; STATED CLERK OF THE GENERAL ASSEMBLY OF THE
PRESBYTERIAN CHURCH; CENTRAL CONFERENCE OF
AMERICAN RABBIS; RECONSTRUCTIONIST RABBINICAL
ASSOCIATION; UNION FOR REFORM JUDAISM; UNITARIAN
UNIVERSALIST ASSOCIATION; COVENANT NETWORK OF
PRESBYTERIANS; FAITH ACTION NETWORK – WASHINGTON;
FRIENDS FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND
QUEER CONCERNS; MEN OF REFORM JUDAISM; METHODIST
FEDERATION FOR SOCIAL ACTION; MORE LIGHT
PRESBYTERIANS; MUSLIMS FOR PROGRESSIVE VALUES;
RECONCILINGWORKS: LUTHERANS FOR FULL PARTICIPATION;
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 Inclusion of GLBTQ Persons*, <http://archive.is/3a6x>5, 8

I. INTRODUCTION

Defendants-Appellants Barronelle Stutzman and Arlene’s Flowers, Inc. (together, “Stutzman”) ask this Court to create a constitutional exemption from Washington’s neutral, generally applicable antidiscrimination laws so that merchants may refuse to provide goods and services to same-sex couples—in this case, flowers for a same-sex wedding—based on their personal religious beliefs. Underlying this request is a false dichotomy between the rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and people of faith. Within the diverse panorama of American religious thought, a large and growing portion of the religious community welcomes, accepts, and celebrates LGBT individuals and families and rejects the idea that they should be subject to discrimination in public accommodations based on differing religious beliefs that reject their dignity, equality, and civil rights. Consistent with these views, many leaders among longstanding pillars of the faith community—including Episcopalians, Lutherans, Presbyterians, and Unitarians, as well as the Central Conference of American Rabbis and the United Church of Christ—have objected to claims for broad religious exemptions from antidiscrimination laws.

This brief continues those efforts. The undersigned amici curiae (“Amici”)¹ urge the Court to reject, once again, Stutzman’s plea for a First Amendment-premised exemption from the Washington Law Against Discrimination (“WLAD”) and Consumer Protection Act (“CPA”). Stutzman has every right to her religious beliefs concerning marriage and to lawfully act on those beliefs in her personal and religious life. But as a merchant marketing flowers to the public, her religious beliefs do not exempt her from Washington’s neutral antidiscrimination laws.

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018), in light of which this case was remanded for further consideration, reaffirmed this longstanding general rule and thus strongly supports affirming the superior court’s judgment. *Id.* at 1727 (holding that while “religious and philosophical objections [to same-sex marriage] are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law”).

Masterpiece warned that religious exemptions to neutral antidiscrimination laws, such as for clergy, must be narrowly “confined”

¹ A list of Amici is set forth in the appendix. More complete statements of interest of individual Amici are set forth in their unopposed motion for leave to file this brief.

and “constrained” to avoid opening the door to a “community-wide stigma [against gay persons] inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations.” *Id.* at 1727, 1728-29. Disregarding this admonition, Stutzman seeks a broad exemption that admits of no coherent limiting principle. In the name of religious freedom, the claimed exemption would open the door to wholesale evisceration of civil rights enforcement and permit religious discrimination against not just LGBT persons, but people of faith and other protected classes.

Our legal system distinguishes between the ironclad protections provided to religion in its own sphere and the different balances that society strikes in laws regulating interactions in the public marketplace. Like Stutzman, Amici represent religious voices that affirm religion as a central element of personal identity and believe that marriage has a “‘spiritual significance’ . . . to the point of being ‘sacred.’” Br. of Appellants at 5, 26, 28 (quoting *Turner v. Safley*, 482 U.S. 78, 96 (1987), and *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594 (2015)). But Amici’s religious faith in the dignity of all persons leads them to view this dispute as a case of sexual orientation discrimination, not religious liberty. Personal religious views are entitled to the utmost respect, but they do not

provide a license to disregard neutral civil rights laws that do not directly and substantially burden actual religious exercise.

Against the backdrop of America's rich and diverse religious landscape, Amici submit that the best way to ensure that *all* people retain the First Amendment right to speak, preach, pray, and practice their religious beliefs is to prevent discrimination in the marketplace regardless of its basis. Affirming the superior court will not constitute an attack on religion or signal a judicial imprimatur on changing social mores. Rather, affirmance will recognize that the religious pluralism woven into the fabric of American law, culture, and society requires that all, regardless of faith, are entitled to equal treatment under the law.

II. IDENTITY AND INTEREST OF AMICI CURIAE

Amici, who are described in more detail in their unopposed motion to file this brief, comprise a broad range of religious stakeholders. Amici believe it is both morally wrong and not constitutionally required to permit blanket discrimination in the public marketplace for goods and services based on the personal religious beliefs of merchants concerning the rights and relationships of same-sex couples. Accordingly, Amici have a strong interest in ensuring that laws do not sanction discrimination in the name of religion.

III. STATEMENT OF THE CASE

Amici adopt the Statements of the Case in Plaintiffs-Respondents' briefs.

IV. ARGUMENT

A. **The Dignity of LGBT Persons and Their Families Informs the Theology of a Wide Cross-Section of American Religious Traditions.**

Religious Americans increasingly affirm that respect for LGBT persons follows theologically from the basic tenets of their religion. Some traditions reflect this evolution in approving LGBT persons for ministry,²

² The Episcopal Church ordained its first openly gay priest in 1977. See Mireya Navarro, *Openly Gay Priest Ordained in Jersey*, N.Y. Times, Dec. 17, 1989. The Unitarian Universalist Church called its first openly gay minister to serve as leader for a congregation in 1979. See Unitarian Universalist LGBT History Timeline, Unitarian Universalist Association of Congregations, <http://www.uua.org/lgbtq/history/20962.shtml> (last visited Mar. 1, 2019). The seminary for Reconstructionist Jews began accepting gay and lesbian applicants in 1984. See Rabbi Shawn I. Zevit, *JRF Homosexuality Report and Inclusion of GLBTQ Persons*, <http://archive.is/3a6x> (last visited Mar. 1, 2019) (citing Reconstructionist Commission on Homosexuality, *Homosexuality and Judaism: The Reconstructionist Position* (1993)). The Central Conference of American Rabbis endorsed the view in 1990 that "all rabbis, regardless of sexual orientation, be accorded the opportunity to fulfill the sacred vocation [that] they have chosen." Central Conference of American Rabbis, *Report of the Ad Hoc Committee on Homosexuality and the Rabbinate of the Central Conference of American Rabbis Annual Convention*, 261 (1990), http://borngay.procon.org/sourcefiles/CCAR_Homosexuality.pdf. The Conservative Jewish movement welcomed gay and lesbian rabbinical and cantorial students to Jewish Theological Seminary in 2007. See Amy Stone, *Out and Ordained, New York's Jewish Theological Seminary Graduates its First Openly Lesbian Rabbi*, Lilith (2011), https://www.lilith.org/pdfs/LILSu11_FINAL_Outandordained.pdf. And in 2011, the Presbyterian Church (USA) amended the church's Book of Orders to effectively open ordained ministry to persons in same-gender relationships. See Sharon Youngs, *Presbyterian Church (USA) Approves Change In Ordination Standard* (May 10, 2011), <http://www.pcusa.org/news/2011/5/10/presbyterian-church-us-approves-change-ordination/> (last visited Mar. 1, 2019).

selecting prominent leaders,³ extending religious blessing and rites to same-sex unions,⁴ or otherwise providing religious affirmation of LGBT relationships.

³ For example, in 2015, Rabbi Denise L. Eger became the first openly LGBT president of Reform Judaism's Central Conference of American Rabbis. *Lesbian Rabbi Is to Become President of Reform Group*, N.Y. Times (Mar. 15, 2015), <https://www.nytimes.com/2015/03/16/us/lesbian-rabbi-is-to-become-president-of-reform-group.html>. And in 2013, the Evangelical Lutheran Church in America elected its first openly gay bishop, the Rev. R. Guy Erwin. Sarah Pulliam Bailey, *ELCA Lutherans Elect First Openly Gay Bishop* (June 3, 2013), <http://www.religionnews.com/2013/06/03/elca-lutherans-elect-first-openly-gay-bishop/> (last visited Mar. 1, 2019).

⁴ The United Church of Christ promulgated a new template for marriage ceremonies that could be used in any marriage ceremony regardless of gender. United Church of Christ, *Order for Marriage, An Inclusive Version*, http://www.ucc.org/worship/pdfs/323_346i_order-for-marriage-inclusive.pdf. The Unitarian Universalist Association formally affirmed its practice of celebrating same-sex unions in 1984. See LGBTQ Ministries Multicultural Growth and Witness, *LGBT History & Facts for Unitarian Universalists* (2012), <https://www.uua.org/documents/lgbtq/history.pdf>; Resolution of Immediate Witness, *Support of the Right to Marry for Same-Sex Couples*, General Assembly of the Unitarian Universalist Association (1996), <https://www.uua.org/statements/statements/14251.shtml>; Unitarian Universalist Association, *Unitarian Universalist LGBTQ: History & Facts*, <http://www.uua.org/lgbtq/history/185789.shtml> (last visited Mar. 1, 2019). The Conservative, Reform, and Reconstructionist Jewish movements allow their rabbis to perform religious wedding ceremonies for same-sex couples. See, e.g., Elliot Dorff, Daniel Nevins & Avram Reisner, *Rituals and Documents of Marriage and Divorce for Same-Sex Couples*, Rabbinical Assembly (Spring 2012), <http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/same-sex-marriage-and-divorce-appendix.pdf>; *Resolution On Same Gender Officiation*, 111th Convention of the Central Conference for American Rabbis (Mar. 2000), <https://www.ccarnet.org/ccar-resolutions/same-gender-officiation/>; *Reconstructionist Movement Endorses Civil Marriage for Same-Sex Couples*, Reconstructionist Rabbinical College, et al. (Feb. 24, 2010), <https://archive.rrc.edu/news-media/news/reconstructionist-movement-endorses-civil-marriage-same-sex-couples> (last visited Mar. 1, 2019). In 2015, the Episcopal Church amended its canon law to recognize marriage between two persons, and authorized marriage ceremonies that refer to “the couple” or “spouses” as well as “husband” or “wife.” Journal of the 78th General Convention of The Episcopal Church, Resolutions 2015-A036 & 2015-A054, at 778-83 (New York: General Convention 2015), http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=2015-A036, http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=2015-A054. The Presiding Bishop of the Evangelical Lutheran Church of America has afforded individual clergy and congregations the freedom to determine whether to solemnize same-sex marriages and to what degree such marriages are recognized. Letter of Elizabeth A. Eaton, Presiding

Such practices show that religious respect for LGBT persons, their relationships, and their families—including by “traditional” or “mainstream” religions—is deep, but not new. It was over thirty years ago that the United Church of Christ, with nearly one million members today, adopted a policy of membership nondiscrimination regarding sexual orientation.⁵ In 1989, the 45th General Assembly for the Union of Reform Judaism, representing 1.3 million Reform Jews, resolved to “urge [its] member congregations to welcome gay and lesbian Jews to membership, as singles, couples, and families.”⁶ More recently, in 2009, the Evangelical Lutheran Church in America, with approximately 3.5 million members, adopted a statement affirming that the church “has called upon congregations and members to welcome, care for, and support same-gender couples and their families.”⁷ The Episcopal Church,⁸ the

Bishop of the Evangelical Lutheran Church in America (June 30, 2015), http://download.elca.org/ELCA%20Resource%20Repository/Letter_on_Supreme_Court_Decision.pdf?_ga=1.178451175.279518488.1472961181.

⁵ *Resolutions: Calling on United Church of Christ Congregations to Declare Themselves Open and Affirming*, Open and Affirming Coalition United Church of Christ: UCC Actions (1985), <https://openandaffirming.org/about/history/ucc-actions/>.

⁶ *Resolutions: Gay and Lesbian Jews*, Union for Reform Judaism (1989), <http://www.urj.org/what-we-believe/resolutions/gay-and-lesbian-jews> (last visited Mar. 1, 2019). Cf. Central Conference of American Rabbis, *Report of the Ad Hoc Committee*, *supra* note 1, at 262.

⁷ Evangelical Lutheran Church in America, *Human Sexuality: Gift and Trust*, 19 (Aug. 19, 2009), <http://www.elca.org/Faith/Faith-and-Society/Social-Statements/Human-Sexuality> (last visited Mar. 1, 2019).

⁸ Resolution 2006-A167, *Reaffirm Church Membership of Gay and Lesbian Persons*, 75th General Convention of The Episcopal Church (2006),

Presbyterian Church (USA),⁹ Reconstructionist Judaism,¹⁰ the Unitarian Universalist Church,¹¹ the United Methodist Church,¹² and myriad other faiths similarly embrace a theological belief in the fundamental human dignity of LGBT Americans and their families.

B. Diverse Faith Groups and Religious Observers Affirm the Place of LGBT Persons and Their Families in Civic Life.

Religious support for LGBT inclusion extends beyond religious profession to advocacy for equal treatment in civil society. Indeed, many mainstream religious groups and leaders deem the embrace of civil nondiscrimination to be *required* by foundational religious tenets. For example, in June 2018, the General Assembly of the Presbyterian Church (USA), a denomination with nearly 1.6 million members, unanimously passed a resolution to, among other things, “Direct the Stated Clerk and

http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2006-A167 (last visited Mar. 1, 2019).

⁹ 217th General Assembly, Theological Task Force on Peace, Unity and Purity of the Church, *A Season of Discernment*, 20 (2006), https://www.pcusa.org/site_media/media/uploads/oga/pdf/peace-unity-purity-final-report-revised-english.pdf.

¹⁰ Zevit, *supra* note 2.

¹¹ *Business Resolution: Confronting Sexual Orientation and Gender Identity Discrimination*, General Assembly of the Unitarian Universalist Association (2010), <http://www.uua.org/statements/statements/169267.shtml> (last visited Mar. 1, 2019).

¹² *Social Principles & Creed*, United Methodist Church, <http://www.umc.org/what-we-believe/the-social-community> (last visited Mar. 1, 2019) (“Equal Rights Regardless of Sexual Orientation / Certain basic human rights and civil liberties are due all persons. We are committed to supporting those rights and liberties for all persons, regardless of sexual orientation.”).

the Office of Public Witness” of that body, and “Encourage synods and presbyteries,” to “oppose legislative, judicial, and administrative efforts at the state and federal levels to limit the protection of persons based upon race, ethnicity, sex, gender, sexual orientation, gender identity, religion, or gender expression in the guise of religious freedom.” The General Assembly further resolved to:

Encourage all Presbyterians to distinguish between our historical understanding of our religious freedom to practice the essential tenets of our faith, and the misuse of the term religious freedom as a justification for discrimination in the provision of secular employment or benefits, healthcare, public or commercial services or goods, or parental rights to persons based on race, ethnicity, sex, gender, physical limitations, sexual orientation, gender identity, religion or gender expression.¹³

As another example, the Bishop of the Episcopal Diocese of Mississippi opposed state legislation seen as privileging certain religious views with respect to LGBT rights, including same-sex couples’ marriage rights, declaring that the “baptismal covenant requires that each of us will respect the dignity of every human being.”¹⁴

¹³ *Resolution On Clarifying the Position of the PC(USA) Regarding Appropriate Boundaries of Religious Liberty*, 223rd PC(USA) General Assembly (2018), <https://www.pc-biz.org/#/search/3000261>.

¹⁴ Press Release, The Episcopal Church in Mississippi, *Statement by the Rt. Rev. Brian R. Seage, Bishop of the Episcopal Diocese of Mississippi* (Mar. 31, 2016), http://www.dioms.org/dfc/newsdetail_2/3178220.

Religious leadership and advocacy groups have also spoken out against recent attempts to interpret constitutional doctrines or extend legislative provisions protecting religious freedom to create special exemptions from generally applicable civil rights law—for example cautioning against allowing “religious liberty claims to prevail in a way that would permit discrimination against protected classes and other minorities, including but not limited to the LGBT community.”¹⁵

In short, a broad swath of American religious institutions and individuals embrace civil equality for LGBT persons. This position, shared by Amici here, is grounded in an abiding sense that the dignity of all people is not just a guidepost of theological reflection, but also an ethical precept that should inform evenhanded application of civil law and obligations. Certainly there remain contrary views within the rich diversity of American religious thought and practice. No one view speaks for “religion”—even if, contrary to the Establishment Clause, it were appropriate to give weight to religious views in applying the Constitution’s secular promise of equal protection. But it is no longer

¹⁵ Central Conference of American Rabbis, *Resolution on State Religious Freedom Restoration Acts* (May 6, 2015); see also Zac Baker, Reconciling Works: Lutherans for Full Participation, *Georgia Clergy Unite To Oppose Religious Refusal Bills* (Jan. 14, 2015), <https://www.reconcilingworks.org/georgia-clergy-unite-to-oppose-religious-refusal-bills/>; Anthony Moujaes, *UCC social justice advocates keep watch on ‘religious freedom’*, United Church of Christ (Apr. 12, 2016), http://www.ucc.org/news_ucc_social_justice_advocates_keep_watch_on_religious_freedom_04122016.

possible, if it ever was, to claim that neutral and generally applicable antidiscrimination protections for LGBT persons are in and of themselves offensive to religion.

C. *Masterpiece* Supports Affirming the Superior Court by Acknowledging the Dignity and Civil Equality of Same-Sex Couples.

Far from mandating reversal, *Masterpiece* strongly supports affirming the superior court by acknowledging, as do Amici, both the dignity and civil equality of same-sex couples:

Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth. For that reason the laws and the Constitution can, and in some instances must, protect them in the exercise of their civil rights. The exercise of their freedom on terms equal to others must be given great weight and respect by the courts.

138 S. Ct. at 1727. Accordingly, while “religious and philosophical objections [to same-sex marriage] are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.” *Id.*; see also *Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990), *overturned on other grounds by legislative action* (Nov. 16, 1993) (holding that the U.S. Supreme Court “ha[s] consistently held that the right of free exercise does not relieve an

individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).”).

Stutzman’s free exercise claim cannot survive this clear statement of the law. Contrary to Stutzman’s assertions, Br. of Appellants at 25-32, 44-45; Reply Br. of Appellants at 15-17, this is not a case where she is being required to “attend” or “participate” in weddings of same-sex couples. Br. of Resp’t State of Washington at 39-41; Br. of Resp’ts Ingersoll & Freed at 5. Rather, Stutzman simply refused to serve Ingersoll because of his sexual orientation. Her refusal violates WLAD and, under longstanding precedent reaffirmed by *Masterpiece*, her personal religious beliefs do not exempt her from this antidiscrimination statute.

Notably, the type of free exercise violation found by the U.S. Supreme Court in *Masterpiece* is entirely absent here. The *Masterpiece* Court reversed because the Colorado Civil Rights Commission’s “clear and impermissible hostility” towards the sincere religious beliefs of the baker, Phillips, “cast doubt on the fairness and impartiality of the Commission’s adjudication of Phillips’ case.” 138 S. Ct. at 1729-30. By contrast, Stutzman does not even allege that the bodies that adjudicated her claims—the superior court and this Court—were hostile to her religious beliefs. Stutzman instead alleges the Attorney General was

hostile, but the Attorney General’s *actual* conduct, even were it relevant, was not at all hostile to religion. *Compare* Br. of Resp’t State of Washington at 6-8, 19-23, 29-39 (establishing that Attorney General never disparaged Stutzman’s sincere religious beliefs or treated her differently from other merchants), *with Masterpiece*, 138 S. Ct. at 1729-30 (finding adjudicators disparaged Phillips’ faith as “despicable” and “insubstantial or even insincere” and treated him differently from other conscience-based objectors). And the Attorney General’s conduct has no bearing on the independent civil action commenced by the same-sex couple, Ingersoll and Freed, who are not state actors. *See* Br. of Resp’ts Ingersoll & Freed at 14.

D. Reversal Would Undermine Antidiscrimination Laws and Open the Door to Discrimination against Protected Classes.

Masterpiece’s admonition that exceptions to neutral antidiscrimination laws should be narrowly “confined” and “constrained” provides further support for affirming the superior court. 138 S. Ct. at 1727, 1728-29.

“[A] member of the clergy who objects to gay marriage on moral and religious grounds,” the U.S. Supreme Court assumed, “could not be compelled to perform the ceremony without denial of his or her right to the free exercise of religion.” *Id.* at 1727. “Yet if that exception were not

confined, then a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations.” *Id.*; *see also id.* at 1728-29 (any religious exception must be “constrained,” lest merchants be allowed to “put up signs saying ‘no goods or services will be sold if they will be used for gay marriages,’ something that would impose a serious stigma on gay persons”).

As confirmed by Stutzman’s own expert, *see* Br. of Resp’ts Ingersoll & Freed at 19-20, the exemption advanced by Stutzman admits of no coherent limiting principle and thus would undermine the purpose of antidiscrimination laws like WLAD—realizing precisely the danger against which the U.S. Supreme Court warned in *Masterpiece*. There is no reason why, under Stutzman’s approach, claimed exemptions logically would be limited to wedding businesses or, for that matter, to sexual orientation discrimination. Merchants could turn away people of faith (whether or not they identify as LGBT) for not sharing their religious beliefs or because, in the case of wedding-related goods and services, the merchants’ religious beliefs prohibit interfaith marriage. Similarly, a merchant who harbors a deep religious conviction that marriage between

people of different races is sacrilegious could seek the same exemption in the name of “religious liberty.” Reversal would truly permit “each conscience [to be] a law unto itself,” *Smith*, 494 U.S. at 890, yielding a slippery slope that affirmance would avoid.

E. Affirmance Will Support and Not Threaten Religious Liberty.

Affirmance in this case poses no threat to religious freedom, including the freedom to hold, express, and practice a religious (or nonreligious) understanding of marriage that is limited to the union of one man and one woman. Existing constitutional principles—untouched by the superior court’s judgment and this Court’s original decision—protect the autonomy of religious entities (or others) to teach their own principles concerning sexuality, marriage, and family life and to preserve practices that comport with their respective tenets. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 195 (2012) (affirming principle that certain “matter[s] are] ‘strictly ecclesiastical,’” meaning they are “the church’s alone”) (citation omitted). As the U.S. Supreme Court made clear in *Obergefell*, “religions, and those who adhere to religious doctrines,” may continue to adhere to an understanding of marriage as limited to different-sex couples, and “[t]he First Amendment ensures that religious organizations and persons are given proper protection” with

respect to religious practices consistent with that understanding. 135 S. Ct. at 2607.

In this regard, it is worth noting that our Constitution’s longstanding respect for religious autonomy has permitted various religions to enforce religious sexual norms or define religious marriage in ways that would be unenforceable under civil law—*e.g.*, opposing interfaith marriage, as Conservative Judaism does;¹⁶ declining to recognize the union of those civilly divorced and remarried, as Roman Catholicism does;¹⁷ or discouraging interracial marriage, as the LDS Church did well after *Loving v. Virginia*, 388 U.S. 1 (1967), which held that the Constitution requires states to allow interracial civil marriages.¹⁸

America’s religious landscape is vast and diverse. Religious adherents differ on contentious issues, including intra-denominationally,¹⁹

¹⁶ Leadership Council of Conservative Judaism, *Conservative View on Inter-marriage* (Mar. 7, 1995), <http://www.mazorguide.com/living/Denominations/conservative-intermarriage.htm>.

¹⁷ United States Conference Of Catholic Bishops, *Compendium – Catechism Of The Catholic Church*, ¶ 349 (2006).

¹⁸ See *Interracial Marriage Discouraged*, *The Deseret News*, June 17, 1978, at 4, https://news.google.com/newspapers?id=_RxVAAAAIIBAJ&sjid=YIADAAAAIIBAJ&pg=5866%2C5012493 (quoting President Spencer W. Kimball in a 1976 address to students at Brigham Young University). The LDS Church has since formally disavowed previous teachings that interracial marriage is a sin. *Race and the Priesthood*, *The Church of Jesus Christ of Latter-Day Saints*, <https://www.lds.org/topics/race-and-the-priesthood?lang=eng#24> (last visited Mar. 1, 2019).

¹⁹ Views on marriage rights for same-sex couples are a case in point. “[A]s opinions . . . shifted in the general population, so [did] those of [the] faithful. . . . A decade ago, the most supportive religious groups were white mainline Protestants and Catholics, with 36

and religious bodies have evolved and disagreed over time on various civil rights and social issues.²⁰ In view of that history and the wide range of modern religious thought concerning the respect for LGBT persons, their families, and their place in civic life, Amici believe it would be wrong to permit particular religious views on sexual orientation, gender identity, or marriage to give rise to broad exemptions from neutral antidiscrimination laws. Longstanding jurisprudence makes clear that such religious favoritism by government is impermissible. *See Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”). Particular religious perspectives on civil marriage must not, on the ostensible ground of “accommodating” religious exercise, be permitted to deny a protected class access to everyday incidents of civil marriage—like flowers—otherwise available to all.

percent and 35 percent support, respectively. [By 2015], major religious groups reside[d] on both sides of this issue and within many key groups – such as Catholics – support among rank and file members [came to be] at odds with official church opposition.” Robert P. Jones, Public Religion Research Institute, *Attitudes on Same-sex Marriage by Religious Affiliation and Denominational Family* (Apr. 22, 2015), <http://www.pri.org/spotlight/attitudes-on-same-sex-marriage-by-religious-affiliation-and-denominational-family/>.

²⁰ For example, the American Baptist Church revised its earlier belief in church and social segregation by race. Pamela A. Smoot, *Race Relations, How Do Baptists Treat Their Brothers and Sisters?*, Baptist History and Heritage Society: History Speaks (2009), <http://www.baptisthistory.org/smootracelrelations.pdf>. A prominent law and religion scholar also has noted that religions’ shifting views on usury, the dissolubility of marriage, and slavery reveal “the displacement of a principle or principles that had been taken as dispositive.” Michael J. Perry, *Religion in Politics*, 29 U.C. Davis L. Rev. 729, 772 n.94 (1996).

Religious liberty means that all voices may contribute to our national conversation about LGBT equality. But particular religious perspectives may not be accorded special privileges or permitted to undermine the protections afforded by neutral, generally applicable statutes and regulations.

Rather, evenhanded civil rights enforcement that declines to give special status to any one set of religious views—as occurred in this case—is the best way to preserve and protect the pluralism that is the essence of religious liberty in America.

IV. CONCLUSION

Amici respectfully submit that the Court should again affirm the superior court’s judgment.

RESPECTFULLY SUBMITTED this 5th day of March, 2019.

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APPENDIX

List of Amici

The Rt. Rev. Gretchen M. Rehberg,
Bishop of the Episcopal Diocese of Spokane

The Rt. Rev. Greg Rickel,
Bishop of the Episcopal Diocese of Olympia

The Pacific Northwest Conference of the United Church of Christ

The Rev. Dr. J. Herbert Nelson, II,
Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.)

Central Conference of American Rabbis

Reconstructionist Rabbinical Association

Union for Reform Judaism

Unitarian Universalist Association

Covenant Network of Presbyterians

Faith Action Network – Washington

Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns

Men of Reform Judaism

Methodist Federation for Social Action

More Light Presbyterians

Muslims for Progressive Values

ReconcilingWorks: Lutherans for Full Participation

Religious Institute, Inc.

Women of Reform Judaism

PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, over the age of 21 years, and not a party to this action. On the 5th day of March, 2019, I caused to be served, via the Washington State Appellate Court's Portal System, which will send notification of such filing to all parties of record, a true copy of the foregoing document.

DATED this 5th day of March, 2019



Sydney Henderson

PACIFICA LAW GROUP

March 05, 2019 - 2:14 PM

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

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