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**STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

NO. 13-2-00871-5

v.

**ANSWER, AFFIRMATIVE DEFENSES,
AND THIRD-PARTY COMPLAINT**

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

Defendants.

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

Third-Party Plaintiffs

v.

ROBERT W. FERGUSON, in his official
capacity as ATTORNEY GENERAL for the
STATE OF WASHINGTON,

Third-Party Defendant.

1 Defendants, Arlene's Flowers, Inc., d/b/a Arlene's Flowers and Gifts, ("Arlene's
2 Flowers") and Barronelle Stutzman hereby answer the State's complaint filed herein and
3 assert Affirmative Defenses and as follows:

4 **ANSWER**

5 1.1 Paragraph 1.1 of Plaintiff's Complaint is DENIED.

6 1.2 Paragraph 1.2 of Plaintiff's Complaint is DENIED.

7
8 1.3 Paragraph 1.3 of Plaintiff's Complaint is DENIED as it relates to
9 Defendant Barronelle Stutzman, individually. Defendants ADMIT that the facts stated in
10 Plaintiff's Complaint took place in Benton County, Washington. All other inferences
11 related to Paragraph 1.3 of Plaintiff's Complaint are DENIED.

12 1.4 Paragraph 1.4 of Plaintiff's Complaint is ADMITTED.

13 2.1 Paragraph 2.1 of Plaintiff's Complaint is ADMITTED.

14 2.2 Paragraph 2.2 of Plaintiff's Complaint is ADMITTED.

15 2.3 Paragraph 2.3 of Plaintiff's Complaint is not a statement of fact and,
16 therefore, requires no response.

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18 3.1 Paragraph 3.1 of Plaintiff's Complaint is DENIED as it relates to
19 Barronelle Stutzman, individually. Otherwise, Paragraph 3.1 of Plaintiff's Complaint is
20 ADMITTED.

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22 3.2 Paragraph 3.2 of Plaintiff's Complaint is DENIED as it relates to
23 Barronelle Stutzman, individually. Otherwise, Paragraph 3.2 of Plaintiff's Complaint is
24 ADMITTED.

1 3.3 Paragraph 3.3 of Plaintiff's Complaint is DENIED as it relates to
2 Barronelle Stutzman, individually. Otherwise, Paragraph 3.3 of Plaintiff's Complaint is
3 ADMITTED.

4 4.1 Paragraph 4.1 of Plaintiff's Complaint is DENIED. Robert Ingersoll did
5 not intend to simply purchase flowers. Robert Ingersoll intended to hire Arlene's
6 Flowers to design and create floral arrangements to decorate and beautify his upcoming
7 wedding.
8

9 4.2 Paragraph 4.2 of Plaintiff's Complaint is DENIED as it relates to
10 Barronelle Stutzman, individually. Otherwise, Paragraph 4.2 of Plaintiff's Complaint is
11 ADMITTED.

12 4.3 Paragraph 4.3 of Plaintiff's Complaint is DENIED. Robert Ingersoll did
13 not state that he intended to simply purchase flowers. Robert Ingersoll intended to hire
14 Arlene's Flowers to design and create floral arrangements to decorate and beautify his
15 upcoming wedding.
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17 4.4 Paragraph 4.4 of Plaintiff's Complaint is DENIED. Ms. Stutzman did not
18 refuse to sell Mr. Ingersoll flowers. Ms. Stutzman informed Robert Ingersoll that her
19 religious convictions precluded her from designing and creating floral arrangements to
20 decorate a same-sex wedding.
21

22 4.5 Paragraph 4.5 of Plaintiff's Complaint is ADMITTED.

23 4.6 Paragraph 4.6 of Plaintiff's Complaint is DENIED to the extent that it
24 alleges either Defendant refused to sell Mr. Ingersoll flowers. *See* answer to Plaintiff's
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1 Complaint at Paragraph 4.1. Otherwise, Paragraph 4.6 of Plaintiff's Complaint is
2 ADMITTED.

3 5.1 Defendants admit and deny paragraphs 1.1 through 4.6 of Plaintiff's
4 Complaint as indicated above.

5 5.2 Paragraph 5.2 of Plaintiff's Complaint is DENIED as it relates to
6 Barronelle Stutzman, individually. Otherwise, Paragraph 5.2 of Plaintiff's Complaint is
7 ADMITTED.
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9 5.3 Paragraph 5.3 of Plaintiff's Complaint is DENIED as it relates to
10 Barronelle Stutzman, individually. Otherwise, Paragraph 5.3 of Plaintiff's Complaint is
11 ADMITTED.

12 5.4 Paragraph 5.4 of Plaintiff's Complaint is DENIED to the extent that it
13 alleges either Defendant refused to sell Mr. Ingersoll flowers. Paragraph 5.4 of Plaintiff's
14 Complaint is also DENIED to the extent that the allegation relates to Barronelle
15 Stutzman, individually. It is ADMITTED that Arlene's Flowers declined to design and
16 create floral arrangements to decorate and beautify Mr. Ingersoll's upcoming wedding.
17

18 5.5 Paragraph 5.5 of Plaintiff's Complaint is DENIED. It is ADMITTED
19 only that Arlene's Flowers declined to design and create floral arrangements to decorate
20 and beautify a same-sex wedding, on the basis of the sincerely held religious convictions
21 of the owners of Arlene's Flowers, concerning the meaning and significance of the
22 institution of marriage.
23

24 5.6 Paragraph 5.6 of Plaintiff's Complaint is DENIED.
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1 the enforcement provisions of RCW 49.60. Moreover, Defendants allege that the
2 Washington Attorney General's Office does not have police power with respect to either
3 RCW 49.60, or RCW 19.86. Therefore, the Washington Attorney General's Office has
4 no authority to act on behalf of the State in any civil capacity absent a complaint having
5 been filed with the Attorney General's Office, or some other State agency. Upon
6 information and belief, no complaint was ever filed in this case, with any agency of the
7 State of Washington, including the Attorney General's Office. For these reasons,
8 Plaintiff lacks standing to bring this action.
9

10 6.3 Failure to State a Claim Upon which Relief can be Granted: For the
11 reasons articulated in paragraphs 6.1 and 6.2, above, Plaintiff's complaint fails to state a
12 claim upon which relief can be granted and should be dismissed under Civil Rule
13 12(b)(6).
14

15 6.4 Failure to Exhaust (or even initiate) Administrative Remedies.

16 6.5 Frustration of the Purpose of the enforcement provisions of RCW 49.60.

17 6.6 As applied preemption under the First Amendment to the United States
18 Constitution.

19 6.7 As applied violation of Article I Section 11 of the Washington State
20 Constitution.

21 6.8 Selective Enforcement in Violation of the Fourteenth Amendment to the
22 United States Constitution.

23 6.9 Justification.
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1 **II. PARTIES**

2 7.1 Arlene’s Flowers is a Washington corporation in good standing and
3 licensed to do business in the State of Washington.

4 7.2 Barronelle Stutzman has been a floral designer in the Tri-Cities for 35
5 years. Ms. Stutzman was trained in floral design and artistry by respected designers, and
6 she is recognized in her community for her skill in creating unique and expressive floral
7 arrangements. She has owned Arlene’s Flowers, Inc., d/b/a Arlene’s Flowers and Gifts,
8 for 16 years.

9 7.3 Robert W. Ferguson is the Washington State Attorney General. Attorney
10 General Ferguson claims authority to pursue an action against individuals and businesses,
11 including Arlene’s Flowers and Barronelle Stutzman, for alleged violations of the
12 WLAD, *via* the CPA. Attorney General Ferguson has made it clear in public statements
13 that he will pursue litigation against all individuals and businesses that cannot, as a matter
14 of conscience, facilitate, promote, or participate in same-sex weddings.
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16 **III. JURISDICTION AND VENUE**

17 8.1 The Superior Court has jurisdiction under RCW 7.24.010 to issue
18 declaratory relief.
19

20 8.2 The Superior Court has jurisdiction under RCW 7.40.010 to issue
21 restraining orders and injunctions.
22

23 8.3 The Superior Court has concurrent jurisdiction to adjudicate violations of
24 42 U.S.C. § 1983.
25

1 8.4 Venue is appropriate in the Benton County Superior Court under RCW
2 4.12.020.

3 **IV. STATEMENT OF FACTS**

4 9.1 Barronelle Stutzman has been designing and creating floral arrangements
5 for 35 years.

6 9.2 After initially working as a delivery person for a local flower shop,
7 Barronelle realized that she had the artistic talent to become a floral designer. She trained
8 under experienced floral designers to develop her natural skill. She also attended training
9 programs and trade shows to further develop her creative skills in floral design and
10 artistry.

11 9.3 With years of experience and natural artistic skills, Barronelle finds the
12 greatest joy in her job by personally crafting unique floral designs that express her own
13 creativity and style.

14 9.4 Barronelle has owned and operated Arlene's Flowers for 16 years. In that
15 time, she has gained a reputation for being skilled in personally crafting distinct and
16 expressive floral arrangements.

17 9.5 Some of the floral arrangements Barronelle creates for weddings include
18 the bridal and attendant bouquets, pew markers, table centerpieces, topiaries, floral and
19 foliage garlands, and corsages and boutonnières.

20 9.6 Barronelle's floral arrangements for weddings are creative and unique
21 expressions, personally designed specifically to celebrate each wedding.
22

1 9.7 Before designing floral arrangements for a wedding, Barronelle meets
2 with the client for detailed discussions about the types of designs the couple is looking
3 for. Together they review sample arrangements and talk about the particular details of
4 the wedding and its venue. Barronelle then takes the information from the client to
5 determine a plan for custom-designed floral arrangements for the wedding.
6

7 9.8 In her capacity as the owner and primary floral designer for Arlene's
8 Flowers, Barronelle has been creating floral arrangements for Robert Ingersoll for nearly
9 nine years. Barronelle enjoys the warm and cordial relationship that she has developed
10 with Mr. Ingersoll. She also enjoys creating the challenging and unique floral
11 arrangements Mr. Ingersoll requests.

12 9.10 Arlene's Flowers has sold Robert Ingersoll a variety of flowers and
13 arrangements for a variety of occasions and sentiments throughout the past nine-years.
14 Such occasions include, but are not limited to, birthdays, anniversaries, mother's day,
15 Valentine's day, and private parties.
16

17 9.11 Barronelle has known that Robert Ingersoll identifies himself as gay
18 throughout most of their nine year relationship. That fact never made any difference in
19 the way Mr. Ingersoll was treated as a customer.

20 9.12 Arlene's Flowers routinely designs floral arrangements for other gay and
21 lesbian clientele. Arlene's Flowers has also had openly gay employees.
22

23 9.13 Washington only recently adopted a bill to alter the state's definition of
24 marriage to include same-sex couples, in 2012. In her 35 years of personally crafting
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1 floral designs and arrangements for weddings, this is the first time that Barronelle has
2 been asked to craft floral designs and arrangements for a same-sex wedding.

3 9.14 Approximately one week before March 1, 2013, an employee of Arlene's
4 Flowers told Barronelle that Robert Ingersoll had come by the store to announce that he
5 had become engaged. He also told the employee at the store that he intended for Arlene's
6 Flowers to create the floral arrangements for his wedding, and that he would come back
7 the next week to discuss the matter with Barronelle.
8

9 9.15 When Barronelle was given the message by her employee, she was
10 distraught because she knew that this posed an insurmountable burden for her religious
11 convictions. Barronelle voted against the passage of the same-sex marriage bill (R-74) in
12 Washington. She spent time praying and discussing with her husband about how to
13 kindly explain to Mr. Ingersoll that her convictions would not allow her to be involved in
14 decorating a same-sex wedding.
15

16 9.16 In accord with her understanding of traditional Christian and Biblical
17 values, Barronelle believes that marriage has religious significance apart from any civil
18 significance, and that its religious significance is inherent in the institution of marriage.
19 Barronelle believes, as the Bible teaches, that marriage is defined by God as a union of
20 man and woman.
21

22 9.17 Barronelle knew that creating floral arrangements for Mr. Ingersoll's
23 wedding would be contrary to her sincerely held religious convictions. She believed that
24 doing so would compel her to express a message with her creativity that violates God's
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1 commands. She also believed that her creation of the floral arrangements would be
2 perceived as an endorsement and celebration of same-sex marriage.

3 9.18 On or about March 1, 2013, Robert Ingersoll came back to Arlene's
4 Flowers as promised to ask Barronelle if she would create the designs and floral
5 arrangements for his wedding. Emotional about her convictions and her decision to
6 decline, Barronelle touched Robert's hand and kindly told him that she could not create
7 the floral arrangements for his wedding because of her Christian faith. Robert Ingersoll
8 noted that he was disappointed, but he said that he understood.

9
10 9.19 Before leaving, Mr. Ingersoll asked Barronelle for referrals to other
11 florists, which Barronelle gladly gave. She gave him names of other local florists that he
12 could use. After chatting for awhile, Barronelle and Mr. Ingersoll hugged each other, and
13 he left the store.

14
15 9.20 Robert Ingersoll has received several offers from other florists to create
16 the arrangements for his upcoming wedding.

17 9.21 A few weeks after Robert Ingersoll left Arlene's Flowers, Barronelle
18 received a letter from the Attorney General's office, threatening legal sanctions for
19 alleged violation of the WLAD and CPA.

20 9.22 The Attorney General originally learned about the situation between
21 Arlene's Flowers and Robert Ingersoll, from social media, including Facebook.

22
23 9.23 Prior to the Attorney General's initial demand as stated in paragraph 9.21,
24 above, neither Robert Ingersoll, nor his partner Curt Freed had ever filed a complaint
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1 with the Attorney General's office, or otherwise requested that the Attorney General
2 intervene.

3 9.24 Upon information and belief, this case is the first time the Attorney
4 General's office has attempted to use the CPA to pursue a purported violation of WLAD,
5 absent action initiated by the Washington Human Rights Commission. The state agency
6 established by law to enforce the WLAD is the Washington Human Rights Commission.
7

8 9.25 The Attorney General has filed suit against Arlene's Flowers and
9 Barronelle and has indicated that he intends to continue to pursue what he believes to be
10 violations of WLAD via the CPA.

11 9.26 Barronelle is being sued, and she fears future suits by the Attorney
12 General, for following her conscience in her work, which has resulted in a chilling effect
13 in the exercise of her constitutional rights and a chill in the exercise of constitutional
14 rights by other small business owners in Washington.
15

16 9.27 If this Court fails to issue declaratory and injunctive relief, the Attorney
17 General's action in this case will inevitably result in a chilling effect for the exercise of
18 constitutional rights by other, similarly situated businesses in Washington.
19

20 **V. CAUSES OF ACTION**

21 10.1 The claims stated below arise under the Washington Constitution, the First
22 and Fourteenth Amendments to the United States Constitution, the federal Civil Rights
23 Act (42 U.S.C. § 1983), RCW 7.24, and RCW 7.40.

24 10.2 The Attorney General pursues actions under the color of state law. This
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1 lawsuit and his threat to pursue legal action against future exercises of conscience and
2 expression has chilled the exercise of Barronelle’s constitutional rights to act according to
3 her conscience and religious belief and has similarly chilled the exercise of constitutional
4 rights by other individuals and businesses in Washington.

5 10.3 The Attorney General, in his official capacity, is a person for purposes of
6 42 U.S.C. § 1983 in this suit for prospective injunctive and declaratory relief.

7 10.4 The Attorney General sued Barronelle and Arlene’s Flowers for the
8 purpose of sending a message to other similarly-situated business owners who have
9 religious and conscience reasons for not participating in or facilitating a same-sex
10 wedding.

11 10.5 The Attorney General is constitutionally precluded from compelling
12 Barronelle to use her artistic skill to personally craft expressive floral arrangements for a
13 same-sex wedding when it violates her religious beliefs and her conscience to do so,
14 particularly when there are many other florists willing, ready, and able to create floral
15 arrangements for same-sex weddings.

16 **First Claim: Violation of Article 1, Section 11 of the State Constitution**

17 11.1 The Washington State Constitution, in Article 1, Section 11, absolutely
18 protects “freedom of conscience in all matters of religious sentiment, belief, and worship”
19 and guarantees that “no one shall be molested or disturbed in person or property on
20 account of religion.”

21 11.2 The state constitution has broader protections for conscience and religious
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1 exercise than the federal constitution. A law that has a direct or indirect burden on the
2 free exercise of religion must be justified by a compelling government interest. The state
3 must also show that the means used to achieve the compelling interest are both necessary
4 and the least restrictive available.

5 11.3 Barronelle has a sincere religious belief, which is shared with many other
6 citizens of Washington State, that marriage is uniquely defined by God as a union of a
7 man and a woman and that it would be a serious violation of God's precepts and her
8 conscience to use her creative skill to personally decorate and thereby personally express
9 a message in support of a wedding between two persons of the same sex.

10 11.4 The Attorney General's actions and public statements in this case are a use
11 state power to coercively ban an important practice of religion by Barronelle and her
12 business, Arlene's Flowers.

13 11.5 The state's effort here, via the Attorney General, to coerce participation in
14 and facilitation of a same-sex wedding in violation of Barronelle's sincerely held
15 religious convictions is subject to strict scrutiny by the Court. The Attorney General's
16 actions and public statements use state power to coercively ban an important practice of
17 religion by Barronelle and Arlene's Flowers.

18 11.6 The state has no compelling interest in forcing Barronelle to violate her
19 conscience and act contrary to her faith by crafting personalized floral arrangements in
20 support of a same-sex wedding.

21 11.7 In addition to the fact that the state has no compelling interest in this
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1 context, the means that the state has chosen to pursue its interest is not necessary or the
2 least restrictive available to achieve the desired end.

3 11.8 The Attorney General's actions violate the rights of Barronelle and
4 Arlene's Flowers under Article 1, Section 11 of the Washington State Constitution.
5

6 **Second Claim: Violation of the Free Exercise Clause of the First Amendment to the**
7 **United States Constitution**

8 12.1 Arlene's Flowers and Barronelle Stutzman have sincerely held religious
9 beliefs that marriage is a union between a man and a woman, and that to participate in,
10 decorate, or facilitate a same-sex wedding is a violation of her conscience and a violation
11 of her religious belief and right to freely exercise her religious beliefs. The Attorney
12 General's actions substantially burden the free exercise of religion by Barronelle and
13 Arlene's Flowers.
14

15 12.2 The state's CPA and WLAD are not neutral or generally applicable
16 because, among other things, they have exceptions that undermine the purposes of those
17 Acts, and they are therefore subject to strict scrutiny.
18

19 12.3 Because the rights implicated in this case involve the free exercise of
20 religion as well as free speech and free association, this case presents a hybrid claim that
21 also requires application of strict scrutiny.

22 12.4 The state is selectively enforcing the CPA to enforce the WLAD against
23 religious belief and practice, in violation of the First and Fourteenth Amendments to the
24 US Constitution, which also subjects the law's application to strict scrutiny.
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1 12.5 The state does not have a compelling interest in forcing Barronelle and/or
2 Arlene's Flowers to participate in, or to decorate a same-sex wedding.

3 12.6 In addition to the fact that the state has no compelling interest in this
4 context, the means that the state has chosen to pursue its interest is not necessary or the
5 least restrictive available to achieve the desired end.

6 12.7 The Attorney General's actions violate the rights of Barronelle and
7 Arlene's Flowers under the Free Exercise Clause of the First Amendment to the United
8 States Constitution.

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11 **Third Claim: Free Speech and Free Association Under the State and Federal**
12 **Constitutions**

13 13.1 Barronelle's creation of wedding floral arrangements and design artistry is
14 expression.

15 13.2 The First Amendment to the federal constitution and Article 1, Section 5
16 of the state constitution protect the right to speak, as well as the right not to speak.

17 13.3 The First Amendment and Article 1, Section 5 protect citizens from being
18 compelled to speak or endorse messages with which they disagree.

19 13.4 The First Amendment and Article 1, Section 5 also protect citizens from
20 being compelled to associate with activities and social, political, and ideological
21 messages with which they disagree.

22 13.5 Requiring Arlene's Flowers and Barronelle to participate in or facilitate a
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same-sex wedding is subject to strict scrutiny under the First Amendment to the United States Constitution and Article 1, Section 5 of the Washington Constitution.

13.6 The state does not have a compelling interest in requiring Barronelle and Arlene’s Flowers to use their artistic talent and expressive skills to promote a message with which they disagree, or to endorse a message with which they do not want to associate.

13.7 The Attorney General’s actions violate the rights of Barronelle and Arlene’s Flowers as guaranteed by the free speech and free association protections under the state and federal constitutions.

PRAYER FOR RELIEF

Arlene’s Flowers and Barronelle Stutzman respectfully request that the Court:

14.1 Dismiss Plaintiff’s Complaint in its entirety, and each cause of action therein, with prejudice.

14.2 Declare that it is unlawful for the Attorney General to compel Third-Party Plaintiffs and those similarly situated to participate in, or otherwise facilitate same-sex weddings, on the basis of conscience and/or freedom of speech.

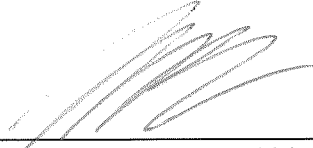
14.3 Enjoin the Attorney General from compelling Third-Party Plaintiffs to create floral arrangements for a same-sex wedding.

14.4 Award reasonable attorneys’ fees and litigation costs to Third-Party Plaintiffs, as allowed by statute, court rule, or in equity, as applicable.

14.5 Award such other relief that the Court deems just and equitable.

1 RESPECTFULLY SUBMITTED this 14th day of May, 2013.

2 GOURLEY | BRISTOL | HEMBREE

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5 _____
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and Third-Party Plaintiffs