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

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I. INTRODUCTION

Barronelle Stutzman operates a small florist shop, Arlene's Flowers, in Richland, Washington. She has enjoyed celebrating events in her customers' lives for nearly 40 years, and approaches her work as an art form, with creativity and emotional investment in each piece she designs.

The superior court held that Arlene's Flowers and Mrs. Stutzman[1] violated the Washington Law Against Discrimination (WLAD), Ch. 49.60 RCW, and the Consumer Protection Act (CPA), Ch. 19.86 RCW, when Mrs. Stutzman declined to create arrangements for, or participate in, her long-time customer's same-sex wedding because of her religious beliefs about marriage. The lower court categorically held that there can *never* be "a free speech exception (be it creative, artistic, or otherwise) to anti-discrimination laws applied to public accommodations." CP 2348. The court ordered Mrs. Stutzman to participate in same-sex ceremonies or to refuse all weddings. It also authorized civil penalties, damages, and attorneys' fees and costs against Arlene's Flowers and Mrs. Stutzman personally.

Although this case involves a sexual orientation discrimination claim in the context of a same-sex wedding, it is not primarily about the

[1] Barronelle Stutzman and Arlene's Flowers are referenced collectively as "Mrs. Stutzman."

right to be free from sexual orientation discrimination or the right to same-sex marriage. Mrs. Stutzman does not question either right here.

This case is about whether the statutory and constitutional rights of religious persons—including the right to be free from compelled artistic expression—are entitled to be weighed in the balance, if and when they come into conflict with the WLAD's prohibition against discrimination based on sexual orientation. To the extent of any conflict, the Court must strike the proper balance under the unique circumstances presented.

Mrs. Stutzman served Mr. Ingersoll and Mr. Freed on nearly 30 previous occasions and referred them for only one event due to her sincere religious beliefs. They had no difficulty securing alternate floral design services. And unlike most public accommodation cases, protected artistic expression lies at the heart of Mrs. Stutzman's work.

The superior court's ruling is uniquely invasive. More so than even prior cases where the Supreme Court found unlawful government coercion, Washington is applying its laws to require Mrs. Stutzman not only to "utter what is not in h[er] mind," *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634 (1943), but also to force her to employ her mind, time, energy, and artistic talents to *actually create* unwanted expression. Its ruling grates on the "fixed star in our constitutional constellation" that "no official, high or petty, can prescribe what shall be

orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Barnette*, 319 U.S. at 642. In this case, the continued vitality of freedom of conscience, a fundamental principle guaranteed by both the Washington and United States Constitution, hangs in the balance.

II. ASSIGNMENTS OF ERROR

1. The Superior Court erred in granting summary judgment for the Attorney General and individual plaintiffs, Robert Ingersoll and Curt Freed, finding Mrs. Stutzman and Arlene's Flowers liable under the WLAD and CPA, and dismissing their constitutional defenses. CP 2601-60.

2. The Superior Court erred in granting summary judgment in favor of the Attorney General and the individual plaintiffs, finding Mrs. Stutzman personally liable under the WLAD and CPA. CP 2566-2600.

3. The Superior Court erred in entering judgment and granting a permanent injunction against Mrs. Stutzman and Arlene's Flowers. CP 2562-65; 2427-2430.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the superior court misconstrued the WLAD and the CPA to require a florist, whose sincere religious beliefs prevent her from designing flowers or otherwise participating in same-sex weddings, either to violate her conscience by participating in such weddings or to forego all wedding business?

2. Whether applying state law to force a florist to create artistic expression for and to participate in marriage ceremonies against her will violates her right to *freedom of speech* under the Washington and United States Constitutions?

3. Whether applying state law to force a florist to create artistic expression for and to participate in a marriage that directly contradicts her sincerely held religious beliefs violates her right to the *free exercise of religion*

under the Washington and United States Constitutions?

4. Whether applying state law to force a florist to collaborate artistically with those celebrating marriages that are not between a man and a woman violates her right to *freedom of association* under the Washington and United States Constitutions?

5. Whether a business owner should be subject to personal liability under the WLAD and CPA when the business is already subject to WLAD and CPA claims for the same act and the owner has not engaged in a knowing violation of the law or fraud or misrepresentation?

IV. STATEMENT OF THE CASE

A. Mrs. Stutzman Has Worked in Floral Design For 37 Years, Taking Over Her Mother's Shop Nearly 20 Years Ago.

Mrs. Stutzman has spent much of her life in floral design. She first learned floral design from her mother at the family's Connell shop. CP 535. In 1982, after the business moved to Richland, Mrs. Stutzman began to manage her mother's shop, known as Arlene's Flowers. In 1996, Mrs. Stutzman purchased Arlene's Flowers, after her mother was diagnosed with Alzheimer's disease. CP 92, 535-36. While the shop sells gift items and raw flowers, the business of Arlene's Flowers consists primarily of creating floral arrangements for special occasions, including weddings.

B. The Floral Designs Created By Mrs. Stutzman Are A Form Of Artistic Expression.

Floral designers like Mrs. Stutzman must incorporate many creative, artistic, and expressive components in their arrangements. CP 671-72. According to Jennifer Robbins, the owner of a Tacoma studio and

the only floral design expert to provide evidence, designers include components like harmony, unity, balance, proportion, scale, focal point, rhythm, line, color, space, depth, texture and even specific fragrance. *Id.*; CP 724-790, 888-905. Floral designers also commonly incorporate the "meaning and symbolism of particular flowers" into their designs. CP 671-72. A leading floral art treatise explains: "As in any art, the floral designer embellishes the form with personal interpretation." CP 724.

After observing Mrs. Stutzman's work, Ms. Robbins explained:

> 21. While some florists may not approach their work as art, a floral design artist like Barronelle Stutzman strives to incorporate artistic creativity, originality, custom tailoring, and attention to detail in designing and creating floral arrangements. Formal study and training is not necessary to design such original and expressive work. A floral design artist displays a high level of talent, emotional and intellectual investment, and skill. Based on my experience and observations, Mrs. Stutzman demonstrates this level of commitment, intention, and skill when she designs arrangements.
>
> 22. As with most artistic mediums, each floral designer has his or her own style, which expresses itself in the final creation. Not only does Mrs. Stutzman express her own unique artistic style, but Arlene's Flowers does as well…. This unique style is evident from my observations and review of the shop's work.
>
> 23. Florists like Mrs. Stutzman approach their work as an art form. The art of floral design and arrangement dates back to ancient times. See Exhibit 5. Floral artists incorporate components of previous eras and cultures. These components offer a great variety of creativity and expression thanks to the evolution of floral design from other cultures. Similarly, floral design artists like Mrs. Stutzman use fabrics, pictures, and a variety of other objects to generate ideas and inspire them to create arrangements.

CP 672-73.

Ms. Robbins testified that wedding design requires hundreds of decisions related to shapes, shades, stem height, geometry, raw product availability, location, and the overall presentation of every vase, flower, and filler. CP 674, ¶25. The artist strives to unify all of the separate floral arrangements—from the boutonnieres, pew markers, table centers, and bouquets—into a unique and cohesive theme. *Id.* Ms. Robbins explained:

> 24. Wedding floral arrangements require floral design artists to become even more personally involved in the creative process and final design. A floral design artist often forms a personal bond with clients. This typically occurs through several personal meetings which results in a floral designer's feeling emotionally invested not only in the final floral creation, but the ceremony. To serve the clients well, the artist must learn about the couple's individual and shared history, their desires, and the particular wedding dreams and details. The florist attempts to create a mood or feeling consistent with the personalities of the couple and to create arrangements that express the unity of the couple. While the designer may use books or pictures as a conversation starter with the couple, she uses their preferences only as a guide. Ultimately, the arrangements not only reflect the mood and look desired by the couple, but also the personal style and creativity of the artist. The florist's personal style and creativity is recognizable from the designs and arrangements that she creates, and it is common for those who view the arrangements, especially wedding arrangements, to ask who created them….
>
> 26. Based on my conversations with and observations of Mrs. Stutzman, I concluded that Mrs. Stutzman brings intention, passion, and creativity to the arrangements she creates as a floral design artist, that she approaches wedding arrangements as an artist with a particular sense of responsibility and joy because of the important role she has in helping to beautify and formalize the wedding ceremony, and that any custom design wedding

> arrangement created by Mrs. Stutzman necessarily requires her to become emotionally and creatively invested in that arrangement and ceremony and the final creation reflects Mrs. Stutzman's style and expression.

CP 671-74. Ms. Robbins' testimony regarding the artistic and expressive nature of floral design is consistent with learned treatises, CP 683-790, 858-1251; art history, CP 1411-39; industry websites, CP 1273-81, 1408-09; the Arlene's Flowers website, CP 1283-84; and the experience, training and work of Mrs. Stutzman herself, CP 536-37, 551-78.

C. Southern Baptist Religious Beliefs Teach Mrs. Stutzman, Among Other Things, To Treat All Persons With Respect And To Use Her Artistic Skills In A Manner Consistent With Her Religious Beliefs.

Mrs. Stutzman is a Christian, who was brought up in the Southern Baptist tradition. CP 535. Southern Baptists believe that every human person is worthy of dignity and respect. CP 603-652. They also hold to the belief that Scripture limits marriage to the union of a man and a woman. CP 606-07. Mrs. Stutzman believes that using her artistic skills to create custom arrangements for a marriage that is not between one man and one woman would violate her religious beliefs. CP 46-47, 545, 608-09.

Theological expert Dennis Burk, a professor at Southern Baptist Theological Seminary and pastor, elaborated on the specific religious beliefs at issue:

> 17. Marriage [between one man and one woman] is the means by which we understand the nature of the Church and its relationship

to the second person of the Trinity, Jesus Christ. Marriage is an institution of such importance that the Bible compares it to the relationship between Christ and the Church. Ephesians 5:25-33.

18. Christians consider marriage a religious institution with biblical significance, regardless of whether the marriage is performed in a church and regardless of whether the participants are Christian.

19. In light of this, same-sex marriage is considered a sin by Christians in the Southern Baptist tradition because it involves two men and two women rather than one man and one woman. To call it sin does not imply that it is worse or better than other sins, or that God's mercy and forgiveness do not extend to persons engaged in such activity.

20. Marriage between non-religious persons (e.g., atheists or agnostics), non-Christians (e.g., Muslims or Hindus) or non-Southern Baptists (e.g., Presbyterians or Roman Catholics) is not considered to be a sin, as long as it involves only one man and one woman. On the contrary, such marriage is a form of grace offered by God to all people as a source of support and comfort and a way of fostering their relationship with Him.

21. A Christian in the Southern Baptist tradition has a mandatory religious obligation to love his or her neighbor and to avoid sin. Romans 12:2; Colossians 3:5-10; James 1:22-27. This duty entails an obligation *not* to state or imply that something another person is doing is *not* sin, when in fact it is. It also entails an obligation *not* to assist or participate when another person proposes to do something sinful. In this sense, refusal to participate in a same-sex marriage ceremony to forestall sin is required as an act of love toward the participants, even though they may not perceive it that way (and perhaps especially when they do not perceive it that way). That should always be done in a gentle and loving manner…

24. A Christian in the Southern Baptist tradition has a mandatory religious obligation to avoid personal sin. John 14:15; James 4:17. This duty entails an obligation *not* to participate or provide material cooperation with a sinful act of another. A person who creates floral arrangements for a same-sex marriage ceremony is providing material cooperation with a sinful act.

CP 606-09 (brackets added). The record contains no contrary evidence regarding the content or sincerity of Mrs. Stutzman's religious beliefs.

D. Mrs. Stutzman Operates Arlene's Flowers In Accordance With Her Religious Beliefs.

Mrs. Stutzman's religious beliefs have animated her work for decades. According to Mrs. Stutzman:

> My faith is a part of every aspect of my life. I believe that God requires me to apply my faith in all that I do whether that is in my personal life or my business.

CP 535. In particular:

> My religious beliefs require that I love and respect my neighbor, which includes my customers and my employees regardless of race, religion, sex, or sexual orientation. According to my religious beliefs, I am no better than anyone else. I believe that I cannot judge anyone but everyone, including me, has sinned and needs the forgiveness God offers in his son, Jesus.

CP 537; *see also* CP 1381 (Arlene's Flowers' EEO policy).

As the superior court recognized, Mrs. Stutzman's conduct of her business does not reflect any animus based on sexual orientation.[2] She has employed and served those who identify as gay, lesbian and bisexual, and their sexual orientation did not affect how she viewed them as employees, customers and friends. CP 538, 543-44. One former employee who is gay, David Mulkey, explained that while he disagreed with Mrs. Stutzman's

[2] *See* CP 2360 (footnote 31, stating "[t]he Court intends no disrespect and does not mean to imply" that Mrs. Stutzman "has conducted herself in any way inconsistently with Resolutions of the SBC's [i.e., Southern Baptist Convention's] direction to condemn 'any form of gay-bashing, disrespectful attitudes, hateful rhetoric, or hate-incited actions' toward gay men or women.").

position on marriage, he enjoyed his time with Mrs. Stutzman and never witnessed her "make unkind, demeaning, derogatory, rude, or insulting comments to any employees or customers. Nor did I hear other employees or customers make those kind of comments in the shop." CP 663-64. He explained:

> I never felt like Barronelle treated me differently because of my sexual orientation even though she was very religious. She made no secret of the fact that she believed her shop was "God's business" and that she kept the shop closed on Sundays because it was "God's day." Regardless of her religious views (or perhaps because of them), Barronelle is a very kind woman. In fact, she's one of the nicest women I've ever met.

CP 664.

Mrs. Stutzman also treated Mr. Ingersoll and Mr. Freed with kindness and respect. She designed floral arrangements marking events in their life together for over nine years, knowing they identified as gay. CP 543. Mr. Ingersoll was a frequent customer, developing what he describes as a "warm and friendly relationship" with Mrs. Stutzman. CP 1750-51.[3] Over the long span of their relationship, he spent at least $4,500 on Mrs. Stutzman's floral creations for anniversaries, birthdays, Mother's Days, Valentine's Days, and private parties. CP 15, 147, 150-51, 543, 1735-37, 1850. According to Mrs. Stutzman:

[3] *See also* CP 350 (Mr. Ingersoll's declaration, stating "[w]e had purchased flowers from Arlene's Flowers many times over the years, and we considered Arlene's Flowers to be our florist"); CP 1850-51 (referring to Mr. Freed's email stating that "Rob is quite close with the owner" and has "got quite the friendship with the owner.").

> 40. Not only do I enjoy Rob personally, I also enjoy the way he challenges me to design and create arrangements that are unique and expressive. Rob would always ask for me when he came into the shop for various occasions. Rob and I would typically pick out a vase together, and then he would hand me the vase and tell me to "do my thing." He was particularly fond of unusual and creative arrangements. His requests for arrangements always challenged me to do my best work, utilizing the artistic skill that I've spent [years] honing. I loved working with Rob. I learned Rob identified as gay because we would frequently talk about his relationship to his partner, Curt Freed, when Rob came into the store. I tried to show interest in Rob's relationship to Curt, just as I try to show interest in the lives of my other customers. But my knowledge that Rob was gay made no difference in how I viewed him as a friend and a customer.

CP 543. Mr. Ingersoll and Mr. Freed were always pleased with the floral design work and service they received from Mrs. Stutzman.[4]

E. Mrs. Stutzman Referred Long-Time Customer Mr. Ingersoll To Nearby Florists For His Same-Sex Wedding.

Arlene's Flowers provides a range of wedding related services. CP 539-43 & 653-59. Not only do these services include floral design and delivery, but also full wedding support before, during, and after the wedding ceremony and reception. At the wedding venue, the floral designers ensure all flowers appear beautiful, perform touch-ups and changes, attend the ceremony, and clean-up afterwards. They also offer help the bridal party throughout the day. CP541-542; 656-657. For Mrs.

[4] CP 1750-51 & 1857 (stating Mrs. Stutzman was always pleasant and happy to see them, was always polite and courteous, made them feel welcome in the store, never made any disparaging comments about their relationship or sexual orientation, and did not give them any feeling of disapproval); *accord* CP 1737, 1740-41, 1745, 1750-51, 1797-98, 1852 & 1857.

Stutzman personally, weddings are one of the most rewarding aspects of her work. CP 539. They often require her to use the full-measure of her artistic creativity, *id.*, as she engages in an intimate consultative process with clients to design arrangements celebrating their union and then works to ensure their wedding day is all they hoped it would be. CP 540, 655-56. Mrs. Stutzman also enjoys design work for weddings because it allows her to participate in a ceremony that she views as having spiritual significance. CP 539.

On February 28, 2013, Mr. Ingersoll went to Arlene's Flowers to ask them to do the flowers for his wedding. CP 350. Mrs. Stutzman was not in at the time. *Id*. Mr. Ingersoll's request was the first time Arlene's Flowers had been asked to create floral arrangements celebrating a wedding that was not between one man and one woman. CP 544. Because of her religious beliefs, Mrs. Stutzman believed that she had to decline the request.[5] CP 544-45. Nonetheless, she struggled with what to say, as she did not want to hurt Mr. Ingersoll's feelings. CP 545.

[5] There appears to be some dispute whether Mr. Ingersoll's request to "do" the flowers for his wedding was limited to raw unarranged flowers, arranged flowers, or the full complement of wedding-related services. Mrs. Stutzman believed that he wanted the full complement of services. CP 546. In keeping with the distinction between material and non-material cooperation that is part of her Southern Baptist religious tradition, she has always been willing to provide pre-arranged or raw unarranged flowers, even if they were to be used for a same-sex wedding. Nonetheless, this dispute appears to be immaterial because the Superior Court's permanent injunctions require Mrs. Stutzman to provide services for same-sex weddings to the same extent as opposite-sex weddings. CP 2562-65; CP 2427-30.

When Mr. Ingersoll returned the next day, he told Mrs. Stutzman that he and Mr. Freed were getting married and that they would like her to do the flowers. CP 350. Mr. Ingersoll says that Mrs. Stutzman took his hand and explained "she could not do the flowers because of her relationship with Jesus Christ." CP 350-51. According to him, she also said, "You know I love you dearly. I think you're a wonderful person …. But my religion doesn't allow me to do this." CP 1851. Mrs. Stutzman said all of this in a kind and considerate way. CP 1763-65. They talked for a little while afterward about Mr. Ingersoll's engagement and his hope that his mother would walk him down the aisle, CP 158, she gave him the names of three other nearby florists who would likely be able to do the wedding, they hugged each other, and then he left. CP 545-56, 1618.

F. The Attorney General And Mr. Ingersoll and Mr. Freed Filed Suit And The Superior Court Granted Summary Judgment And Entered Permanent Injunctions Against Mrs. Stutzman.

After learning about the underlying facts through a media report, a representative of the Attorney General sent a letter to Mrs. Stutzman and Arlene's Flowers, stating that, in order to avoid a lawsuit, they must sign an "assurance of discontinuance" (AOD) document and agree to provide the same services for same-sex weddings as opposite-sex weddings, or else be subject to civil penalties, attorney fees and costs, and other

unspecified relief. CP 1325, 1328.[6] When Mrs. Stutzman declined to sign the AOD agreement, the Attorney General filed suit. CP 1-5. Mr. Ingersoll and Mr. Freed followed with another suit soon afterward. CP 2526-2532.

The Superior Court consolidated the actions and granted summary judgment in favor of the Attorney General and Mr. Ingersoll and Mr. Freed, finding Arlene's Flowers and Mrs. Stutzman, in her personal capacity, liable under the WLAD and CPA. It dismissed her constitutional defenses. CP 2566-2600 & 2601-60. It also entered permanent injunctions that require Mrs. Stutzman to create floral arrangements celebrating same-sex marriages if she provides artistic design services for marriages between one man and one woman.[7] It requires her to pay an as-yet undetermined amount of actual damages and attorneys' fees and costs to Mr. Ingersoll and Mr. Freed, CP 2554-55, as well as $1,000 in penalties to the State. CP 2419-20. Mrs. Stutzman and Arlene's Flowers appeal these decisions to this Court. CP 2422-2525 & 2557-2660.

V. ARGUMENT

A. The Superior Court Misconstrued The WLAD Which Protects Sexual Orientation, Not Same-Sex Marriage.

Under principles of judicial restraint, the Court is obligated to address non-constitutional issues first. *See Isla Verde Int'l Holdings, Inc.*

[6] The Attorney General's letter and the AOD document, CP 1325-29, 2553-56, are reproduced in the Appendix.
[7] The permanent injunctions, CP 2427-30 & 2562-65, are reproduced in the Appendix.

v. City of Camas, 146 Wn. 2d 740, 752, 49 P.3d 867 (2002). Accordingly, this brief begins with a discussion of the superior court's determination that Mrs. Stutzman violated the WLAD and the CPA.[8] If the Court determines no violation of these statutes occurred, it should reverse the superior court's determination that Mrs. Stutzman is liable as a matter of law and it need not address the constitutional issues discussed below.

1. Same-sex marriage was illegal when the Legislature added sexual orientation to the WLAD.

In 2006, the Legislature added sexual orientation to the WLAD as a protected classification. *See* Laws of 2006, Ch. 4, § 3 (codified at RCW 49.60.030). The legislation provided: "[i]nclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage." *Id.* § 2 (codified at RCW 49.60.020). At the same time, Washington's Defense of Marriage Act provided that same-sex marriage was illegal in Washington. *See* Laws of 1998, Ch. 1, § 3 (codified at RCW 26.04.010(1)). The Legislature declared that "[i]t is a compelling interest of the state of Washington to reaffirm its historical commitment to the institution of marriage as a union between a man and a

[8] The CPA claim hinges upon the existence of a violation of the WLAD. *See* RCW 49.60.030(3) (regarding relationship between WLAD and CPA); CP 3-4 (Attorney General's complaint, ¶¶ 5.7-5.8); CP 2530 (individual plaintiffs' complaint, ¶¶ 29-30); CP 2340 & 2343-45 (summary judgment order).

woman as husband and wife and to protect that institution." *Id.* § 2(1).[9]

In 2012, six years after the Legislature added sexual orientation to the WLAD, the voters authorized same-sex marriage by referendum. *See* Laws of 2012, Ch. 3, § 1 (codified at RCW 26.04.010(1)). Nonetheless, the statutory definition of marriage that prevailed when sexual orientation was added to the WLAD and the relevant evidence of legislative intent should preclude the Court from interpreting the WLAD as protecting same-sex marriage. The Court relied on similar reasoning in declining to interpret marital status to include cohabiting couples in *Waggoner v. Ace Hardware Corp*., 134 Wn. 2d 748, 754-55, 953 P.2d 88 (1998).

Waggoner involved the WLAD's prohibition against discrimination based on marital status, which applies in the employment context (but not public accommodations). *See* RCW 49.60.180. The plaintiff-employees in *Waggoner* alleged that they were discharged because their employer believed they were cohabiting, and brought suit for marital status discrimination. *See* 134 Wn. 2d at 750-51. In affirming dismissal of the claim, the Court reasoned in part that "cohabiting was a

[9] Before the Legislature enacted the state DOMA, the Court of Appeals held that Washington law did not authorize same-sex marriage. *See Singer v. Hara*, 11 Wn. App. 247, 249, 522 P.2d 1187, *rev. denied*, 84 Wn. 2d 1008 (1974). *United States v. Windsor*, — U.S. —, 133 S. Ct. 2675 (2013), holding the federal DOMA unconstitutional, and *Obergefell v. Hodges*, — U.S. —, 135 S. Ct. 2584 (2015), holding the constitutional right to marriage includes two persons of the same sex, do not preclude reliance on Washington's DOMA as evidence of legislative intent regarding protection of same-sex marriage under the WLAD.

crime under Washington law when the Legislature included marital status as a protected class" and it "remained a crime until three years after the Legislature's inclusion of marital status as a protected class." *Id.* at 754. "It would be most anomalous for the Legislature to criminalize and protect the same conduct at the same time," and the existence of the illegal cohabitation statute "would seem to vitiate any argument that the legislature intended 'marital status' discrimination to include discrimination on the basis of a couple's unwed cohabitation." *Id.* (citation omitted.)[10] Just as in *Waggoner*, it would be anomalous for the Legislature to intend to proscribe same-sex marriage and also protect same-sex marriage in public accommodations at the same time.

2. The Legislature created a safe harbor that applies to persons who cannot participate in a same-sex wedding on religious grounds.

When the Legislature added sexual orientation to the WLAD, it added the following language to the WLAD's statutory rule of construction: "[t]his chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation." Laws of 2006, Ch. 4, § 2 (codified at RCW 49.60.020). It is difficult to imagine a more compelling

[10] The Legislature subsequently amended the definition of "marital status," limiting it to "the legal status of being married, single, separated divorced, or widowed." Laws of 1993, Ch. 510, § 4 (codified at RCW 49.60.040). The phrase was undefined by statute, when the claim at issue in *Waggoner* arose. *See* 134 Wn. 2d at 756-57 (referring to former WAC 162-04-010, which defined marital status in terms of "(a) what a person's marital status is; (b) who his or her spouse is; or (c) what the spouse does").

endorsement of same-sex weddings than subjecting a private person in a wedding-related business who cannot participate in such weddings because of their religious beliefs to: (i) suit by the Attorney General and private litigants; (ii) liability for civil penalties, damages, and attorney fees and costs, and (iii) injunctive relief compelling the person to choose between violating their religious beliefs by participating in such weddings or foregoing all wedding business. That is precisely what happened here.

Requiring Mrs. Stutzman to participate in same-sex weddings to the same extent as opposite-sex weddings effectively requires her to endorse same-sex weddings. *See* CP 545. The word "endorse" as used in the WLAD's statutory rule of construction is undefined, and should be given its ordinary meaning as discerned from common dictionaries. *See Grant County Prosecuting Attorney v. Jasman*, 183 Wn. 2d 633, 643, 354 P.3d 846 (2015). The pertinent dictionary definition of "endorse" is "to express definite approval or acceptance of." *Webster's Third New International Dictionary of the English Language Unabridged, s.v.* "endorse" (1993) (3rd definition).

In the context of public accommodations, participation is tantamount to endorsement. The WLAD guarantees "[t]he right to the *full enjoyment of* any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage or

amusement." RCW 49.60.030(1)(b) (emphasis added). The phrase "full enjoyment of" is specially defined in terms of "acts directly or indirectly causing persons of any particular … sexual orientation … to be treated as not welcome, accepted, desired, or solicited." RCW 49.60.040(14) . The conduct required under this definition is equivalent to the ordinary meaning of endorsement. The Court cannot affirm the superior court without effectively requiring Mrs. Stutzman to endorse same-sex weddings, contrary to the WLAD's statutory rule of construction.

3. The WLAD distinguishes between sexual orientation, which is protected in the public accommodation context, and marital status, which is not.

The WLAD prohibits discrimination "because of" a protected classification such as sexual orientation. RCW 49.60.030(1). The superior court found that Mrs. Stutzman does not harbor any discriminatory animus, and this finding is consistent with the way that she has treated her employees and customers. *See* CP 2360. The court also acknowledged that she refused to participate in Mr. Ingersoll's and Mr. Freed's wedding because of her religious beliefs about the nature of marriage, rather than their sexual orientation. *See* CP 2335. Nonetheless, the court determined that a violation of the WLAD occurred because the conduct of a same-sex wedding is associated with the protected classification of sexual orientation. *See* CP 2337-39. In doing so, it cited case law that says certain

sexual acts are inseparable from same-sex orientation based on out-of-state precedent.[11] *See*, *Christian Legal Soc. Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 689 (2010). But the U.S. Supreme Court has not addressed the WLAD nor has it eliminated the distinction between objecting to any marriage not between one man and one woman on religious grounds and sexual orientation discrimination.

While conduct associated with a protected classification is properly protected in many instances, such protection should not be extended to a same-sex wedding under the WLAD. The WLAD distinguishes between sexual orientation and marital status. It prohibits discrimination based on marital status in certain contexts, such as insurance, employment and real estate. *See* RCW 49.60.178, .180, .190, .200, .222 & .225. However, protection for marital status is conspicuously absent from the WLAD's public accommodations provisions.[12] RCW 49.60.030(1) & .215. Mrs. Stutzman's long history of serving Mr. Ingersoll and religious beliefs

[11] The superior court relied on *Elane Photography, LLC v. Willock*, 309 P.3d 53 (N.M. 2013), *cert. denied*, — U.S. —, 134 S. Ct. 1787 (2014). *See* CP 2338-39. *Elane Photography* is distinguishable because New Mexico's antidiscrimination law does not appear to have a provision comparable to the WLAD's statutory rule of construction, nor does it appear to separately address marital status discrimination. *See* N.M. Stat. § 28-1-7(F). The superior court also relied on *Lewis v. Doll*, 53 Wn. App. 203, 765 P.2d 1341, *rev. denied*, 112 Wn. 2d 1027 (1989). *See* CP 2336-37 & 2339. *Lewis* involved a convenience store that refused to serve black patrons due to a stereotypically racist belief that black people are likely to be shoplifters. This case is not even remotely comparable.

[12] The WLAD also protects proprietors' "right to engage in commerce free from any discriminatory boycotts or blacklists . . . on the basis of . . . religion." RCW 49.60.30(1) and (1)(f).

about marriage demonstrate she did not refer Mr. Ingersoll because of his sexual orientation. Her faith religious beliefs prohibit her from participating in all marriages other than those between one man and one woman. Accordingly, the Court should hold that the refusal of Mrs. Stutzman to participate in a same-sex wedding is not discrimination "because of" sexual orientation.

4. The Superior Court failed to balance Mrs. Stutzman's religious rights, which are also protected by the WLAD.

Underlying the superior court's orders is the premise that the WLAD's prohibition against discrimination based on sexual orientation takes precedence over the religious beliefs of a person providing a public accommodation. This premise is unsupported by the text, purpose and required liberal construction of the WLAD, which protects *both* religion and sexual orientation. When these civil rights come into conflict with each other, the court should subject them to the same sort of balancing that occurs in other contexts. To the extent such a conflict exists here, the superior court erred in failing to strike the proper balance.

The WLAD provides that "[t]he right to be free from discrimination because of … creed … is recognized as and declared to be a civil right" along with sexual orientation. RCW 49.60.030(1) (ellipses added). "Creed" is synonymous with religion, and encompasses belief and

the practice of one's faith.[13] While the WLAD's civil rights declaration specifically refers to discrimination in public accommodations and other contexts where discrimination may occur, the declaration of rights is phrased in broad, non-exclusive terms that extend beyond the enumerated contexts. *See* RCW 49.60.030(1); *Marquis v. City of Spokane,* 130 Wn. 2d 97, 105-13, 922 P.2d 43 (1996).

There is nothing in the WLAD that purports to limit the rights of religious citizens simply because they undertake to provide a public accommodation. In light of the text, purpose and rule of liberal construction, the WLAD should protect those who provide public accommodations to the same extent as their patrons.

The WLAD does not contain a hierarchy of rights or other means of resolving conflicts between competing claims of right. In other contexts where there are competing claims, the Court balances the nature of the rights involved, the least restrictive means for protecting the rights involved, the relative benefits and burdens, and other relevant circumstances. *Cf. Seattle Times Co. v. Ishikawa*, 97 Wn. 2d 30, 37-39, 640 P.2d 716 (1982) (adopting test for balancing criminal defendant's

[13] "Washington courts have long equated the term 'creed' in the WLAD with the term 'religion' in Title VII of the Civil Rights Act of 1964 (Title VII)." *Kumar v. Gate Gourmet Inc.*, 180 Wn. 2d 481, 489, 325 P.3d 193 (2014). Under Title VII, "[t]he term 'religion' includes all aspects of religious observance and practice, as well as belief[.]" 42 U.S.C. § 2000e(j).

right to fair trial with public's right of access to courts). To the extent of any conflict, the Court should engage in the same type of balancing here.

The proper balance favors the rights of Mrs. Stutzman under the narrow circumstances present in this case. *First*, the protection of religion under the WLAD is grounded in the religious freedom provision of the Washington Constitution, whereas the protection of sexual orientation in public accommodations appears to be grounded in the Legislature's police power.[14] Rights of express constitutional magnitude take precedence over other rights when they conflict.

Second, the extent of any infringement on the rights of Mr. Ingersoll and Mr. Freed would be narrowly tailored to protect the rights of Mrs. Stutzman. The distinction grounded in her religious beliefs between the provision of goods or services—which she has always been willing to provide—and participation in a same-sex wedding does not give anyone a license to discriminate in the name of religion. In most circumstances, the distinction would prevent public accommodations from refusing service to customers on the basis of sexual orientation. At the same time, however, it

[14] *See* RCW 49.60.010; Wash. Const. Art. I, § 11; *Andersen v. King County*, 158 Wn. 2d 1, 19-31, 138 P.3d 963 (2006) (3-Justice lead opinion by Madsen, J., indicating that sexual orientation is not a suspect class and that same-sex marriage is not a fundamental right); 158 Wn. 2d at 66-74 (2-Justice concurrence in the result by J. Johnson, J.). The right to same-sex marriage recognized in *Obergefell, supra,* does not alter the analysis because the right at issue here is freedom from discrimination based on sexual orientation, rather than the right to marry.

protects those providing public accommodations from being compelled to participate in activities that violate their religious beliefs.

Third, the balance of benefits and burdens would favor Mrs. Stutzman. She either must violate her conscience or forego a portion of her business because of her religious beliefs, while Mr. Ingersoll and Mr. Freed are able to obtain custom floral designs for their same-sex wedding from nearby florists, as the record reflects. On balance, Mrs. Stutzman's rights should take precedence in these unique circumstances.[15]

B. The Superior Court Violated Mrs. Stutzman's Freedom From Compelled Artistic Expression Under The State And Federal Constitutions.

Mrs. Stutzman's floral arrangements are protected artistic expressions. Nonetheless, the superior court concluded that there can never be a free speech exception, artistic or otherwise to the WLAD's (and CPA's) application in *any* circumstance. CP 2348. This conclusion squarely conflicts with federal and state free speech guarantees.[16]

1. Floral designs are artistic expressions.

Floral artists have designed arrangements for centuries, CP 872, and master painters like Van Gogh, Renoir, and Monet have memorialized the creative designs—preserving these works of art long after the flowers

[15] For the reasons contained herein, neither should this Court hold that Mrs. Stutzman committed an unfair commercial act in violation of public policy. RCW 19.86.010 et seq.
[16] *See* Wash. Const., art. I, § 5; U.S. Const., amend. I.

have wilted. CP 1411-32. Art is defined as "something that is created with imagination and skill and that is beautiful or that expresses important ideas or feelings."[17] Mr. Ingersoll and Mr. Freed candidly admit that Mrs. Stutzman's floral creations reflect imagination and skill, praising her "exceptional creativity," "creative and thoughtful" designs, and "amazing work."[18] Rather than expressing feelings through words, they often asked Mrs. Stutzman to "say it with flowers." And they openly acknowledge that designers like Mrs. Stutzman use wedding flowers to convey a "celebratory atmosphere," "beautify the ceremony," "add a mood," and a certain "elegance." CP 1752, 1858.

Mrs. Stutzman also presented expert testimony that she combines various artistic factors into a signature style that is "botanical[,] European[,] and traditional" in nature. CP 672, 1984. Her designs "create a mood or feeling consistent with the personalities of the couple and … that express the[ir] unity," CP 673, as well as her own "personal style and creativity." CP 664 (Mr. Mulkey confirmed the "final creation reflects [her] style and expression.").

Not surprisingly, constitutional protections extend well beyond the spoken or written word. From wordless music, nude dancing, theatre and

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[17] Merriam Webster Dictionary Online, *available at* http://www.merriam-webster.com/dictionary/art (last visited Aug. 28, 2015).
[18] CP 15, 147, 1735-1737, 1741, 1745, 1746, 1797-98, 1852.

orchestra performance, photographs, stained glass windows, painting, sculpture, and tattoos, protected expression occurs in many forms.[19] As the Ninth Circuit explained in the tattoo-artist context, "The fact that both the tattooist and the person receiving the tattoo contribute to the creative process or that the tattooist … 'provides a service,' does not make the tattooing process any less expressive activity, because there is no dispute that the tattooist applies his creative talents as well." *Anderson*, 621 F.3d at 1062. The same logic applies here. It can hardly be otherwise or famous commissioned works of art like the painted ceiling of the Sistine Chapel would be attributed to powerful patrons like Pope Julius II, not gifted artists like Michelangelo Buonarroti. Simply put, Mrs. Stutzman crafts her unique expression in living color by petal, leaf, and loam.

2. The compelled speech doctrine protects Mrs. Stutzman's artistic expression.

The superior court erred by compelling Mrs. Stutzman to create expression for all state-recognized marriages, including expression that she would otherwise not create because of her religious beliefs. *See* CP 2420, 2554. The constitutional right to free speech "includes both the right

[19] *Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) (nude dancing); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 569 (1995) (paintings, music, and verse); *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) (music without words); *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557-58 (1975) (theatre); *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061 (9th Cir. 2010) (tattoos); *White v. City of Sparks*, 500 F.3d 953, 956 (9th Cir.2007) (paintings); *Piarowski v. Ill. Cmty. Coll. Dist. 515*, 759 F.2d 625, 629 (7th Cir.1985) (stained glass windows that were "art for art's sake").

to speak freely and the right to refrain from speaking." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). The latter aspect, referred to as the compelled speech doctrine, safeguards the freedom of mind and thought – the right to decide whether to speak at all. Speech is compelled when the government punishes private actors for refusing to engage in unwanted expression, *Id.* at 715, or forces them to alter their expression by "accomodat[ing] another speaker's message." *Rumsfeld v. FAIR*, 547 U.S. 47, 63-64 (2006) (citing *Hurley* , 515 U.S. at 566 (1995)).

A long line of U.S. Supreme Court precedent establishes that the government cannot force citizens to convey messages that they deem objectionable, nor may it punish them for declining to convey such messages even when a public accommodations law is implicated.[20] The State may express and encourage the viewpoint that all state-sanctioned forms of marriage are equally valid, but it cannot force Mrs. Stutzman "to confess by word or act" her agreement. *Agency for Int'l Dev. v. Alliance*

[20] This principle originated in *Barnette*, where a school threatened to expel religious students for refusing to recite the Pledge of Allegiance. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 629-30 (1943). Because the students' refusal did not present a clear and present danger, the Court invalidated the law. *Id.* at 634.

Later, in *Wooley*, 430 U.S. at 707-08, the Court extended this doctrine to a religious refusal to display a state motto on a license plate. The Court explained that the state could not force private citizens to foster an unacceptable viewpoint. *Id.* at 715; s*ee also e.g., Pac. Gas & Elec. Co. v. Public Utilities Comm'n of Cal.,* 475 U.S. 1, 20 (1986) (government may not require a business to include a third-party's expression, explaining the State may not "advance some … view[s] by burdening the expression of others"); *Miami Herald Publ'g. v. Tornillo*, 418 U.S. 241, 258 (1974) (government may not require a newspaper to include a third party's writings in its editorial page).

for Open Soc. Int'l, Inc., 133 S. Ct. 2321, 2332 (2013) (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

The lower court wrongly concluded that freedom of speech has *no application whatsoever* in the public accommodation context.[21] CP 2348. But the U.S. Supreme Court has done just that. In *Hurley,* the Court declared that the First Amendment barred Massachusetts from using a public accommodation law like the WLAD to compel parade organizers to include an unwanted pro-LGBT viewpoint. 515 U.S. at 574-75. The Court held that nondiscrimination laws may not "be used to produce thoughts and statements acceptable to some groups," as the First Amendment "has no more certain antithesis." *Id*. at 579; *see also Boy Scouts of America v. Dale*, 530 U.S. 640, 659 (2000) (concluding that the right of expressive association prohibits public-accommodations law application). Just as Massachusetts could not force the public accommodation in *Hurley* to alter its message, the State cannot force Mrs. Stutzman to alter her message. 515 U.S. at 574. The parade organization and Arlene's Flowers

[21] The superior court also cited *Rumsfeld*, 547 U.S.at 60, suggesting that expression can be compelled if it is "incidental." That is not *Rumsfeld*'s holding. First, judicial deference is at its highest in a war powers case. *Id.* at 58. Second, there is nothing "incidental" about forcing an artist to employ her God-given skills and talent to design, create, and convey an objectionable message. If displaying a disagreeable motto on one's license plate is not "incidental" for compelled speech purposes, *see Wooley*, 430 U.S. at 707, forcing Mrs. Stutzman to design and create floral arrangements to celebrate same-sex marriages cannot be.

are public accommodations for much the same reason: they offer public access to their expression.[22]

Hurley, along with other U.S. Supreme Court cases, affirms that constitutional protection against compelled speech applies to businesses. 515 U.S. at 574; *see also Citizens United v. FEC*, 558 U.S. 310, 342 (2010) (collecting cases). "It is well settled that a speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak." *Riley v. Nat'l Fd'n of the Blind of N.C.*, 487 U.S. 781, 801 (1988); *see Mastrovincenzo v. City of New York*, 435 F.3d 78, 92 (2d Cir. 2006) (sale of expression is protected); *Anderson*, 621 F.3d at 1063 ("[T]he business of tattooing qualifies as purely expressive activity … entitled to full constitutional protection.")

Redgrave v. Boston Symphony Orchestra, 855 F.2d 888 (1st Cr. 1988), applied *Barnette, Wooley,* and *Riley* to artistic expression. Vanessa Redgrave attempted to force the Symphony to perform with her after she made controversial comments about Palestine. *Id.* at 890. She claimed that the Massachusetts Civil Rights Act ("MCRA") barred the Symphony from discriminating because of her political expression. *Id*. at 901.

[22] *See Irish-Am. Gay, Lesbian & Bisexual Group of Boston v. City of Boston*, 636 N.E.2d 1293, 1296 (Mass. 1994) (noting that the parade organization sent applications to the public), *rev'd on other grounds, Hurley*, 515 U.S. 557.

The First Circuit noted the "doubly unusual" nature of the case because it required the court to weigh the plaintiff's statutory right against the defendant's constitutional right. *Id.* at 904. The court explained that Redgrave's claim effectively required the state to "enter[] the marketplace of ideas" and enforce the MCRA in a manner that would "have the effect of coercing" the Symphony's speech. *Id*. at 904 & 906. The court was unwilling to do so. Based on a long line of "distinguished" cases, it explained:

> Protection for free expression in the arts should be particularly strong when asserted against a state effort to compel expression, for then the law's typical reluctance to force private citizens to act, … augments its constitutionally based concern for the integrity of the artist.

Id. at 905 (internal citations omitted). Accordingly, the Court declined to apply the MCRA to "the aesthetic judgments of artists." *Id.* at 906.

Just as in *Redgrave,* this Court should recognize the danger in "coercing" artistic expression in the "marketplace of ideas." For Mrs. Stutzman, marriage serves as a public, expressive act and a religious institution with clear spiritual significance. CP 539, 606-08, 1776, 1799, 1803-04. Her religious beliefs compel her to create artistic designs celebrating only those marriages that are between one man and one woman. CP 507-09. This allows her to fully invest emotionally and artistically in the creative process. CP 607-08.

The lower court failed to even recognize the critical distinction between the sale of pre-printed posters and commissioned art and the sale of pre-arranged flowers and the commission of wedding designs that may include participation at the ceremony. The federal and state constitutions give all citizens—and particularly artists—the right to decide "the ideas and beliefs deserving of expression, consideration, and adherence" even if the government views their choices as wrong. *Alliance for Open Soc.*, 133 S. Ct. at 2327 (quoting *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641, 114 S.Ct. 2445, 2288 (1994)). Here, the strength of the "constitutionally based concern for the integrity of [Mrs. Stutzman as an] artist" should prevail, *Redgrave*, 855 F.2d at 905, especially when Mr. Ingersoll and Mr. Freed have access to so many other floral designers. CP 1860.

C. The Superior Court Violated Mrs. Stutzman's State And Federal Constitutional Rights To The Free Exercise Of Religion By Forcing Her To Create Floral Designs That Are Contrary To Her Religious Beliefs.

The state and federal constitutions protect the free exercise of religion.[23] This protection does not vary with the outcome of elections, *Barnette*, 319 U.S. at 638, and serves the vital purpose of ensuring the widest possible toleration of conflicting views. *United States v. Ballard*, 322 U.S. 78, 87 (1944). Here, neither the lower court nor Mr. Ingersoll or

[23] *See* Wash. Const., art. I, § 11; U.S. Const. amend. I.

Mr. Freed questioned the sincerity of Mrs. Stutzman's religious beliefs. CP 1764, 2134, 2355. Rather, the only question is whether the government violates the free exercise of religion by requiring Mrs. Stutzman not only to design wedding arrangements in violation of her religious beliefs, but also provide services that include her presence at, and direct support of, a ceremony completely at odds with those beliefs.[24] Because the State has only a marginal interest in assuring access to custom floral design services, such services are widely available, and Mrs. Stutzman has long demonstrated a complete lack of animus towards those who identify as gays and lesbians, the answer to this question must be yes.

1. Forcing Mrs. Stutzman to create floral designs or forego all weddings substantially burdens her religious beliefs under Article I, Section 11.

The religious freedom provision of the Washington Constitution's Declaration of Rights provides in pertinent part:

> Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state.

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[24] Arlene's Flower's free exercise rights are synonymous with Mrs. Stutzman's. *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2768 (2014) ("protecting the free-exercise rights of [closely-held] corporations … protects the religious liberty of the humans who own and control those companies.").

Wash. Const. Art. I § 11. This provision provides more protection for religious freedom than the U.S. Constitution. *City of Woodinville v. Northshore United Church of Christ*, 166 Wn. 2d 633, 642, 211 P.3d 406 (2009). It applies to religiously motivated conduct, not simply to beliefs. *First Covenant Church of Seattle v. City of Seattle*, 120 Wn. 2d 203, 224, 840 P.2d 174 (1992). When government regulation substantially burdens sincere religious belief or conduct, Washington courts apply strict scrutiny, *i.e.*, they ensure a law is narrowly tailored to a compelling interest. *Woodinville*, 166 Wn. 2d at 642.[25] Although only "substantial" burdens trigger strict scrutiny in contrast with a "slight convenience," *id.* at 643-44, strict scrutiny applies even if the regulation "indirectly burdens the exercise of religion." *First Covenant,* 120 Wn.2d at 226.

In this case, the superior court's permanent injunctions impose a substantial burden on Mrs. Stutzman's religious freedom by requiring her either to violate her religious beliefs by creating floral designs celebrating marriages that are not between a man and a woman or forego all weddings. The superior court rightly assumed the existence of a

[25] At points, the Superior Court seems to suggest that any legislation enacted pursuant to the police power is sufficient to overcome religious freedom. CP 2354-59 & 2367-68. This is plainly incorrect because the purpose of constitutional rights is to limit the exercise of police power. *See CLEAN v. State,* 130 Wn. 2d 782, 805, 928 P.2d 1054 (1996) (stating "the only limitation" upon the police power is "that it must reasonably tend to promote some interest of the State, and not violate any constitutional mandate").

substantial burden,[26] but wrongly held that enforcing the WLAD in this particular instance satisfies strict scrutiny.

Mrs. Stutzman is religiously motivated to condone through her art only those marriages that are consistent with her church's teaching and personal faith. CP 539-43. The superior court's orders make it impossible for her to do so. CP 2420, 2554. This substantially burdens her free exercise of religion in several ways. *First*, custom design work for weddings is religiously fulfilling for Mrs. Stutzman because it gives her "an opportunity to participate in marriage," which she believes "God designed" and her "religious beliefs about marriage are an important component" of her faith. CP 539. Mrs. Stutzman may no longer artistically honor any marriages without also condoning marriages that violate her religious beliefs. CP 47, 545.

Second, forcing Mrs. Stutzman to spend substantial time designing flowers that celebrate a marriage inconsistent with her faith deeply offends her religious beliefs. CP 547. Mrs. Stutzman believes that this use of her

[26] The Attorney General and Mr. Ingersoll and Mr. Freed characterize the burden on Mrs. Stutzman as insubstantial because they claim weddings represent only 3 percent of her business. CP 2070, 2135. The 3 percent figure is misleadingly low in part because weddings lead to referrals for other business. *Id.* (¶ 24). The Superior Court treated WLAD liability as a substantial burden on Mrs. Stutzman's religious freedom. CP 2513.

The Attorney General also argues that there is no burden because Mrs. Stutzman could delegate flower arrangements and other services for same-sex weddings to an employee. CP 390. This argument is at odds with the Attorney General's claim that Mrs. Stutzman should be personally liable, and it overlooks the portion of Wash. Const. Art. I § 11, providing that "no one shall be molested or disturbed in person or property on account of religion." Mrs. Stutzman's property includes her business.

art constitutes sin and would "subject [her] to God's judgment," CP 609, something which plainly constitutes a substantial burden.

Third, requiring Mrs. Stutzman to attend same-sex marriage ceremonies, which is a part of the services she offers, would impermissibly force her to participate in a religious ceremony she views as theologically incorrect and spiritually harmful. CP 606-09. Mrs. Stutzman's view is that "wedding ceremonies [are] religious events where worship takes place." CP 539. At overtly religious weddings, like Mr. Ingersoll's and Mr. Freed's, where a minister officiates and the parties exchange rings, this factor becomes equally apparent. CP 1776, 1799, 1803-04.

Significantly, Mrs. Stutzman has an established practice of providing superior customer service, which includes actively facilitating and participating in a variety of ways at the ceremony and reception. CP 542. As one of Mrs. Stutzman's customer's explained, Mrs. Stutzman goes "above and beyond by talking to the guests, helping them feel comfortable, and even calming nervous parents." CP 657. The superior court's orders commanding Mrs. Stutzman to provide all of these "services … on the same terms to same-sex couples," CP 2420, and to participate in their marriages to the same degree—severely burdens her

free exercise of religion.[27] Because Mrs. Stutzman's religious exercise is substantially burdened in all of these ways, strict scrutiny applies under article I, section 11. *See First Covenant*, 120 Wn. 2d at 225.

2. Forcing Mrs. Stutzman to violate her beliefs and church's teaching violates the Free Exercise Clause of the First Amendment.

To determine whether federal free exercise protections apply, the U.S. Supreme Court asks whether a law is generally applicable or neutral; if a law fails either prong, it must undergo the most rigorous form of scrutiny. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Applying the WLAD and CPA to Mrs. Stutzman fails that test. The superior court reached the opposite conclusion by discounting the religious and secular exemptions the State has made to the WLAD's and CPA's scope and by drawing inapplicable distinctions between "clergy and laity" and "accommodations and public accommodations."

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[27] If this case cannot be resolved on non-constitutional grounds, then the Court is obligated to address issues arising under the state constitution before addressing issues arising under the federal constitution. *See State v. Johnson,* 128 Wn. 2d 431, 443 & n.45, 909 P.2d 293 (1996). If the Court determines that the WLAD is ambiguous, then the constitutional analysis can serve as an interpretive aid. *See Davis v. Cox*, 183 Wn. 2d 269, 280, 351 P.3d 862 (2015).

a. The Superior Court's application of state law lacks neutrality.

The State recognizes that "many religions recognize marriage as having spiritual significance," *Turner v. Safley*, 482 U.S. 78, 96 (1987), and it created broad religious exceptions to its law as a result. Neither ministers nor religious organizations must provide wedding services that violate their religious beliefs. *See* RCW 26.04.010(4)-(7). The State also provides religious groups exemptions for other quintessentially religious services, such as education, cremation, and burial. *See* RCW 49.60.040.

By exempting most religious organizations, the State has explicitly recognized that the morality of homosexual conduct remains an important religious question for many. Mrs. Stutzman has as much a right to exercise "the right to define [her] own concept of existence, of meaning, of the universe, and of the mystery of human life" as religious organizations. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992). Thus, this differential treatment lacks religious neutrality. *Lukumi*, 508 U.S. at 536; *see Conestoga Wood Specialties Corp. v. Sec. of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 415 (3d Cir. 2013) (Jordan, J., dissenting), *rev'd* 134 S. Ct. 2751 (2014) (explaining that it is "less than neutral" to treat believers differently and to make religious protections turn on a business' number of employees).

b. The Superior Court's application of state law lacks general applicability.

Unlike most "across-the-board … prohibition[s] on a particular form of conduct," *Employment Div. v. Smith*, 494 U.S. 872, 884 (1990), the WLAD and CPA do not apply generally to all members of society in the same way. The WLAD categorically exempts substantial non-religiously motivated conduct that undermines the purposes of the law to the same degree as Mrs. Stutzman's request for a limited religious exemption. *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2003) (Alito, J.). Such exemptions "are of paramount concern when a law has the incidental effect of burdening religious practice," which the WLAD—at a minimum—unquestionably does here.

For example, the State exempts from WLAD protection for businesses that employ less than eight persons, employees working for a close family member or in domestic service, those renting certain multifamily dwellings, and persons seeking entry into distinctly private organizations. RCW 49.60.040(2), (5), & (10)-(11). Exemptions to the CPA also exist, including discrimination against certain tenants based on disability, sex, and marital or family status, RCW 49.60.222(2)(c), (3), (5)-(6), and discrimination against tenants in a dwelling where the landlord also lives.

These exemptions undermine WLAD and CPA purposes to the same (or a greater) degree as would protecting artistic expression and participation in religiously-objectionable weddings. *Cf. Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 365 (3d Cir. 1999) (Alito, J.) (overturning the denial of a religious exemption to a police department's ban on beards when a medical exemption was allowed). No legitimate reason—let alone a compelling one—exists for granting a religious exemption to other religious corporations and individuals, and broad secular exemptions, but denying one to Arlene's Flowers and Mrs. Stutzman. Mrs. Stutzman's religious objection is the same as the other exempted religious organizations' and individuals', and she is equally involved in weddings. Granting these groups and individuals an exception "endangers [the government's] interests" in preventing "discrimination" to an identical degree. *See Lukumi*, 508 U.S. at 542 & 537 (explaining the State cannot "devalue[] religious reasons for" so-called discrimination "by judging them to be of less import than nonreligious reasons").

D. The Superior Court Violated Mrs. Stutzman's Right To Freedom of Association By Forcing Her To Collaborate Artistically With Those Celebrating Marriages That Are Inconsistent With Her Religious Beliefs.

The freedom of speech protects the right to associate, including a right that may elicit strong emotions—the right not to associate. *See Dale*,

530 U.S. at 647. While Mrs. Stutzman very much enjoyed her friendship with Mr. Ingersoll, she also has the right to accept artistic commissions only from those wishing to express messages about marriage that comport with her own. *Id.* at 648; *Hurley*, 515 U.S. at 574. As in *Dale*, where the Boy Scouts forced association with a homosexual scoutmaster would have sent the conflicting message that the "Boy Scouts accepts homosexual conduct as a legitimate form of behavior," *Dale*, 515 U.S. at 653, forcing Mrs. Stutzman to associate with Mr. Ingersoll and Mr. Freed on this particular commission would send the conflicting message that she condones marriages that violate her church's teaching and her faith. Strict scrutiny thus applies on free association grounds. *See id.* at 680. The superior court erred in holding otherwise and labeling Mrs. Stutzman as a perpetrator of "invidious discrimination." CP 2514; *see infra* Part V.F.1.

E. The Superior Court Violated The Hybrid Rights Doctrine By Forcing Mrs. Stutzman To Engage In Expression That Violates Her Religious Beliefs.

When a law infringes upon two or more fundamental rights, strict scrutiny applies under the hybrid rights doctrine. *See First Covenant Church*, 120 Wn.2d at 225; *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1032 (9th Cir. 2004). Compelling Mrs. Stutzman to create expression celebrating the State's definition of marriage impinges upon her rights to (1) free speech, (2) free exercise, and (3) free

association. *See supra* Parts V.B-D. This presents a classic hybrid rights situation. *See Smith*, 494 U.S. at 882. Accordingly, strict scrutiny applies and the Superior Court erred in holding otherwise. CP 2352-53.

F. Applying The WLAD And CPA To Mrs. Stutzman Does Not Satisfy The Rigorous Standard Of Strict Scrutiny.

Strict scrutiny, the most demanding test known to constitutional law, *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997), requires the State to show that the law in question serves a compelling interest and is the least restrictive means of achieving that goal, *id.* at 533-34; *see also First United Methodist Church of Seattle v. Hearing Examiner for Seattle Landmarks Preservation Bd.*, 129 Wn.2d 238, 246, 916 P.2d 374 (1996). The Superior Court erred in holding that coercing Mrs. Stutzman's art to serve the expressive purposes of Mr. Ingersoll and Mr. Freed survives this intentionally rigorous test. CP 2357, CP 2360.

1. State law does not serve a compelling interest when no invidious discrimination has occurred and many market alternatives exist.

The State does not have a compelling interest in combating discrimination in general. Rather, the State has a compelling interest in combating *invidious* discrimination. *See Moran v. State*, 88 Wash. 2d 867, 874, 568 P.2d 758 (1977) (recognizing that the State's interest in prohibiting discrimination "*goes no further than invidious*

discrimination") (emphasis added); *see also Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984) (observing that public accommodations laws rightly target "acts of *invidious* discrimination") (emphasis added). It is right to suppress irrational or invidious discrimination. But reasoned religious distinctions are not invidious. The State engages in forbidden viewpoint discrimination when it penalizes and requires Mrs. Stutzman, against her will, to create artistic expression condoning marriages that violate her faith.

Washington State's Code of Judicial Conduct (the "Code") illustrates the difference between invidious discrimination and discrimination *per se*. It defines "invidious" narrowly, explaining that it encompasses only those classifications that are "arbitrary, irrational, and not reasonably related to a legitimate purpose." CJC, Terminology. It also prohibits judges from membership only in those organizations "that practice[] *invidious* discrimination," not those that discriminate in any sense. WA. R. CJC 3.6(A) (emphasis added). The Code stresses that "invidious discrimination is a complex question" and that whether a judge is a member of a prohibited organization depends on a close examination of many factors, including the "religious, ethnic, or cultural values of legitimate common interest to its members." *Id*. cmt. 2.

This is not a case where Mrs. Stutzman engaged in arbitrary and irrational discrimination, unmoored from any legitimate purpose. Mrs. Stutzman has consistently served (and employed) gays and lesbians. She served Mr. Ingersoll for nearly 10 years, only once declining a commission that would require her to create expression that violated her religious beliefs about marriage.

When Mr. Ingersoll asked Mrs. Stutzman to do the flowers for his wedding, she faced "a very difficult decision" that would pain a friend. CP 152. She struggled with how to communicate her religious convictions to Mr. Ingersoll, CP 16, spoke to him kindly and compassionately, CP 1763-64, and made it abundantly clear to him that she took no "joy or satisfaction" in referring him to three other florists, but was simply being "sincere in her beliefs," CP 1763-64; 1742; 545. Mrs. Stutzman was so sincere that, at the time, Mr. Ingersoll said he understood her decision. CP 546. That is not invidious discrimination or bigotry, but simply remaining true to one's faith, which is what free exercise protections—including the WLAD's prohibition on creed discrimination—exist to protect. RCW 49.60.020.

Yet the Superior Court did not even consider whether Mrs. Stutzman's respectful referral after years of faithful service was "invidious discrimination." CP 2514. It simply deemed it so, reaching an extreme

conclusion that there can never be a "free speech exception (be it creative, artistic, or otherwise) to … public accommodation[]" laws, regardless of whether they require the "expression of a message with which the speaker disagrees." CP 2348. The superior court improperly focused on the state's broad interest in "combating discrimination" *per se* as supplying the requisite compelling interest without considering the context. CP 2357-58.

The superior court erred by not looking beyond broadly formulated interests to scrutinize the asserted harm of recognizing a narrow exemption for Mrs. Stutzman—in other words, "to look to the marginal interest in enforcing" the WLAD and CPA against her. *Hobby Lobby*, 134 S. Ct. at 277; *see also Hurley*, 515 U.S. at 572 (crediting state's argument that its public accommodations law served the important interest of prohibiting discrimination but still finding that the statute's "peculiar" "appli[cation]" to compel unwanted expression violated the First Amendment.). When a deep conflict exists between accessing commercial services, and coercing artistic expression, the Court should engage in prudent judicial balancing based on the specific interests at stake. This does not mean a florist shop is not a public accommodation for any purpose. Rather, the solution is a proper exception for expressive services resulting from message-based objections, not senseless animus.

Given the strong constitutional protections at stake and the State's weaker interest in ensuring access to floral design services, Mrs. Stutzman's fundamental rights should prevail. The State already permits a myriad of religious and secular exemptions to the WLAD's and CPA's "non-discrimination" rule. *See supra* Part C.2. And statutes do not protect a compelling interest when they leave appreciable damage to that interest unprohibited. *Lukumi*, 508 U.S. at 547.

Public accommodation laws do not serve a compelling state interest when they force an artist to express a message that violates her conscience.[28] *See Dale*, 530 U.S. at 658 (regarding this application as "peculiar"); *Hurley*, 515 U.S. at 572 (same). In this context, the WLAD's and CPA's only purpose is to allow exactly what the rule of speaker autonomy forbids, *id.* at 578, *i.e.*, permitting the State to deprive Mrs. Stutzman of the right "to control [her] own speech" and make "choices of content" that in Plaintiffs' eyes are "misguided, or even hurtful," *id.* at 574.[29] While Mr. Ingersoll and Mr. Freed allege $7.91 in damages, the superior court emphasized the dignitary harm presumed when

[28] In *Barnette*, for example, the State had to respect the freedom of conscience even of children in a highly regulated, compulsory school environment. 319 U.S. at 641 ("[W]e apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization.").

[29] *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 583 (2000) (explaining that in *Hurley* the Supreme Court "rejected [the] contention that [state] public accommodation law overrode [a private speaker's] right to choose the content of its own message.").

discrimination occurs. The same type of dignitary harm exist in forcing Mrs. Stutzman to violate her religious beliefs and create artistic expression against her will or forego a meaningful part of her business. CP 2341.

Moreover, such a sacrifice is completely unnecessary as a practical matter. Mr. Ingersoll and Mr. Freed had no trouble finding another florist in the Tri-Cities area who was happy to design flowers for their wedding; in fact, they received multiple offers to do so for free. CP 1732-35, 1746-47, 1846-48, 1854, 1860, 1867. Thus, no access problem exists. *Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2738 (2011). In fact, the Washington Human Rights Commission received no more than 70 complaints of sexual orientation discrimination in public accommodations from 2006-2013—and not only was no florist or wedding service provider charged, not a single claim was substantiated. CP 1508-34.

Finally, the Court's recognition of a narrow exception for Mrs. Stutzman will not result in widespread WLAD exemptions. *First*, similar claims could apply only to businesses that create and sell expression. This includes, for example, newspapers, publicists, speechwriters, photographers, and artists. *Second*, the compelled speech doctrine does not wholly exempt a business that creates and sells expression. It has no application, for example, to requests for any non-expressive goods or services that a business provides including gift items, raw products, or pre-

arranged flowers in Mrs. Stutzman's shop. *Third*, compelled speech claims would apply only to claims under the WLAD's public accommodation provision, not to its employment and housing provisions. The record shows no need to violate Mrs. Stutzman's constitutional rights. The State cannot force Mrs. Stutzman to create artistic expression against her will.

2. Respecting Mrs. Stutzman's faith and art may be accomplished through narrowly tailored means.

The State's marginal interest in ensuring people may obtain artistic floral designs celebrating same-sex weddings can be served "through means that would not violate [Mrs. Stutzman's] First Amendment rights." *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1, 19 (1986). The State must prove that the violation of Mrs. Stutzman's fundamental rights is absolutely necessary to accomplish its asserted interests. *Brown*, 131 S. Ct. at 2738. Here, the State has presented no evidence that forcing Mrs. Stutzman to violate her faith and engage in artistic expression against her will is the *only* way to serve its goals.

Without even considering the State's alternative measures, the WLAD applies to the vast majority of Mrs. Stutzman's work. By tailoring protection to her clearly artistic and expressive content decisions, only the bare minimum of Mr. Ingersoll's and Mr. Freed's statutory rights would be impacted and the Court would protect Mrs. Stutzman's constitutional

rights to the extent needed to protect her conscience. Any harm would be further mitigated by Mrs. Stutzman's good-faith referrals to an alternate provider. The State could also institute educational programs or ranking systems that promote non-discrimination and businesses that exemplify those ideals. *Cf. 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 507-08 (1996) (plurality op.). These options are more narrowly tailored means of advancing the State's non-discrimination goals.

Nor can the State complain that any less-restrictive alternative would require a customer to take action, or may be inconvenient, or may not work perfectly every time. *United States v. Playboy*, 529 U.S. 803, 824 (2000). The State may not assume that any plausible, less restrictive alternative would be ineffective. *Holt v. Hobbs*, 135 S. Ct. 853, 866 (2015). Market forces strongly incentivize businesses—including expressive businesses—to accept all orders. Here, for example, Mr. Ingersoll and Mr. Freed confirmed they had multiple offers from florists to do their wedding. CP 1867. There is no evidence that the State even considered these or other alternatives. *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373 (2002).

G. Personal And Corporate Liability Is Unprecedented And Punitive In This Context.

No Washington court had imposed personal liability on a business

owner in a public accommodation case like this and the Superior Court erred in becoming the first.[30] CP 2228-29. Mrs. Stutzman kept Arlene's Flowers' affairs separate from her personal affairs. *Grayson v. Nordic Constr. Co.*, 92 Wn.2d 548, 552-53 (1979). Although Washington courts recognize the responsible-corporate-officer doctrine, they have never applied it in a CPA or related action outside of the fraud context. *Grayson*, 92 Wn.2d at 554. The doctrine does not apply where a corporate officer has not engaged in any intentionally deceptive, misleading, or patently false conduct. *See One Pac. Towers Homeowners' Ass'n v. Hal Real Estate Invs., Inc.*, 108 Wn. App. 330, 347-48 (2001), *rev'd in part on other grounds,* 148 Wn.2d 319 (2002). Mrs. Stutzman's actions were transparent. Thus, she cannot be held personally liable here.

Analogies to supervisory liability in employment cases also lack support. This is a public accommodations case, the parties' dealings were at arm's length, and Arlene's Flowers, not Mrs. Stutzman, is the accommodation. Imposing personal liability on Mrs. Stutzman and on her small business for a single referral and in light of her past service to Mr. Ingersoll and Mr. Freed is legally unsupported and punitive.

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[30] Plaintiffs have cited *Lewis*, 53 Wn. App. at 205, but the defendant in that case never denied personal liability for her blatantly discriminatory conduct. Consequently, the *Lewis* Court never considered the question at issue here. Reliance on *Lewis'* dicta is inappropriate as it "is neither binding nor persuasive." *Hildahl v. Bringolf*, 101 Wn. App. 634, 650 (2000).

VI. CONCLUSION

That our society embraces conflicting ideas about marriage is all the more reason to protect the rights of citizens like Mrs. Stutzman who may express a minority view, *see Dale*, 530 U.S. at 660, even while serving gay and lesbian residents in the State. Yet the superior court's approach forces Mrs. Stutzman to create expression against her will and conscience or face severe financial and personal consequences. This is neither the path toward a diverse and tolerant society, nor reconcilable with Mrs. Stutzman's constitutional freedoms. Mrs. Stutzman respectfully requests that this Court reverse the superior court's judgments and rule in Mrs. Stutzman's favor on the statutory or constitutional grounds herein.

Respectfully submitted this the 16th day of October, 2015.

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CERTIFICATE OF SERVICE

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APPENDIX

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U.S. Const. Amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Wash. Const. Art. I § 11

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Adopted 1889. Amended by Amendment 4 (Laws 1903, p. 283, § 1, approved Nov. 1904); Amendment 34 (Laws 1957, S.J.R. No. 14, p. 1299, approved Nov. 4, 1958); Amendment 88 (Laws 1993, H.J.R. No. 4200, p. 3062, approved Nov. 2, 1993).

RCW 49.60.010. Purpose of chapter

This chapter shall be known as the “law against discrimination.” It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status,

sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

[2007 c 187 § 1, eff. July 22, 2007; 2006 c 4 § 1, eff. June 8, 2006; 1997 c 271 § 1; 1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

RCW 49.60.020. Construction of chapter—Election of other remedies

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Inclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage.

[2007 c 187 § 2, eff. July 22, 2007; 2006 c 4 § 2, eff. June 8, 2006; 1993 c 510 § 2; 1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614-30.]

RCW 49.60.030. Freedom from discrimination--Declaration of civil rights

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

[2009 c 164 § 1, eff. July 26, 2009; 2007 c 187 § 3, eff. July 22, 2007; 2006 c 4 § 3, eff. June 8, 2006; 1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

RCW 49.60.040. Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Aggrieved person” means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

(2) “Any place of public resort, accommodation, assemblage, or amusement” includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(3) “Commission” means the Washington state human rights commission.

(4) “Complainant” means the person who files a complaint in a real estate transaction.

(5) “Covered multifamily dwelling” means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

(6) “Credit transaction” includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not

limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

(7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(8) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

(9) “Dwelling” means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) “Employee” does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(11) “Employer” includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

(12) “Employment agency” includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

(13) “Families with children status” means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(14) “Full enjoyment of” includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

(15) “Honorably discharged veteran or military status” means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(16) “Labor organization” includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

(17) “Marital status” means the legal status of being married, single, separated, divorced, or widowed.

(18) “National origin” includes “ancestry.”

(19) “Person” includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(20) “Premises” means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(21) “Real estate transaction” includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

(22) “Real property” includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(23) “Respondent” means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

(24) “Service animal” means an animal that is trained for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability.

(25) “Sex” means gender.

(26) “Sexual orientation” means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, “gender expression or identity” means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

[2009 c 187 § 3, eff. July 26, 2009. Prior: 2007 c 317 § 2, eff. July 22, 2007; 2007 c 187 § 4, eff. July 22, 2007; 2006 c 4 § 4, eff. June 8, 2006; 1997 c 271 § 3; 1995 c 259 § 2; prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

RCW 49.60.215. Unfair practices of places of public resort, accommodation, assemblage, amusement--Trained dog guides and service animals

(1) It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates

charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, status as a mother breastfeeding her child, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

(2) This section does not apply to food establishments, as defined in RCW 49.60.218, with respect to the use of a trained dog guide or service animal by a person with a disability. Food establishments are subject to RCW 49.60.218 with respect to trained dog guides and service animals.

[2011 c 237 § 1, eff. July 22, 2011; 2009 c 164 § 2, eff. July 26, 2009; 2007 c 187 § 12, eff. July 22, 2007; 2006 c 4 § 13, eff. June 8, 2006; 1997 c 271 § 13; 1993 c 510 § 16. Prior: 1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue • Suite 2000• MS TB 14 • Seattle WA 98104-3188
(206) 464-7745

March 28, 2013

VIA FEDERAL EXPRESS

Barronelle Stutzman
Arlene's Flowers, Inc.
1177 Lee Blvd.
Richland, WA 99352

Re: Violation of the Consumer Protection Act

Dear Ms. Stutzman:

I am an Assistant Attorney General in the Washington State Attorney General's Office. It has come to the attention of our Office that on or about March 1, 2013, you refused to sell floral arrangements to a same-sex couple for their wedding because of the couple's sexual orientation. Refusing to provide goods or services on the basis of a consumer's or consumers' sexual orientation is an unfair practice under Washington's Law Against Discrimination, RCW 49.60, and therefore violates the Washington Consumer Protection Act, RCW 19.86. Our Office is charged with enforcing the Consumer Protection Act.

In an effort to resolve this matter and to avoid further action by our Office, up to and including the filing of a lawsuit, we would like to provide you the opportunity to agree that, in the future, you will not discriminate against consumers based on their sexual orientation. This means that as a seller of goods or services, you will not refuse to sell floral arrangements for same-sex weddings if you sell floral arrangements for opposite-sex weddings.

I have enclosed an Assurance of Discontinuance (AOD) reflecting such an agreement for your review. If you agree to enter into this AOD, you agree not to discriminate against consumers based on their sexual orientation in the future. Please note that the AOD is not an admission by you that you violated the law and it does not include monetary payments or attorneys' fees, both of which are provided for under the Consumer Protection Act. However, if you fail to abide by the terms of the AOD after signing it, you could be subject to potential legal action including injunctions, civil penalties of up to $2000 per violation, and attorneys' fees and costs.

It is our preference to resolve this matter in a fair, measured, and appropriate manner. We believe that the enclosed AOD does this. I would appreciate hearing from you no later than close of business, April 8, 2013, regarding your willingness to sign the AOD. I would also be happy to discuss this matter with you further, either in person or by telephone; if this is something you would like to do, please let me know and I will find a convenient time that works for both of us. However, if you do not respond or if you are not willing to sign the AOD, we will be required to pursue more formal options to address this matter.

You, or your counsel, may reach me by email at sarah.shifley@atg.wa.gov, or by telephone at the number listed below. Thank you in advance for your prompt attention to this letter.

Sincerely,

SARAH A. SHIFLEY
Assistant Attorney General
(206) 389-3974

SAS:lra

Enclosure

STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

In the matter of: ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN, Respondents.	NO. ASSURANCE OF DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Sarah A. Shifley, Assistant Attorney General, files this Assurance of Discontinuance pursuant to RCW 19.86.100.

I. INVESTIGATION

1.1 The Attorney General initiated an investigation into the business practices of Arlene's Flowers, Inc., d/b/a Arlene's Flowers and Gifts, and its president, owner, and operator, Barronelle Stutzman (collectively, "Respondents").

1.2 Respondents are engaged in the sale of goods or services in the state of Washington, including the sale of floral arrangements for weddings and other occasions, through a retail store located at 1177 Lee Blvd., Richland, WA 99352.

1.3 On or about March 1, 2013, Respondents refused to sell floral arrangements to a same-sex couple for their wedding because of the couple's sexual orientation.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7745

II. ASSURANCE OF DISCONTINUANCE

2.1 The Attorney General deems and the Respondents acknowledge that the following constitutes an unfair or deceptive act or practice in violation of the Consumer Protection Act, RCW 19.86:

> *Discriminating against any person* by directly or indirectly refusing to sell or provide any goods or services – including flowers, floral arrangements, or other floral services for a wedding – because of the person's sexual orientation in violation of Washington's Law Against Discrimination, RCW 49.60.

2.2 Respondents agree that they will not engage in the above-identified unfair or deceptive act or practice. Respondents further agree that they will not permit their agents, employees, or any other people acting on their behalf, to engage in the above-identified act or practice.

2.3 This Assurance of Discontinuance shall not be considered an admission of violation for any purposes. However, failure to comply with this Assurance of Discontinuance shall be *prima facie* evidence of a violation of RCW 19.86.020 and may result in imposition by the Court of injunctions and civil penalties of up to $2,000 per violation, attorneys' fees and costs, and any other relief that the Court may order pursuant to RCW 19.86.

2.4 Nothing in this Assurance of Discontinuance shall be construed so as to limit or bar any other person or entity from pursuing available legal remedies against the Respondents.

DATED this _____ day of _____, 2013.

Approved for entry:

_____
JUDGE/COURT COMMISSIONER

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7745

Presented by:

ROBERT W. FERGUSON
Attorney General

SARAH A. SHIFLEY, WSBA #39394
Assistant Attorney General
Attorneys for State of Washington

Agreed to, Approved for Entry, Notice of Presentation Waived:

BARRONELLE STUTZMAN
Respondent

ARLENE'S FLOWERS, INC.
By:_____
Respondent

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7745

THE HONORABLE ALEXANDER C. EKSTROM

IN THE SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

ROBERT INGERSOLL AND CURT FREED, Plaintiffs, V. ARLENE'S FLOWERS, INC., D/B/A ARLENE'S FLOWERS AND GIFTS; AND BARRONELLE STUTZMAN, Defendants.	No. 13-2-00953-3 **JUDGMENT AND ORDER OF PERMANENT INJUNCTION**

THIS MATTER comes before the Court on Plaintiffs' Motion for Partial Summary Judgment and other motions for summary judgment as fully described in this Court's Memorandum Decision and Order Granting Plaintiff State of Washington's Motion for Partial Summary Judgment on Defendants' Non-Constitutional Defenses, Denying Defendants' First Motion for Summary Judgment Against Plaintiff State of Washington, and Denying in Part and Granting in Part Defendants' Motion for Partial Summary Judgment on Plaintiffs' Claims Against Barronelle Stutzman in Her Personal Capacity, entered on January 7, 2015 (Dkt. 205), and its Memorandum Decision and Order Denying Defendants' Motion for Summary Judgment Based on Plaintiffs' Lack of Standing, Granting Plaintiff State of Washington's

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Motion for Partial Summary Judgment on Liability and Constitutional Defenses, and Granting Plaintiffs Ingersoll and Freed's Motion for Partial Summary Judgment, entered on February 18, 2015 (Dkt. 220).

As explained in detail in the Memorandum Decisions and Orders described above, the Court finds and concludes that, by refusing to "do the flowers" for Ingersoll's and Freed's wedding, Defendants Barronelle Stutzman and Arlene's Flowers, Inc. violated the Washington Law Against Discrimination, RCW 49.60.010, *et seq.*, and the Washington Consumer Protection Act, RCW 19.86.010, *et seq.*

Accordingly, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, are permanently enjoined and restrained from violating the Washington Law Against Discrimination, RCW ch. 49.60, and the Consumer Protection Act, RCW ch. 19.86, by discriminating against any person because of their sexual orientation. The terms of this permanent injunction include a prohibition against any disparate treatment in the offering or sale of goods, merchandise, or services to any person because of their sexual orientation, including but not limited to the offering or sale of goods, merchandise, or services to same-sex couples. All goods, merchandise, and services offered or sold by Defendants shall be offered and sold on the same terms to all customers without regard to sexual orientation. All goods, merchandise, and services offered ~~and~~ or sold to opposite sex couples shall be offered ~~and~~ or sold on the same terms to same-sex couples. Defendants shall immediately inform all of their officers, agents, servants, employees, and attorneys, and those including but not limited to goods, merchandise and services for weddings & commitment ceremonies

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persons in active concert or participation with them, of the terms and conditions of this Judgment and Permanent Injunction.

2. Plaintiffs Robert Ingersoll and Curt Freed are entitled to an award of actual damages from Defendants, jointly and severally, under RCW 49.60.030 and RCW 19.86.090. The Court reserves determination of the amount of actual damages until after any appeal of this Judgment and Permanent Injunction has been exhausted.

3. Plaintiffs are entitled to an award of costs of suit, including reasonable attorneys' fees, pursuant to RCW 49.60.030 and RCW 19.86.090. The Court reserves determination of the amount of costs and fees to be awarded until after any appeal of this Judgment and Permanent Injunction has been exhausted.

4. The Court finds that there is no just reason for delay, and directs the entry of this Judgment and Permanent Injunction as a final judgment pursuant to Civil Rule 54(b).

5. The Court retains continuing jurisdiction of this action to enforce the terms of the Permanent Injunction.

DATED this 27th day of March, 2015.

THE HONORABLE ALEXANDER C. EKSTROM
BENTON COUNTY SUPERIOR COURT JUDGE

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745

Presented by:

HILLIS CLARK MARTIN & PETERSON P.S.

By _____

Michael R. Scott, WSBA #12822
Amit D. Ranade, WSBA #34878
Jake Ewart, WSBA #38655

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
Margaret Chen, WSBA #46156

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Elizabeth Gill (Admitted *pro hac vice*)
ACLU Foundation
LGBT & AIDS Project
Attorneys for Plaintiffs
Robert Ingersoll and Curt Freed

ND: 99994.022 4837-9881-8594v1

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The Honorable Judge Alex Ekstrom

STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff v. ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN, Defendants.	NO. 13-2-00871-5 JUDGMENT FOR PLAINTIFF STATE OF WASHINGTON ON PLAINTIFF'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT **(CLERK'S ACTION REQUIRED)** ~~[PROPOSED]~~

JUDGMENT SUMMARY

Pursuant to RCW 4.64.030, the following information shall be entered in the Clerk's Execution Docket:

1.	Judgment Creditor:	State of Washington
2.	Attorneys for Judgment Creditor:	Todd Bowers, Senior Counsel; Kimberlee Gunning, Assistant Attorney General; Noah Purcell, Solicitor General
3.	Judgment Debtors:	Arlene's Flowers d/b/a Arlene's Flowers and Gifts; Barronelle Stutzman
4.	Attorneys for Judgment Debtor:	Kristen K. Waggoner; Jonathan Scruggs, *pro hac vice*; Austin Nimocks, *pro hac vice*; Kellie Fiedorek, *pro hac vice*; Alicia M. Berry

5. Principal Judgment Amount (Penalties): $1,000.00
Attorneys' Fees and Costs: $1.00
Total Judgment Amount: $1,001.00

6. Amount of Interest Owed to Date of Judgment: $0.00

7. Total of Taxable Costs and Attorneys Fees: $1.00

This matter came before the Court on Plaintiff State of Washington's presentation of a judgment on the Court's orders of January 7, 2015 (Memorandum Decision and Order Granting Plaintiff State of Washington's Motion for Partial Summary Judgment on Defendants' Non-Constitutional Defenses) [Dkt. 205], and February 18, 2015 (Memorandum Decision and Order Denying Defendants' Motion for Summary Judgment Based on Plaintiffs' Lack of Standing, Granting Plaintiff State of Washington's Motion for Partial Summary Judgment on Liability and Constitutional Defenses) [Dkt. 218]. These orders granted summary judgment to the Plaintiff State of Washington on its Consumer Protection Act (CPA) claim against Defendants and denied Defendants' motions for summary judgment.

The Court heard the argument of counsel for the Plaintiff State of Washington, Todd Bowers, and Kristen K. Waggoner, counsel for Defendants. The Court considered its aforementioned orders on the Plaintiff's motions for summary judgment, the parties' memoranda regarding the imposition of penalties, as well as the pleadings and other papers filed in this matter. Based on all of this and the argument of counsel, the Court hereby enters judgment as follows:

JUDGMENT

1. Pursuant to RCW 19.86.080(1) and CR 65, Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, are permanently enjoined and restrained from violating RCW 19.86, the Consumer Protection Act, by discriminating against any person because of their sexual orientation. The terms of this permanent injunction include a prohibition against any disparate treatment in the offering or

sale of goods, merchandise, or services to any person because of their sexual orientation, including but not limited to the offering or sale of goods, merchandise, or services to same-sex couples. All goods, merchandise, and services offered or sold by Defendants shall be offered or sold on the same terms to all customers without regard to sexual orientation. All 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. Defendants shall immediately inform all of their officers, agents, servants, employees, and attorneys; and those persons in active concert or participation with them of the terms and conditions of this judgment and permanent injunction.

2. Defendants shall pay $1,000.00 to the Plaintiff State of Washington. Defendants are jointly and severally liable for this amount, which is imposed as a civil penalty pursuant to RCW 19.86.140. The parties agree and the Court orders that Defendants' payment is due 60 days after any appeal in this cause becomes final. Payment shall be made via a valid check paid to the order of the "Attorney General—State of Washington" and shall be due and owing upon entry of this judgment and shall be sent to the Office of the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.

3. Plaintiff State of Washington is awarded costs and reasonable attorneys' fees of $1.00.

4. The Court retains continuing jurisdiction of this action to enforce the terms of the permanent injunction.

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DONE IN OPEN COURT this 27th day of March, 2015.

HONORABLE JUDGE ALEXANDER EKSTROM
Judge of the Superior Court

Presented by:

ROBERT W. FERGUSON
Attorney General

TODD BOWERS, WSBA #25274
Senior Counsel
KIMBERLEE GUNNING, WSBA #35366
Assistant Attorney General
Attorneys for Plaintiff
State of Washington

Approved to Form:
Notice of Presentation Waived:

ALLIANCE DEFENDING FREEDOM

KRISTEN K. WAGGONER, WSBA #27790
Attorney for Defendants