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 AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS

The Frederick Douglass Foundation, the National Hispanic Christian Leadership Conference, the National Black Church Initiative, the Coalition of African American Pastors USA, the National Black Religious Broadcasters, Alveda King Ministries, the Radiance Foundation, Mount Calvary Christian Center, Church of God in Christ, Hosanna Asamblea De Dios, New Hope International Church, and Ryan T. Anderson

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I. INTEREST OF THE *AMICI CURIAE*

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

Amici are a diverse group of organizations, churches, pastors, and individuals who together represent millions of people nationally and in Washington State who believe in and advocate for the view that marriage is a union between one man and one woman. The organizational *Amici* represent significant portions of the African American and Hispanic communities. They speak on behalf of more than 70,000 African American and Hispanic churches, and tens of millions of African Americans and Hispanic Americans, throughout the United States. These *Amici* have an interest in denouncing the spurious notion that understanding marriage to be a union between a man and a woman is akin to holding racist views about marriage. The State, the Respondents Ingersoll and Freed, and *Amici* including the NAACP and others, have argued that the two views about marriage are comparable, so that

government should treat proponents of one man and one woman marriage like racists. *Amici*, as members of the African American and Hispanic communities, have a strong interest in debunking that comparison.

The church *Amici* share this interest representing diverse congregations in Washington State, including many African American, Hispanic American, and Asian American Washingtonians. These congregations include many members who own businesses and work in the wedding industry. Accordingly, this case poses an issue of great concern to the church *amici* and the individuals they represent.

The scholar *Amicus* is a published author who studied the institution of marriage and carefully analyzed the moral, political, and jurisprudential implications of redefining marriage to include same-sex couples. He has an interest in explaining that rational reasons underlie the view that marriage is inherently a union between a man and a woman.

II. INTRODUCTION

This case is about the status of people of good will who continue to believe what our law long held about marriage—that it is a union of husband and wife. It is about whether the government may penalize these Americans for living out that belief in the public square.

The Supreme Court ruled that the U.S. Constitution requires states to recognize same-sex marriage, but its ruling in no way requires private

citizens or their businesses, schools, or charities to facilitate such marriages against their conscience. Indeed, the Court went out of its way to affirm the right of every American to give witness to dissenting beliefs, stating that Americans who believe marriage is between one man and one woman "reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here."[1]

As the Supreme Court recognized, this view of marriage – call it the conjugal view – did not originate in animus; history confirms that. Thus, Mrs. Stutzman, seeks the freedom to act on her reasonable, conscientious belief about marriage—while leaving same-sex couples free to do the same.

Mrs. Stutzman's belief about the nature of marriage is eminently reasonable. It is a view shared throughout history by religious and *nonreligious* cultures. In fact, nearly every culture has singled out male-female bonds for recognition and regulation. This includes ancient thinkers fully aware of same-sex sexual relationships—but ignorant of Judaism and Christianity—who nonetheless saw special social value in the kind of union that only a man and woman can form.

[1] *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015).

The conjugal view is also impossible to ascribe to hostility toward those identifying as gay or lesbian. First, the countless cultures that have singled out male-female bonds for special treatment span the spectrum of attitudes toward homosexuality. Second, some classical thinkers who affirmed the distinct value of such bonds worked in cultures where same-sex sexual activity was accepted and practiced across society, and nothing like our modern concept of gay identity existed. They could not have been motivated by bias or animus against gay people as a class. Therefore, the conjugal view's intellectual roots are not found in religion or bias, but in honest and carefully developed beliefs about the common good.

This cannot be said of hostility to interracial marriage. Conceptually and historically, the two views are nothing alike. In all human history, opposition to interracial marriage only arose out of broader campaigns to oppress a particular group. Nothing of the sort is true of support for the conjugal view of marriage.

Nor does the government have a compelling interest to enforce in this case. The right of religious liberty that Mrs. Stutzman has invoked concerns the institution of marriage, not sexual orientation in general. Mrs. Stutzman's choice to act on a reasonable vision of marriage drives no one to the margins and excludes no one from public life. It is nothing like race discrimination. This Court should hold for the Appellant.

III. STATEMENT OF THE CASE

Amici incorporate by reference Appellants' Statement of the Case.

IV. ARGUMENT

A. The conjugal view of marriage is eminently reasonable. Intellectual and cultural history refute the charge that only animus motivates the conjugal view.

Mrs. Stutzman's religious liberty and conscience claims are rooted in a view of marriage that has found support in reasoned reflection that spans countless traditions across several millennia.

Many cultures and thinkers have understood marriage as a stable sexual union of man and woman, apt for family life. It is historically impossible to attribute these cultural and intellectual traditions to any one religion, or to hostility toward people identifying as homosexual. They confound the idea that only a narrow religious impulse or prejudice could motivate the view that the conjugal union of husband and wife has distinctive value.

For millennia, cultures around the world have regulated male-female sexual unions in particular, with a view to children's needs. As one historian observes, "Marriage, as the socially recognized linking of a specific man to a specific woman and her offspring, can be found in all

societies. Through marriage, children can be assured of being born to both a man and a woman who will care for them as they mature."[2]

Major intellectual traditions affirmed the special value of male-female bonds. Plato wrote favorably of legislating to have people "couple[], male and female, and lovingly pair together, and live the rest of their lives" together.[3] For Aristotle, the foundation of political community was "the family group," meaning "the nuclear family."[4] In Aristotle's view, indeed, "between man and wife friendship seems to exist by nature," and their conjugal union has primacy even over political union.[5]

Likewise, the ancient Greek historian Plutarch wrote approvingly of marriage as "a union of life between man and woman for the delights of love and the begetting of children."[6] He considered marriage a distinct form of friendship, specially embodied in "physical union."[7] And for Musonius Rufus, the first-century Roman Stoic, a "husband and wife" should "come together for the purpose of making a life in common and of

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[2] G. Robina Quale, *A History of Marriage Systems* 2 (Praeger 1988).
[3] Plato, 4 *The Dialogues of Plato* 407 (Benjamin Jowett trans. & ed., Oxford Univ., 1953) (360 B.C.).
[4] Alberto Moffi, *Family and Property Law*, *in Cambridge Companion to Ancient Greek Law* 254 (Michael Gagarin & David Cohen eds., 2005).
[5] Aristotle, *Ethics, in The Complete Works of Aristotle* 2 (Jonathan Barnes ed., rev. Oxford trans. ,1984) (1836).
[6] Plutarch, *Life of Solon*, *in 20 Plutarch's Lives* 4 (Loeb ed., 1961).
[7] Plutarch, *Erotikas* 769 (Loeb ed., 1961).

procreating children, and furthermore of regarding all things in common between them . . . even their own bodies."[8]

Not one of these thinkers was Jewish or Christian, or even influenced by Judaism or Christianity. Nor were they ignorant of same-sex sexual relations, which were common, for example, between adult and adolescent males in Greece. No one imagines that these great thinkers were motivated by sectarian religious concerns, ignorance, or hostility of any type toward anyone. Yet they reasoned their way to the view that male-female sexual bonds have distinctive and deeply important value.

Indeed, the anthropological evidence of a nearly perfect global consensus on sexual complementarity in marriage supports broader conclusions: First, no particular religion is uniquely responsible for the conjugal view of marriage. And second, it cannot be ascribed simply to bias or prejudice against people identifying as homosexual. After all, it has prevailed in societies that have spanned the spectrum of attitudes toward homosexuality – including ones *favorable* toward same-sex acts, and others lacking anything like our concept of gay identity.

So something besides bias or prejudice motivates the view that the union of man and woman has special value. That something is a rational

[8] Musonius Rufus, *Discourses XIIIA, in Musonius Rufus: The Roman Socrates* (Cora E. Lutz trans., 1947), *available at* https://sites.google.com/site/thestoiclife/the_teachers/musonius-rufus.

judgment shared across history and cultures, and affirmed by the great philosophers and teachers of humanity, from Socrates to Gandhi. Accordingly, Mrs. Stutzman should be free to keep acting in the public square on this honest, decent, and widely shared belief.

B. History shows that while oppression *must* have been the point of anti-miscegenation, it *could not* have been the goal of the conjugal view of marriage.

Attempts to lump support for the conjugal view together with opposition to interracial marriage fail, both historically and conceptually. Interracial marriage bans are the exception in world history. They have existed *only* in societies with a race-based caste system, and began *only* in connection with race-based slavery. The conjugal view of marriage, on the other hand, has been the norm throughout human history, shared by the great thinkers and religions of both East and West and by cultures with a wide variety of views on homosexuality.

And far from having been devised as a pretext for excluding same-sex couples—as some now charge—marriage as the union of husband and wife arose in many places entirely independent of and centuries before any debates about same-sex marriage. Again, it arose in cultures that had no concept of sexual orientation and in some that fully accepted

homoeroticism.[9] Searching the writings of Plato and Aristotle, Augustine and Aquinas, Maimonides and al-Farabi, Luther and Calvin, Locke and Kant, Gandhi and Martin Luther King Jr., one finds that the sexual union of male and female goes to the heart of their reflections on marriage, but considerations of race with respect to marriage are simply absent.[10]

> Ever since ancient Rome, class-stratified and estate-based societies had instituted laws against intermarriage between individuals of unequal social or civil status, with the aim of preserving the integrity of the ruling class…. But the English colonies stand out as the first secular authorities to nullify and criminalize intermarriage on the basis of race or color designations.[11]

Indeed, the earliest anti-miscegenation statutes—Maryland's was first in 1661—were part and parcel of chattel slavery.[12] Slaves, "could *not* marry legally; their unions received no protection from state authorities. Any master could override a slave's marital commitment."[13] Because they were not persons in the eyes of the law, "[t]he denial of legal marriage to slaves quintessentially expressed their lack of civil rights" – '[t]o marry

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[9] John Finnis, *Human Rights and Common Good* 315–88 (2011).
[10] *Id.*; John Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (1997)*; and* Scott Yenor, *Family Politics: The Idea of Marriage in Modern Political Thought* (2011).
[11] Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* 483 (Kindle ed. 2000).
[12] Francis Beckwith, *Interracial Marriage and Same-Sex Marriage* (Public Discourse, Witherspoon Institute, May 21, 2010), *available at* http://www.thepublicdiscourse.com/2010/05/1324/.
[13] Cott, *Public Vows: A History of Marriage and the Nation* 382 (emphasis in original).

meant to consent, and slaves could not exercise the fundamental capacity to consent."[14]

Francis Beckwith summarizes anti-miscegenation laws' history:

> The overwhelming consensus among scholars is that the reason for these laws was to enforce racial purity, an idea that begins its cultural ascendancy with the commencement of race-based slavery of Africans in early 17th-century America and eventually receives the imprimatur of "science" when the eugenics movement comes of age in the late 19th and early 20th centuries.[15]

He concludes:

> Anti-miscegenation laws…were attempts to eradicate the legal status of real marriages by injecting a condition—sameness of race—that had no precedent in common law. For in the common law, a necessary condition for a legitimate marriage was male-female complementarity, a condition on which race has no bearing.[16]

History is clear: anti-miscegenation laws were but one aspect of a legal system designed to hold a race of people in economic and political inferiority and servitude. They had nothing to do with varied intellectual traditions on the nature of marriage, and everything to do with subjugation.

C. Hostility to interracial marriage was and is unreasonable. Support for conjugal marriage is reasonable.

Philosophical reflection on the nature of marriage establishes the reasonableness of the conjugal view of marriage. In the Aristotelian

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[14] *Id*.
[15] Beckwith, *Interracial Marriage and Same-Sex Marriage*.
[16] *Id*.

tradition that has long informed Western thought and practice, community is created by common action – by cooperative activity, defined by common goods, in the context of commitment. The activities and goods build up that bond and determine the commitment that it requires.

It is in these three ways that the kind of union created by marriage is comprehensive: in (1) how it unites persons, (2) what it unites them with respect to, and (3) how extensive a commitment it demands. It unites two people in (1) their most basic dimensions, in mind *and* body; (2) with respect to procreation, family life, and its broad domestic sharing; (3) and permanently and exclusively.[17]

As to one, the bodily union of two people is much like the union of organs in an individual. Just as one's organs form a unity by coordinating for the biological good of the whole (one's bodily life), so the bodies of a man and woman form a unity by coordination (sexual union) for a biological good (reproduction) of the couple as a whole.

Second, marriage is oriented to procreation, family life, and thus a comprehensive range of goods. The act that makes marital love is also the kind of act that makes new life, creating new participants in every type of

[17] This argument is expanded upon in Chapter 1, "Men, Women, and Children: The Truth about Marriage," of Ryan T. Anderson, *Truth Overruled: The Future of Marriage and Religious Freedom* (2015), and in Chapter 2, "Comprehensive Union," of Sherif Girgis et al., *What Is Marriage? Man and Woman: A Defense* (2012).

good. So marriage itself, the bond embodied by that act, would be fulfilled by family life, and by the all-around domestic sharing uniquely apt for it.

Third, a union comprehensive in these two senses calls for a comprehensive commitment. Through time, that requires permanence; and at any given time, it requires exclusivity. People united in their whole persons—mind and body—should be united for their whole lives. Such a total commitment is also uniquely called for by the kind of relationship that is fulfilled by having and rearing children. For that is an inherently open-ended task calling for unconditioned commitment; and children's good is undermined by divorce and infidelity, which fragment families and often deprive children of fathers or mothers.

In short, the conjugal view of marriage is no arbitrary grab-bag of rules. It is a coherent vision that can make sense of many of our shared convictions about marriage—e.g., in the importance of its total commitment and link to family life. So whether the conjugal view is ultimately correct or mistaken, whether it should be enshrined in law or not, it is the fruit of honest and rich rational arguments.

D. Historically, religious views on conjugal marriage are more widely shared and deeply rooted than religious attempts to rationalize racism.

Although some invoked the Bible to support interracial marriage bans, religious views about marriage helped to eliminate those very laws.

Indeed, the first court to strike down an interracial marriage ban did so in light of a religious argument advanced by an interracial Catholic couple. Professor Fay Botham describes the reasoning behind the California Supreme Court's decision in *Perez v. Sharpe*:[18]

> [The argument] hinged upon several key points of Catholic doctrine: … third, that the Catholic Church has no law forbidding "the intermarriage of a nonwhite person and a white person"; and fourth, that the Church "respects the requirements of the State for the marriage of its citizens as long as they are in keeping with the dignity and Divine purpose of marriage."[19]

Botham continues:

> [The argument] appealed to the highest source of Catholic authority: the Holy Father himself. Citing Pope Pius XI's 1937 encyclical to the church in Germany, *Mit brennender Sorge*, [the lawyer] pointed out that the "Church has condemned the proposition that 'it is imperative at all costs to preserve and promote racial vigor and the purity of blood; whatever is conducive to this end is by that very fact honorable and permissible.'"[20]

The court sided with the Catholic plaintiffs and overturned the state's ban on interracial marriage. Part of the argument hinged on what marriage is and its connection to procreation:

> The right to marry is as fundamental as the right to send one's child to a particular school or the right to have offspring. Indeed, "We are dealing here with legislation which involves one of the

[18] *Perez v. Sharpe*, 32 Cal. 2d 711 (Cal. 1948).
[19] Fay Botham, *Almighty God Created the Races: Christianity, Interracial Marriage, and American Law (Chapel Hill: University of North Carolina Press, 2013), Kindle edition*, 310.
[20] *Id.* at 313.

> basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race."[21]

A few years later, the same court again addressed the meaning of marriage, finding that "the institution of marriage" serves "the public interest" because it "channels biological drives that might otherwise become socially destructive" and "ensures the care and education of children in a stable environment."[22]

The U.S. Supreme Court reached a similar conclusion in 1967 when it struck down all bans on interracial marriage in *Loving v. Virginia*. Declaring that such laws were premised on "the doctrine of White Supremacy,"[23] the Court held as follows:

> There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy.[24]

The law thus fell as an impermissible racial classification.

As in *Perez*, numerous religious groups argued that racism distorted a clear-eyed understanding of marriage. As Susan Dudley Gold

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[21] *Perez,* 32 Cal. 2d. at 711, 715 (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 536 (1942)).
[22] See *De Burgh v. De Burgh*, 250 P.2d 598, 601 (Cal. 1952).
[23] *Loving v. Virginia*, 388 U.S. 1, 7 (1967).
[24] *See id.* at 11–12.

recounts in "*Loving v. Virginia": Lifting the Ban against Interracial Marriage*:

> A coalition made up of Catholic bishops, the National Catholic Conference for Interracial Justice, and the National Catholic Social Action Committee filed a fourth amicus brief in favor of the Lovings. The bishops and the nonprofit groups became involved in the case because of their commitment "to end racial discrimination and prejudice" and because of the "serious issues of personal liberty" raised by the Lovings' ordeal.[25]

Catholics were not alone. Southern Baptist theologians also opposed bans on interracial marriage. In 1964, three years before the Supreme Court ruled in *Loving*, T. B. Maston published a booklet for the Christian Life Commission of the Southern Baptist Convention titled *Interracial Marriage*. While Maston thought "interracial marriages, at least in our society, are not wise," he was clear on their biblical status: "A case cannot be made against interracial marriages on the basis of any specific teachings of the Scripture."[26] Indeed, he argued, "The laws forbidding interracial marriages should be repealed."[27]

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[25] See Susan Dudley Gold, "*Loving v. Virginia": Lifting the Ban against Interracial Marriage* (New York: Cavendish Square Publishing, 2009), 71–72 (quotations in original).

[26] T. B. Maston, *Interracial Marriage*, Christian Life Commission, Southern Baptist Convention, 9.

[27] *Id.*at 9. Of course, there were Christians who claimed the Bible supported their position, but Maston showed how they misinterpreted the Scriptures. Any Old Testament prohibitions about marriage "were primarily national and tribal and not racial. The main motive for the restrictions was religious…. The Prohibitions regarding intermarriage in the Old Testament might be used to argue against the marriage of a Christian and a non-Christian, and even against the marriage of citizens of different nations, but they cannot properly be used to support arguments against racial intermarriage" *Id.*at 5. Maston went

E. The government's interest in a case like this is not compelling and is entirely unlike its interest in a case involving interracial marriage.

The strict scrutiny test that government must overcome before violating one of its citizens' religious freedom "look[s] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[s] the asserted harm of granting specific exemptions to particular religious claimants."[28]

Here, the government has no compelling interest in forcing conscientious citizens to participate in same-sex weddings in violation of their religious or moral convictions. Even people who personally support same-sex marriage can see that the government is not justified in coercing people who do not. Disagreements about the nature of marriage are not about the dignity of the people who identify as gay or lesbian. Americans on different sides of the marriage issue agree that everyone should be free to participate in public life on equal terms. That goal is only accomplished by allowing Mrs. Stutzman the freedom to operate her business according to her religious beliefs.

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on to note that in the Old Testament, "there are a number of instances of intermarriages," and "many of the great characters of the Bible were of mixed blood." *Id.*at 5–6. Maston pointed out that a sound Christian view of marriage had nothing to say about race but everything to say about sexual complementarity of male and female: "The Christian view which is soundly based on the biblical revelation is that marriage, which was and is ordained of God is a voluntary union of one man and one woman as husband and wife for life." *Id.* at 7.

[28] *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006).

The State claims a compelling interest in its public accommodation law. But Respondents Ingersoll and Freed received numerous offers for free floral arrangements and obtained their floral arrangements without additional cost. Their only harm, therefore, was emotional.

The Supreme Court has never held that the government has a compelling interest in protecting people from emotional harm. On the contrary, the Court has repeatedly protected the exercise of First Amendment rights, even when doing so caused citizens severe emotional distress. For example, the Court upheld Westboro Baptist Church picketers' Free Speech right to picket a Marine's funeral with signs stating "God Hates Fags," "Thank God for IED's" and "You're Going to Hell", despite the acute emotional harm it caused the Marine's family.[29] In reaching its decision, the Court stated: "As a Nation we have chosen…to protect even hurtful speech on public issues to ensure that we do not stifle public debate."[30]

Similarly, the Court upheld the First Amendment rights of parade organizers not to include an LGBT group in a St. Patrick's Day parade,[31] and the First Amendment rights of the Boy Scouts of America to remove a

[29] *Snyder v. Phelps*, 562 U.S. 443, 448 (2011).
[30] *Id.* at 461.
[31] *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 580-81 (1995).

gay assistant scout leader.[32] Both cases involved citizens who were emotionally harmed by the outcome.[33] Both cases involved public accommodation laws substantially similar to the one at issue in the present case.[34] And in both cases the Supreme Court ruled that neither the state's interest in public accommodation laws nor the citizen's emotional distress justified violation of First Amendment rights.[35]

Moreover, any comparison to invidious race discrimination must also fail. Unlike speech about traditional marriage, which does not bar a group of people from essential services, our country's terrible sin of invidious race discrimination, especially during the Jim Crow era, created a pervasive and significant barrier to African-Americans' full participation in society. As one scholar stated:

> There remains…a crucial difference between the race-based discrimination against African Americans in the Jim Crow South and *any* other form of discrimination or exclusion in our country. The pervasive impediments to equal citizenship for African Americans have not been matched by any other recent episode in American history. Our country has harmed many people…But the systemic and structural injustices perpetuated against African Americans – and the extraordinary remedies those injustices warranted – remain in a class of their own.[36]

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[32] *Boy Scouts of America v. Dale*, 530 U.S. 640, 656-659 (2000).
[33] *Hurley*, 515 U.S. at 580-81; *Dale*, 530 U.S. at 656-659.
[34] *Id.*
[35] *Id.*
[36] John D. Inazu, *A Confident Pluralism*, 88 S. Cal. L. Rev. 587, 603 (2015).

The dehumanization of African Americans that began with chattel slavery before the Civil War persisted for decades under Jim Crow laws, which prevented blacks and whites from associating or contracting with one another. Racism thus was entrenched and backed by state-sponsored violence. History shows that opposition to interracial marriage was part of this broader effort to subjugate a class of people. In that context, the government has a much different and far stronger interest to pursue when it comes to invidious race discrimination.

That is not true in this case. This case is about conscientious denials of wedding services for same-sex couples—which market forces in our pluralistic country, to say nothing of changing mores, are keeping fairly isolated. In every publicized case of a business owner declining to facilitate a same-sex ceremony, the service sought by the couple was available from other businesses.

Moreover, this case is not about refusing to serve gays and lesbians, but only about treating same-sex relationships as marriages. Mrs. Stutzman employed a self-identified gay employee and sold flowers to a same-sex couple for a decade. It was only when that couple asked her to arrange flowers for their same-sex *wedding celebration* that she declined—because she was unable in conscience to facilitate

the *event.*[37] Likewise, this case isn't about refusing patrons who identify as gay, but about offering services that violate a conscientious belief that marriage unites a man and woman.

V. CONCLUSION

Mrs. Stutzman's conflict of conscience is motivated by her reasonable beliefs about the nature of marriage. To state or to claim, as has been claimed in this case, that her refusal to support a gay wedding is the same as discriminating against gay persons is to misstate the facts of the case and the relationship between the parties. To compare it to race discrimination ignores the history of racism in this country. But more to the point of this brief, the claim flies in the face of the history and purpose of marriage itself. People of goodwill who care for and respect those in the gay community can and do continue to believe that marriage is best understood as uniting a man and a woman. The Court should reverse the appellate court and dismiss the claims against the Appellants.

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[37] Barronelle Stutzman, *Why a Friend is Suing Me: The Arlene's Flowers Story*, The Seattle Times (Nov. 9, 2015), http://www.seattletimes.com/opinion/why-a-good-friend-is-suing-me-the-arlenes-flowers-story/ ("I always liked bouncing off creative ideas with Rob for special events in his life . . . For 10 years, we encouraged that artistry in each other. I knew he was in a relationship with a man and he knew I was a Christian. But that never clouded the friendship for either of us or threatened our shared creativity—until he asked me to design something special to celebrate his upcoming wedding.").

DATED this September 30, 2016

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