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 *AMICUS CURIAE* THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF REVERSAL

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INTRODUCTION AND STATEMENT OF THE CASE

Sex, marriage, and religion are deeply important issues about which Americans hold a variety of beliefs. The freedom to form one's own beliefs about these issues—and to act on those beliefs—is protected by the Constitution as central to each citizen's own dignity and self-definition. *See, e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593 (2015).

As Justice Kennedy recently explained, this principle applies fully to religious citizens. For these citizens, living according to their religion "is essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts." *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2785 (2014) (Kennedy, J., concurring). This freedom includes not just the right to privately hold religious beliefs, but also the right to live by them, *i.e.*, to "establish one's religious … self-definition in the political, civic, and economic life of our larger community." *Id.*

Because sex, marriage, and religion are so deeply important to so many Americans, our disagreements on these subjects can be hurtful. It is surely painful, for example, to be told that one's religious or sexual identity is viewed as wrong, immoral, or backward by others. Still, our longstanding commitment to freedoms of thought, religion, and speech forbid the government from punishing the expression of unpopular ideas on these matters or coercing the expression of popular ones. Yet in this

case the State seeks both to punish Ms. Stutzman for living according to her view of marriage, and to compel her to help celebrate religiously significant events using her own artistic expression. That approach is irreconcilable with the pluralism the First Amendment exists to protect.

The Supreme Court's *Obergefell* decision illustrates this principle. The Court recognized that marriage is a deeply important and "transcendent" issue about which individuals should remain free to make their own decisions, without government coercion. *Obergefell*, 135 S. Ct. at 2594, 2599-2604. The Court fully understood that, for millions of Americans, a marriage is also a fundamentally *religious* event—one that "is sacred" and forms "a keystone of our social order." *Id.* at 2594, 2601. The Court saw no problem with people and institutions holding the "decent and honorable religious or philosophical" belief that marriage is limited to opposite-sex unions. *Id.* at 2602. Instead, it emphasized that the constitutional problem arises not from the existence of competing views, but only when one particular view of marriage "becomes enacted law and public policy" thereby putting "the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes" those who seek to live by a contrary view of marriage. *Id*. The "full promise of liberty," the Court explained, requires allowing "individuals to engage in intimate association without criminal lia-

bility," and forecloses government from making citizens "outlaw[s]" or "outcast[s]" for pursuing a less popular view of marriage. *Id.* at 2600.

The same open-minded pluralism that animates *Obergefell* is commanded by decades of First Amendment doctrine. *See, e.g.*, *W. Va. St. Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). Washington is no more permitted to punish Ms. Stutzman for expressing a minority view of marriage in Washington than Ohio was free to punish Mr. Obergefell for living according to a minority view of marriage in Ohio.

The State's arguments about dignitary harm, Att'y Gen. Br. at 4, 22, 34-35, 37-38, do not override these First Amendment principles. The possibility of personal harm from an unwelcome message is real. But the First Amendment squarely forbids the government from punishing expression because it may be hurtful to others. *See, e.g.*, *Snyder v. Phelps*, 562 U.S. 443 (2011). The State's case against Ms. Stutzman's religious conduct and expression cannot possibly meet this high standard. Free citizens have the right to make up their own minds and express their own messages about sex, marriage, and religion, without "compulsion of the State." *Lawrence v. Texas*, 539 U.S. 558, 574 (2003). Anything else would contradict the lessons of *Obergefell* and the requirements of the First Amendment.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Becket Fund for Religious Liberty is a nonprofit, nonpartisan law firm dedicated to protecting the free expression of all religious traditions. The Becket Fund has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits across the country and around the world. The Becket Fund does not take a position on same-sex marriage as such, but focuses instead on same-sex marriage only as it relates to religious liberty. The Becket Fund files this brief to urge the Court to apply time-honored First Amendment principles to protect the rights of all citizens to form and live according to their own deeply-held beliefs about sex, marriage, and religion.

ARGUMENT

I. Strict Scrutiny Applies to the State's Efforts to Force Ms. Stutzman to Personally and Artistically Celebrate Same-Sex Weddings.

In the unique circumstances of this case, the State's application of WLAD to Ms. Stutzman is subject to strict scrutiny on two independent grounds: because it violates Ms. Stutzman's freedom of conscience and religion under Article 1, Section 11 of the Washington State Constitution, and because it violates her right of free speech under the First Amendment of the U.S. Constitution.

Freedom of Conscience and Religion. Washington's constitution guarantees "absolute freedom of conscience" and protects religiously-motivated conduct and beliefs. *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 224, 840 P.2d 174, 186 (1992). "[A] party challenging government action" under Art. 1, Sec. 11 "must show two things: that the belief is sincere and that the government action burdens the exercise of religion." *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 642, 211 P.3d 406, 410 (2009). The government must then show it used a narrow means to achieve a compelling goal. *Id.*

In Ms. Stutzman's case, all parties agree that she has a sincere religious belief that she may not participate in celebrating a same-sex wedding by providing custom floral arrangements. Op. 46-47. The court below assumed that the State's order, which would force Ms. Stutzman to choose between creating floral arrangements to celebrate all same-sex weddings and not creating floral arrangements for any weddings, was a "substantial burden" on her religious exercise. *Id.* at 48. Thus, it correctly concluded that strict scrutiny applied—but incorrectly held that the State's actions passed strict scrutiny in this case. *Id.* at 48-51.

Freedom of Speech. The court below also erred when it categorically declared that fundamental constitutional liberties like freedom of speech and association can never require any exception to public accommodation

laws. Op. 39. That is wrong. The Supreme Court has recognized repeatedly that speech and association rights have required just such an exception to public accommodation laws. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 659 (2000). Furthermore, our constitutional commitment to diversity of ideas means the government can neither punish expressive conduct because of its message, *see Texas v. Johnson*, 491 U.S. 397 (1989), nor compel a speaker to engage in expressive conduct the government favors, *see Hurley*, 515 U.S. at 557. Here, the State has done both.

The Supreme Court has explained that the point of forbidding compelled expression "is simply the point of all speech protection, which is to shield just those choices of content that in someone's eyes are misguided, or even hurtful." *Id.* at 573-74. These principles ensure our freedoms—and our diversity—by prohibiting the government from punishing people for expressing unpopular ideas or refusing to express popular ones.

These principles apply with full force to issues that are particularly important, like sex, marriage, and religion. As the Supreme Court has explained, "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *Barnette*, 319 U.S. at 642. The government cannot "prescribe what shall

be orthodox in politics, nationalism, religion, or other matters of opinion" and cannot "force citizens to confess by word or act their faith therein." *Id.*

Compelled symbolic speech. The State would require Ms. Stutzman to help celebrate same-sex weddings by providing custom artistic floral arrangements and personal services. This is compelled speech.

The State cannot avoid the First Amendment by claiming that Ms. Stutzman's custom floral arrangements for weddings are not expressive. Not all conduct is expressive, but conduct is expressive "when the actor intends to communicate a message and the message can be understood in context." *State v. Immelt*, 173 Wn.2d 1, 7, 267 P.3d 305, 308 (2011); *see also First Covenant Church*, 120 Wn.2d at 217 ("[A] church building itself 'is an expression of Christian belief and message'"). Weddings are particularly expressive events, such that "wedding guests who celebrate nuptials by sounding their horns" are "engaging in speech intended to communicate a message." *Immelt*, 173 Wn.2d at 9, 267 P.3d at 308.

When Ms. Stutzman helps a marrying couple "say it with flowers," her work obviously meets this standard. In the court below, Tacoma floral design expert Jennifer Robbins testified that floral designers like Ms. Stutzman "approach their work as an art form." CP 671-74. Moreover, "[w]edding floral arrangements require floral design artists to become even more personally involved in the creative process and final design"

than ordinary arrangements. CP 673. When designing flowers for a wedding, the florist must integrate her understanding of the couple with her own artistic style, and create a theme that carries through all parts of the wedding, from boutonnieres to pew markers to centerpieces to bouquets. CP 674. Thus, "any custom design wedding arrangement created by Ms. Stutzman necessarily requires her to become emotionally and creatively invested in that arrangement and ceremony and the final creation reflects Ms. Stutzman's style and expression." CP 674.

None of this should be a surprise—weddings are often designed to be expressive events, publicly celebrating the love of two particular people. As the Ninth Circuit has explained:

> The core of a wedding ceremony's 'particularized message' is easy to discern, even if the message varies from one wedding to another. Wedding ceremonies convey important messages about the couple, their beliefs, and their relationship to each other and to their community … The core of the message in a wedding is a celebration of marriage and the uniting of two people in a committed long-term relationship.

Kaahumanu v. Hawaii, 682 F.3d 789, 798-99 (9th Cir. 2012); *accord Immelt*, 173 Wn.2d at 9, 267 P.3d at 308 (wedding-related horn-honking is constitutionally-protected expressive conduct).

Nor can the government escape strict scrutiny by labeling Ms. Stutzman's expression as a "service" not protected by the First Amendment. *See, e.g.*, *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061 (9th

Cir. 2010) ("[T]hat 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"). Rather, "[p]rotection 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." *Redgrave v. Bos. Symphony Orchestra*, 855 F.2d 888, 905 (1st Cir. 1988).

The standard for distinguishing between expressive and non-expressive conduct is both familiar and practical: does "the actor intend[] to communicate a message" that "can be understood in context"? *Immelt*, 173 Wn.2d at 7, 267 P.3d at 308. Of course our law does not treat most conduct as expressive. *Rumsfeld v. FAIR*, 547 U.S. 47, 66 (2006) ("[W]e have extended First Amendment protection only to conduct that is inherently expressive."). That is why this decades-old doctrine has not caused civil rights laws (or all laws) to crumble. *See, e.g.*, *id.* at 62 (reaffirming validity of civil rights laws). But when Ms. Stutzman expresses a couple's unique personalities and celebrates their love by creating custom floral arrangements, she easily meets the standard. Forcing Ms. Stutzman to perform these expressive functions thus triggers strict scrutiny.

Disapproval of Ms. Stutzman's message. The reason the State wishes to prevent Ms. Stutzman from declining to celebrate same-sex weddings is also relevant. The State's brief makes clear that the true harm to the plaintiffs is not the *de minimis* $7.91 in mileage costs but a dignitary harm—namely the pain caused by Ms. Stutzman's unwillingness to celebrate the plaintiffs' marriage by offering her expressive abilities. Att'y Gen. Br. at 4, 22, 34-35, 37-38. While such harms can be very real, avoiding these harms by silencing hurtful expression is simply not "unrelated to the suppression of free expression." *United States v. O'Brien*, 391 U.S. 367, 377 (1968). Indeed, if Ms. Stutzman turned down the same request for virtually any other reason—because of a vacation, or because of a competing job, or because Mr. Ingersoll could not meet her price point—there would be no dignitary harm. It is only because of the expressive nature of Ms. Stutzman's refusal to personally participate in the wedding that any dignitary harm is alleged at all.

The Supreme Court's decision in the flag-burning case is instructive. In *Johnson*, 491 U.S. at 408-10, Texas sought to defend its ban on flag-burning by asserting two interests. Texas argued that some people would be so deeply offended by the flag-burning that they would breach the peace. *Id.* at 408. And it argued that prohibiting flag-burning helped the State preserve the flag as a national symbol. *Id.* at 410.

The Court rejected both arguments as impermissible. *Id.* at 408-10. First, the Court rejected the breach-the-peace interest because it impermissibly sought to justify a speech restriction based on predictions of how listeners would respond to the message. *Id.* at 408. The Court thus rejected the argument that the State may punish speech based on the predicted response of a listener who "takes serious offense at particular expression." *Id.* To the contrary, the Court emphasized that a "principal 'function of free speech under our system of government is to invite dispute.'" *Id.*

For similar reasons, the Court ruled that the State's interest in protecting the flag's symbolic value was related to suppressing expression. An interest in preserving the flag's symbolic value "is directly related to expression" namely that the feared expression "will lead people to believe" that the flag lacks symbolic meaning. *Id.* at 410 (internal citations omitted). The Court emphasized that such concerns "blossom only when a person's treatment of the flag communicates some message, and thus are related 'to the suppression of free expression' within the meaning of *O'Brien*." *Id.* at 410 (citing *O'Brien*, 391 U.S. at 377).

The same is true here. The State's asserted dignitary concerns "blossom only when a person's" inability to provide personal expressive services for a wedding "communicates some message." *Id.* The First

Amendment requires strict scrutiny when the government punishes or coerces expressive activity in this manner.

II. The State's Efforts to Force Ms. Stutzman to Personally and Artistically Participate in Same-Sex Weddings Fails Strict Scrutiny.

The court below chose to enforce Washington's public accommodation law in a "peculiar" way that coerced personal participation and expression in celebrating a private marriage ceremony, rather than focusing on invidious discrimination against a class of individuals "as such." *Hurley*, 515 U.S. at 572. It took the further step of holding Ms. Stutzman personally liable, and ordering her to provide personal artistic services for future same-sex weddings. *See* CP 2427-30 & 2562-65. The Supreme Court has noted that this type of "peculiar" enforcement is much more likely to collide with other important civil rights, such as speech, association, and free exercise. *Hurley*, 515 U.S. at 572-73; *see also Dale*, 530 U.S. at 657 (as states have "expanded" their use of public accommodation laws, "the potential for conflict between state public accommodations laws and the First Amendment rights of organizations has increased").

This is not how we have traditionally treated personal, religiously-motivated decisions not to participate in others' marriage ceremonies. As Justice Kagan pointed out during argument in *Obergefell*, "[T]here are many rabbis that will not conduct marriages between Jews and non-Jews,

notwithstanding that we have a constitutional prohibition against religious discrimination. And those rabbis get all the powers and privileges of the State, even if they have that rule." *Obergefell* Arg. Tr. at 26:9-15, http://www.supremecourt.gov/oral_arguments/argument_transcripts/14-556q1_7l48.pdf. But under the lower court's logic, a rabbi that offered the solemnization of marriage as a fee-based service but declined to marry a Jewish groom and a non-Jewish bride could violate Washington law.

Perhaps because the plaintiffs suffered less than $8 in actual damages, the State devotes much of its brief to arguing about dignitary and psychological harms that may flow from being the victim of discrimination. Att'y Gen. Br. at 4, 22, 34-35, 37-38. The law is clear that these types of dignitary harms—while often real—do not satisfy strict scrutiny and cannot trump the First Amendment. Nor could the government carry its heavy burden by citing the removal of alleged barriers to service as a reason for forcing Ms. Stutzman's participation. In short, the government has no sufficient reason, unrelated to expression, to force Ms. Stutzman to personally help celebrate an event with which she disagrees. Forcing her to do so would violate both the First Amendment and the very principles of tolerance and dignity upon which the right to same-sex marriage is based.

A. The State's dignitary harm claim cannot satisfy strict scrutiny.

The State defends its coercion of Ms. Stutzman by arguing that "[d]iscrimination … can cause serious non-economic injuries" and "[t]he State's goal … is to ensure that [gay and lesbian Washington residents] do not face the harms of discrimination while going about their daily lives." Att'y Gen. Br. at 34, 37. The State thus seeks to prevent individuals from experiencing emotional distress that can accompany a denial of service from others who do not wish to be personally involved in their private marriage ceremony. But the Supreme Court has consistently held that a government's desire to protect people from emotional harm—even far more acute emotional harm than is present here—does not constitute a compelling government interest sufficient to punish or coerce expression.

For example, it is difficult to imagine more excruciating humiliation, degradation, or emotional harm than that endured by the father who saw Westboro Baptist picketers with signs stating "God Hates Fags," "You're Going to Hell," and "God Hates You" at the funeral of his son, a Marine killed in Iraq. *Snyder*, 562 U.S. at 448. A jury found this conduct so outrageous, and the father's resulting mental anguish so acute, that it awarded over $10 million in damages. *Id.* at 450, 456.

Despite this emotional distress, the Supreme Court in an 8-1 decision upheld the "bedrock principle underlying the First Amendment" that "the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Id.* at 414 (citing *Johnson*, 491 U.S. at 414); *see also Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 43 (1977). Any other result would "effectively empower a majority to silence dissidents simply as a matter of personal predilections." *Cohen v. California*, 403 U.S. 15, 21 (1971).

Nor is the government entitled to a unique "avoiding emotional harm" trump card in the context of public accommodations. In *Dale*, it was no doubt emotionally distressing for a gay scout leader to be expelled from the Boy Scouts; indeed, unlike this case, which involved an easily-replaced business transaction, Dale was expelled from a program that had been a major part of his life for nearly as long as he could remember. *Dale*, 530 U.S. at 654. Yet the Court held that the government's effort to spare Dale this emotional harm still failed First Amendment scrutiny. *Id.* at 661; *see also Hurley*, 515 U.S. at 574 (exclusion of the LGBT group was "hurtful," but still protected).

In *Snyder* and *Dale*, the plaintiffs could point to emotional harm caused by groups that wished to completely exclude or even condemn them; that is not the case here. Arlene's Flowers is willing to serve and

employ LGBT individuals, and Ms. Stutzman has no objection to providing supplies and pre-made bouquets to LGBT couples, even for same-sex weddings. Ms. Stutzman simply could not agree to help celebrate a same-sex wedding by providing her personal artistic services. Thus, if anything, the State's interest is even weaker here than in *Snyder* and *Dale*.

Finally, when considering harms in the public accommodation context, courts must weigh the dignitary harm on both sides—not just the emotional harm to the aggrieved individual, but the concrete financial harm and government coercion imposed upon the owners of the establishment. *Dale*, 530 U.S. at 659. Dignity is a two-way street. As one gay-rights advocate and scholar put it: "[T]he burden on individuals like [Ms. Stutzman] outweighs the burden on individuals like [the plaintiffs]," who have "no difficulty finding [a substitute source for the desired service]," while people like Ms. Stutzman might be forced to "abandon [their] business." Andrew Koppelman, *Gay Rights, Religious Accommodations, and the Purposes of Antidiscrimination Law*, 88 S. Cal. L. Rev. 619, 629-30 (2015).

B. Avoiding $7.91 in travel costs cannot satisfy strict scrutiny.

The decision below invokes a generalized interest in "protect[ing] the public welfare, health and peace of the people of [Washington]" by banning discrimination that "threatens" the "rights and proper privileges of [Washington's] inhabitants." Op. 50. But strict scrutiny requires courts to

"look[] beyond broadly formulated interests" and instead "scrutinize[] the asserted harm of granting *specific exemptions* to *particular religious claimants*." *Gonzales v. O Centro*, 546 U.S. 418, 431 (2006) (emphasis added); *id.* at 430 (noting that strict scrutiny analysis is the same for speech cases); *see also Wisconsin v. Yoder*, 406 U.S. 205, 214-15 (1972) (assessing government interest in forcing specific children to attend one additional year of schooling).

The State has not even come close to making this sort of specific showing. Arlene's has regularly employed and served gay and lesbian people—including Mr. Ingersoll. Arlene's has never declined to hire or serve anyone because of any legally protected characteristic, and it has a firm company policy against doing so. CP 537; 1381 (Arlene's Flowers EEO policy). Ms. Stutzman was happy to refer Mr. Ingersoll to other florists and continues to be willing to provide him with raw materials and pre-made floral arrangements for all occasions. Ms. Stutzman merely cannot personally participate in the celebration of a same-sex wedding by using her artistic skills. Ultimately, Mr. Ingersoll and Mr. Freed received many offers to provide flowers for their wedding, including offers to provide them for free. CP 1746-47, 1854, 1860, 1867.

Thus, here the government must demonstrate that it has a compelling interest in forcing a closely-held, expressive business to create expressive

items that contradict its sincerely-held religious beliefs, when the same items are readily available for the same price from many vendors in the same community. And the government cannot simply *assert* that it has a compelling interest in this sort of compulsion. It must "offer[] evidence" that this is so, and that evidence must be "clear and convincing." *O Centro*, 546 U.S. at 437. But the government offered no such evidence that forcing Ms. Stutzman to violate her religious beliefs and create this expression furthers a compelling interest. That is not surprising given that even plaintiffs concede that they suffered less than $8 in actual damages.

None of this is to say that eliminating actual, pervasive barriers to equal citizenship and services could never qualify as a compelling interest. Indeed, as the Supreme Court has recognized, one of the foundational justifications for public accommodation laws is to "remov[e] the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 626 (1984); *see also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252-53 (1964) (recounting obstacles to service for African Americans prior to the Civil Rights Act of 1964). But when a public accommodation law collides with other fundamental rights, the courts must balance those rights "on one side of the scale, and the State's interest on the other." *Dale*, 530 U.S. at 659. In such a case, the government must

make a particularized showing that eliminating the specific type of discrimination at issue is necessary to overcome a significant structural barrier to an individual's full participation in society. The government makes no such claim here, presumably because it thinks the evidence would not support it. In the absence of such a showing, our commitment to freedom and diversity means that fundamental rights like speech and free exercise must prevail. *See id.*; *Hurley*, 515 U.S. at 557.

CONCLUSION

In our pluralistic society, the law should not be used to coerce ideological conformity and expression simply to shield citizens from encountering people who disagree with them. Rather, on deeply contested moral issues, the law should "create a society in which both sides can live their own values." Douglas Laycock, *Religious Liberty and the Culture Wars*, 2014 U. Ill. L. Rev. 839, 877 (2014).

These values are not alien to the issue of same-sex marriage. To the contrary, the Supreme Court's *Obergefell* decision is built upon the values of diversity, tolerance, and respect for the rights of others to form their own views about deeply important questions like sex, marriage, and religion without compulsion by the government. That is why *Obergefell* emphasized that the constitutional problem arose not from the multiplicity of good faith views about marriage, but from the enshrining of a single view

into law which was then used to "demean[]," "stigmatize[]," and exclude those who did not accept it, treating them as "outlaw[s]" and "outcast[s]." 135 S. Ct. at 2600, 2602. It is just as wrong for a government to make Ms. Stutzman an outcast for living and expressing her understanding of marriage as it was to make Mr. Obergefell an outcast for living and expressing his.[1] And it would represent a profound misunderstanding of the United States Supreme Court's message in *Obergefell* to approve such a course.

This Court—and the United States Supreme Court—will surely someday have to reconcile competing civil rights claims in a case that requires painful concessions from both sides. But this is not that case. As long as this Court faithfully applies the Washington Constitution, the First Amendment and *Obergefell*, everyone can win. Mr. Ingersoll and Mr. Freed can have their wedding and flowers, and Ms. Stutzman can have her artistic expression. There is room enough in our pluralistic democracy for all of them to live according to their respective views of sex, marriage, and religion. It is not the government's role to punish any of them for their views on these subjects.

For all these reasons, the decision below should be reversed.

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[1] *See also* Laycock, *Religious Liberty and the Culture Wars*, 2014 U. Ill. L. Rev. at 877 ("One of the ironies of the culture wars is that religious minorities and gays and lesbians make essentially parallel demands …. I cannot fundamentally change who I am, they each say. … We can honor both sides' version of that claim if we will try.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served by email on the following counsel of record, who have consented in writing to service in this manner:

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Dated this 5th day of February, 2016.

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