IN THE COURT OF APPEALS OF THE STATE OF OREGON

Melissa Elaine Klein, dba Sweetcakes by Melissa; and Aaron Wayne Klein, dba Sweetcakes by Melissa, and, in the alternative, individually as an aider and abettor under ORS 659A.406, Petitioners, V. Oregon Bureau of Labor and Industries, Respondent.	Agency Nos. 44-14, 45-14 CA A159899

BRIEF OF *AMICUS CURIAE* ANTI-DEFAMATION LEAGUE AND SIXTEEN OTHER ORGANIZATIONS IN SUPPORT OF RESPONDENT

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IDENTITY AND INTEREST OF THE *AMICI CURIAE*

Amicus curiae Anti-Defamation League (ADL) was founded in 1913 to combat anti-Semitism and other forms of discrimination, advance goodwill and mutual understanding among Americans of all creeds and races, and secure justice and fair treatment to all. Today, ADL is one of the world's leading civil and human rights organizations combating anti-Semitism and all types of prejudice, discriminatory treatment, and hate. As part of its commitment to protecting the civil rights of all persons, ADL has filed *amicus* briefs in numerous cases urging the unconstitutionality or illegality of discriminatory practices or laws.[1]

The following organizations join ADL in this brief: Bend the Arc: A Jewish Partnership for Justice; Hindu American Foundation; Interfaith Alliance; Hadassah: The Women's Zionist Organization of America, Inc.; Keshet; Metropolitan Community Churches; Global Justice Institute; More Light Presbyterians; People For the American Way Foundation; African American Ministers Leadership Council; The National Council of Jewish Women; T'ruah: The Rabbinic Call for Human Rights; Union for Reform Judaism, Religious Action Center; Women of Reform Judaism; Central Conference of American

[1] *See, e.g.*, *United States v. Windsor*, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013); *Hollingsworth v. Perry*, 133 S. Ct. 2652, 186 L. Ed. 2d 768 (2013); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp't Opportunity Comm'n*, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012); *Christian Legal Soc'y Chapter of the Univ. of Ca. v. Martinez*, 561 U.S. 661, 130 S. Ct. 2971, 177 L. Ed. 2d 838 (2010).

Rabbis; and Women's League for Conservative Judaism (collectively the "Amici").

Amici have a substantial interest in this case because it raises core questions about equality and constitutional rights. The Kleins are asking the Court to create an exception to anti-discrimination public accommodation laws on the basis of religion; such an exception would threaten to invite and promote the very type of religious prejudice against which the ADL and all of the *amici* have long fought.

STATEMENT OF THE CASE

Amici rely on the Statement of the Case as presented by Respondent, Oregon Bureau of Labor and Industries, in its Answering Brief, filed in this Court, on August 22, 2016.

STATEMENT OF THE FACTS

Amici rely on the Statement of Facts as presented by Respondent, Oregon Bureau of Labor and Industries. in its Answering Brief, filed in this Court, on August 22, 2016.

ARGUMENT

I. Courts Have Consistently Rejected The Argument That Religiously Motivated Discrimination Warrants An Exception To Generally Applicable Anti-Discrimination Laws.

The Kleins sought below (and on appeal) to justify their violation of Oregon's public accommodations law, ORS 659A.403, based on the Kleins'

religious objection to weddings of same-sex couples. Op. Br. 5, 11. According to the Kleins, providing Rachel Cryer a cake for her wedding with Laurel Bowman would be "conveying messages that contradict their deeply and sincerely held religious beliefs." *Id*. at 4.

Religious beliefs, however, do not legitimize violating public accommodation laws that protect individuals from discrimination on the basis of their sexual orientation just as they do not legitimize discrimination on the basis of race or sex. The Kleins' arguments rely on a mistaken premise that religious beliefs excuse compliance with neutral laws of general applicability – here, ORS 659A.403. But as the United States Supreme Court has recognized, "[n]ot all burdens on religion are unconstitutional." *United States v. Lee*, 455 U.S. 252, 257, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982) (explaining that "[w]hen followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity." *Id*. at 261. To the contrary, courts consistently have held that religion may be "burdened" to prevent unlawful discrimination in the name of religious freedom.

For example, in the seminal case, *Bob Jones University v. United States*, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983), a private university that prohibited interracial dating and marriage on religious grounds challenged the

Internal Revenue Service's disallowance of the university's tax-exempt status. In upholding the IRS's revocation of the school's tax exemption, and its corresponding right to receive tax-deductible charitable donations, the Court recognized that because "the Government has a fundamental, overriding interest in eradicating racial discrimination in education," *id.* at 604, the IRS's action withstood constitutional scrutiny, notwithstanding that the university's policy was motivated by religious belief. Likewise, the Kleins' religious beliefs, no matter how sincerely held, cannot be invoked to allow them to violate Oregon public accommodation laws aimed at eradicating precisely the kind of discrimination that they practiced against Ms. Cryer's and Ms. Bowman's exercise of their constitutional right to marry. *See Obergefell v. Hodges*, 576 U.S. ___ , 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015). [2]

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[2] *See, e.g.*, *Gifford v. McCarthy*, 23 N.Y.S.3d 422, 137 A.D.3d 30 (N.Y. App. Div. Jan. 14, 2016) (wedding facility's refusal to host same-sex wedding based on owner's religious beliefs was unlawful discriminatory practice); *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. Aug. 13, 2015) (bakery's refusal to sell wedding cake for same-sex wedding because of owner's religious beliefs violated state public accommodation law); *Lukaszewski v. Nazareth Hosp.*, 764 F. Supp. 57, 61 (E.D. Pa. 1991) (hospital's free exercise rights "not implicated" by federal law's prohibition on age discrimination); *U.S. Dep't of Labor v. Shenandoah Baptist Church*, 707 F. Supp. 1450, 1460 (W.D. Va. 1989) (religious school's Free Exercise rights did not excuse violation of federal law prohibiting discrimination on the basis of sex); *Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 37, 39 (D.C. 1987) (en banc) (Georgetown University's free exercise rights did not excuse it from violating the D.C. Human Rights Act when it denied tangible benefits to student groups on the basis of sexual orientation); *State ex rel. McClure v. Sports & Health Club, Inc.*, 370 N.W.2d

Bob Jones University is part of the settled case law establishing that the Free Exercise Clause does not allow religious believers to thwart generally applicable anti-discrimination laws. The Supreme Court's rejection of the university's arguments provides yet another milestone in a long history of judicial and societal rejection of discrimination in the name of religion. *Amici* file this brief to provide the Court with that historical perspective. Just as history has not countenanced using the protections of the First Amendment's Free Exercise Clause to rationalize discriminating against minority groups, the Kleins cannot rely on it, or their religious beliefs, to discriminate against Rachel Cryer in violation of ORS 659A.403.

II. Religious Disapproval Has Historically Been An Unsustainable Basis For Justifying Discrimination Against Minority Groups.

Those who discriminate against disadvantaged groups have long relied on arguments rooted in religion to justify their discrimination. Time and again, however, society has come to see such discrimination as a stain on the Nation's history and to view the religious justifications offered for it as wrong, both spiritually and philosophically.

844, 853 n.16 (Minn. 1985) (Free Exercise Clause did not permit private health club to apply membership criteria based on marital status and religious affiliation in violation of the Minnesota Human Rights Law).

A. Many Forms Of Discrimination Against Minority Groups Were Initially Rationalized By Religious Disapproval.

A pattern has repeated itself throughout American history: Pervasive discriminatory practices that now seem preposterous were defended—and, in many cases, extolled—in their day on grounds of religious disapproval.

Slavery provides a striking example. From the colonial period until the ratification of the Thirteenth Amendment, supporters of slavery often relied on scripture to deflect abolitionist concerns and to insist that slavery was a moral *good*—a central part of God's plan. *See* William N. Eskridge Jr., *Noah's Curse: How Religion Often Conflates Status, Belief & Conduct to Resist Antidiscrimination Norms*, 45 Ga. L. Rev. 657, 666-67 (2011). Slavery supporters prominently argued that "the Negro was a heathen and a barbarian, an outcast among the peoples of the earth, a descendant of Noah's son Ham, cursed by God himself and doomed to be a servant forever on account of an ancient sin." Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law & Politics* 12 (1978) (quoting Gunnar Myrdal, *et al.*, *An American Dilemma: The Negro Problem and Modern Democracy* 85 (1944)). A related theory held that "negroes were human but that unlike whites they were not created in the image of God and [were] one of several inferior races created by God after Adam." 6 John David Smith, *The Biblical & "Scientific" Defense of Slavery* xxv-xxvi (1993). Defenders of slavery also emphasized

"that God's Chosen (Abraham, Isaac, and Jacob) owned slaves and that Leviticus required the Israelites to secure 'bondsmen' from among the 'heathen' surrounding Israel" that were to be "inherit[ed] * * * for a possession." Eskridge, *supra*, at 667.

This scriptural justification was not embraced by extremist sects alone. To the contrary, it represented the dominant viewpoint of nearly every major religious group in the United States during this period. In fact, when abolitionists began to challenge slavery, clergymen of all denominational stripes were among the institution's most ardent defenders. *Id.* at 669. And following Lincoln's Emancipation Proclamation, 96 religious leaders from 11 different denominations issued a proclamation of their own entitled "An Address to Christians Throughout the World" demanding the preservation of slavery. *Id.*

The biblical defense of slavery gained currency within the judicial sphere as well. For example, in *Scott v. Emerson*, 15 Mo. 576 (1852), the Missouri Supreme Court counseled:

> When the condition of our slaves is contrasted with the state of their miserable race in Africa; when their civilization, intelligence and instruction in religious truths are considered * * * we are almost persuaded, that the introduction of slavery amongst us was, in the providence of God * * * a means of placing that unhappy race within the pale of civilized nations.

Id. at 587. Indeed, even the United States Supreme Court accepted a religiously

rooted notion of African Americans as inferior, noting that that inferiority "was regarded as an axiom in morals as well as in politics, which no one thought of disputing." *Dred Scott v. Sandford*, 60 U.S. 393, 407, 15 L. Ed. 691 (1856).

Nor did the Thirteenth Amendment put an end to religious justifications for African-American subjugation. Instead, those opposed to equal rights for former slaves simply modified their reading of scripture: If the Bible no longer could be read to condone slavery, it could at least be read to mandate segregation. Eskridge, *supra*, at 694. The theories of Reverend Benjamin Morgan Palmer, leader of the Southern Presbyterian Church, provide a telling example. Recall that, according to Biblical tradition, Africans descended from Ham. Palmer theorized that because Ham's grandson Nimrod built the Tower of Babel, and God reacted by scattering the tower's builders "abroad from thence upon the face of all the earth," God would do the same thing again if Ham's current descendants challenged segregation: "[I]f arrogant descendants of Ham * * * sought to disrupt the divine plan for segregation of the races, the Lord would thwart those plans through divine dispersion that reaffirmed the original design." *Id.* at 670. Southern whites relied on this and other "modernized" interpretations of scripture to advocate a "'right not to associate' with black people." *Id.* at 669, 694.

Just as with slavery, these arguments gained widespread acceptance, including within the judiciary. In *West Chester & Philadelphia Railroad Co. v.*

Miles, 55 Pa. 209 (1867), the Pennsylvania Supreme Court opined that "following the order of Divine Providence, human authority ought not to compel these widely separated races to intermix." *Id.* at 213. Thus the legal basis for segregation: "When, therefore, we declare a right to maintain separate relations, as far as is reasonably practicable, but in a spirit of kindness and charity, and with due regard to equality of rights, it is not prejudice, nor caste, nor injustice of any kind, but simply to suffer men to follow the law of races established by the Creator himself." *Id.* at 214. This passage was cited repeatedly by other courts as a basis for upholding Jim Crow laws. *See*, *e.g.*, *Berea Coll. v. Commonwealth*, 29 Ky. L. Rptr. 284, 94 S.W. 623, 628 (1906); *Bowie v. Birmingham Ry. & Elec. Co.*, 125 Ala. 397, 408-09, 27 So. 1016 (1900); *State v. Gibson*, 36 Ind. 389, 405 (1871).

Segregationist arguments grounded in religion were perhaps most ubiquitous in the struggle against interracial marriage. Seizing on the notion that marriage "ha[s] more to do with the morals and civilization of a people than any other institution," *Maynard v. Hill*, 125 U.S. 190, 205, 8 S. Ct. 723, 31 L. Ed. 654 (1888), opponents of interracial marriage relied on scripture to argue that marriage between the races was immoral and a contravention of God's word. They cited numerous biblical passages to justify their position, including Deuteronomy 7:3 (instructing the Israelites not to marry members of other tribes); Ezra 9:1-3 (discussing the "abominations" of marrying members of

other nations); and Genesis 28:1 (describing Isaac's instruction to Jacob not to "take a wife of the daughters of Canaan," who were of African descent). Eskridge, *supra*, at 673 n.79, 675.

Again, these beliefs found their way into scores of judicial opinions upholding bans on interracial marriage. In *Kinney v. Commonwealth*, 71 Va. 858 (1878), for example, the Virginia Supreme Court held that "[t]he purity of public morals, the moral and physical development of both races, and the highest advancement of our cherished southern civilization" all required that the races "be kept distinct and separate, and that connections and alliances so unnatural that God and nature seem to forbid them, should be prohibited by positive law, and be subject to no evasion." *Id.* at 869. Likewise, in *Green v. State*, 58 Ala. 190 (1877), the Alabama Supreme Court wrote: "[S]urely there can not be any tyranny or injustice in requiring both [blacks and whites] alike, to form this union with those of their own race only, whom God hath joined together by indelible peculiarities, which declare that He has made the two races distinct." *Id.* at 195. *See, e.g.*, *Scott v. State*, 39 Ga. 321, 326 (1869); *Miles*, 55 Pa. at 213.

Perhaps most notoriously, in the mid-1960s a Virginia trial court held—in a decision later overturned by the United States Supreme Court—that Virginia's prohibition on interracial marriage fulfilled God's Word: "Almighty God created the races white, black, yellow, malay and red, and he placed them

on separate continents." *Loving v. Virginia*, 388 U.S. 1, 3, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) (citing trial court opinion). "And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix." *Id.*

Such beliefs maintained a robust following well into the second half of the twentieth century. *See id.*; *see also State ex rel. Hawkins v. Bd. of Control*, 83 So. 2d 20, 27-28 (Fla. 1955) (en banc) (noting that "segregation is not a new philosophy generated by the states" but rather part of "God's plan"). Even as laws supporting segregation began to fall, the arguments for segregation continued to rely on religion as a justification, focusing on religious liberty and the associational freedom of white Christians not to associate with non-whites. *See* Eskridge, *supra*, at 672-74. After the United States Supreme Court struck down the "separate but equal" doctrine in *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), Southern churches created religious academies so white Christians would not be burdened by having to attend segregated schools. *See* U.S. Comm'n on Civil Rights, Discriminatory Religious Schools & Tax Exempt Status 1 (1982). When the Treasury Department removed those schools' tax-exempt designations, fundamentalists protested that the government was infringing on their religious liberty to run segregated schools as the Bible demanded. *See Tax Exempt Status of Private Schools: Hearing Before the Subcomm. on Taxation & Debt Mgmt. Generally*

of the S. Comm. on Fin., 96th Cong. 18 (1979). Bob Jones University made the same argument before the United States Supreme Court in defending its segregationist admissions policy as late as 1983. *See Bob Jones Univ.*, 461 U.S. at 602-03.

Similar arguments grounded in religion were advanced to support discrimination against women. *See* Angela L. Padilla & Jennifer J. Winrich, *Christianity, Feminism & the Law*, 1 Colum. J. Gender & L. 67, 75-86 (1991). As one scholar noted: "There is assumed to be a literal scriptural foundation for a patriarchal family governance structure of husband as 'head' of the household," with his "wife as caregiver/homemaker and submissive or deferential to the husband's authority." Linda C. McClain, *The Domain of Civic Virtue in a Good Society: Families, Schools & Sex Equality*, 69 Fordham L. Rev. 1617, 1643 (2001).

As with race, this belief structure influenced judicial decision-making. In *Bradwell v. Illinois*, 83 U.S. 130, 21 L. Ed. 442 (1872), for example, Justice Bradley opined that Illinois could deny women admission to the state bar because "[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life." *Id.* at 141 (Bradley, J., concurring). That God Himself ordained women to be homemakers (not lawyers) provided the key justification for this view: "The constitution of the family organization, which is founded in the divine

ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. * * * The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." *Id.*

B. Such Religious Justifications For Discrimination Have Been Abandoned And Opinions Upholding Them Have Been Repudiated.

The discrimination against minority groups catalogued above has come to be universally repudiated. The United States Supreme Court rejected miscegenation laws in *Loving*. It rejected segregation in *Brown*. It has repudiated opinions upholding racially discriminatory laws driven by religious disapproval. *See, e.g.*, *South Carolina v. Regan*, 465 U.S. 367, 412 n.10, 104 S. Ct. 1107, 79 L. Ed. 2d 372 (1984) (referring to *Dred Scott* as one of three worst decisions in history). And the United States Supreme Court has, during the past four decades, rejected earlier, religion-driven views regarding the place of women in society. In *Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090 (1982), for example, the Court held that any "test for determining the validity of a gender-based classification * * * must be applied free of fixed notions concerning the roles and abilities of males and females." *Id.* at 724-25. And in *Frontiero v. Richardson*, 411 U.S. 677, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973), the Court, renouncing Justice Bradley's concurrence in *Bradwell*, noted the "long and unfortunate history of sex

discrimination" in America. *Id.* at 684.

Tellingly, as societal support for the discriminatory practices discussed above has ebbed, the religious disapproval that undergirded that discrimination has *itself* receded. After the Civil War, clergymen modified their interpretation of scripture so that the Bible endorsed segregation instead of slavery. *See infra* at 15-17. Likewise, the 1960s witnessed "all of the major Protestant denominations * * * abandon[ ] the racist renderings of the biblical stories about Noah, Ham, Canaan, Nimrod, Isaac, and Jacob" altogether. Eskridge, *supra*, at 681. And many religious groups have embraced the precise opposite of their old approach to women's rights issues. Many Protestant churches, for example, now ordain women and embrace gender-neutral policies, *see* Christopher C. Lund, *In Defense of the Ministerial Exception*, 90 N.C. L. Rev. 1, 44 (2011), and have introduced programs to address discrimination against women within the church, *see* Elisabeth S. Wendorff, *Employment Discrimination & Clergywomen: Where the Law Has Feared to Tread*, 3 S. Cal. Rev. L. & Women's Stud. 135, 147-48 (1993).

This shift is just the latest incarnation of a recurring national dynamic: Religious justifications for discrimination vanishes as popular support for those forms of discrimination fade. Or, as Professor Eskridge put it, "[r]eligious doctrine on matters relating to race and sexuality has been relentlessly dynamic: the Word of God has changed constantly." Eskridge, *supra*, at 712.

III. Religious Justifications For Discrimination, Including Based On Sexual Orientation, Have Shifted Over Time.

When it comes to Lesbian, Gay, Bisexual and Transgender (LGBT) rights and marriage equality, history is repeating itself yet again: Religious objections to equal treatment of the LGBT community are dissipating quickly as societal attitudes fundamentally recalibrate.

A. Religious Teachings On LGBT Rights And Marriage Equality Are Shifting.

Until recently, many religions vehemently opposed homosexuality and homosexual behavior—and the law followed suit. From 1879-1961, most American states and the federal government adopted statutes criminalizing sodomy and imposing civil penalties on gay people. Eskridge, *supra*, at 689. These laws were premised, at least in part, on the view that same-sex sodomy is a carnal sin and contrary to Biblical purity rules. *Id.* As one evangelical newspaper explained:

> Romans 1:18-32 shows that homosexuality is contrary to nature, and that it is part of the de-generation of man that guarantees ultimate disaster in this life and in the life to come. The Church had better make it plain that Christianity and homosexuality are incompatible even as it proclaims deliverance for the homosexual from his sinful habit through faith in Jesus Christ.

Editorial, *The Options of Modern Man*, 14 Christianity Today 132, 134 (1969).

Not all religious groups expressed such hostility toward homosexuality, of course. But among those that did, the anti-gay rhetoric and action only intensified as the gay-rights movement began to emerge. In 1965, "the Roman

Catholic Church * * * almost single-handedly blocked sodomy reform in New York based upon the Church's view that sodomy is a carnal sin." Eskridge, *supra*, at 690. In 1972, Mormon activists in Idaho convinced that state to reverse course and reinstate a sodomy ban it had just repealed. *Id.* at 692. In 1986, the President of the Southern Baptist Convention preached that "God Himself created AIDS to show His displeasure with homosexuality." *Id.* at 695. And two years later, Southern Baptists adopted a formal resolution condemning homosexuality as an "abomination in the eyes of God." *Id.* at 695-96.

But more recently—just as in the cases of integration and interracial marriage—religious teachings have shifted, some quite dramatically. *See id.*, at 689-700. In 1978—less than a decade after the Stonewall Riots ushered in the gay-rights movement—the Presbyterian Church concluded, after reexamining scripture, that "the Sin of Sodom was rape" (rather than gay sex) "and that St. Paul's condemnations refer to dissolute behaviors rather than to any and all homosexual relations." *Id.* at 700-01. By 1986, most mainstream Protestant denominations had decided that the Bible does not support criminal sanctions against consensual same-sex relations. *Id.* at 699.

Some religious denominations have gone much further. During the last three decades, most mainstream Protestant denominations, including the Unitarian Universalist Association, the Presbyterian Church, the Quakers, the Episcopal Church, the United Methodist Church, the Evangelical Lutheran

Church in America, the United Church of Christ, and the Disciples of Christ, have announced that LGBT people are entitled to equal treatment and have issued statements beseeching their members not to reject LGBT congregants. *Id.* at 699-700. During this same period, Unitarians, the United Church of Christ, and Reform, Reconstructionist and Conservative Jews began ordaining openly gay rabbis and ministers. *Id.* at 707. The Episcopal Church followed suit in 1989. *Id.*

Indeed, even some groups that previously resisted gay rights have embraced a more tolerant stance of late. In 1994, the Vatican issued a statement that LGBT persons "must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided." *Id.* at 704. And the Southern Baptist Convention has questioned the vehemence of its earlier condemnations. In 2009, the editor of the Baptist Standard asserted that expelling LGBT members from the church was not "redemptive" because it singles out one sin while turning a blind eye to others. *Id.* at 705-06.

To be sure, the Catholic Church, Mormons, Southern Baptists, and some other groups view marriage equality as "the new Maginot Line for homosexuality." *Id.* at 708. But, in general, religious condemnations of same-sex couples marrying have waned in recent years. Many groups, including the Union of American Hebrew Congregations (Reform Jews), the Unitarian

Universalist Church, the United Church of Christ, the Quakers, and the Episcopal Church, now embrace marriage equality. *See* Human Rights Campaign, *Faith Positions*.[3]

Other groups have taken more incremental approaches. In 2004, the Presbyterian General Assembly passed a resolution indicating support for laws recognizing same-sex relationships. *See* Human Rights Campaign, *Stances of Faiths on LGBT Issues: Presbyterian Church (USA)*.[4] In 2009, the Evangelical Lutheran Church in America voted by a substantial majority to "commit to finding ways to allow congregations that choose to do so to recognize, support and hold publicly accountable, lifelong, monogamous, same-gender relationships." Evangelical Lutheran Church in America, *2009 ELCA Churchwide Assembly Addresses Variety of Topics*.[5]

Of course, "the shift of religious discourse toward acceptance of gay people has continued at different paces for different denominations." Eskridge, *supra*, at 704-05. Change has not come overnight, but neither did it come overnight with slavery, segregation, interracial marriage, or women's rights. The bottom line is that "the tension between equal rights for gay people and

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[3] *Available at* http://www.hrc.org/resources/entry/faith-positions (viewed on August 26, 2016).
[4] *Available at* http://www.hrc.org/resources/entry/stances-of-faiths-on-lgbt-issues-presbyterian-church-usa (viewed on August 26, 2016).
[5] *Available at* http://www.elca.org/News-and-Events/6218?_ga=1.107752834.1287315157.1433951594 (viewed on August 26, 2016).

liberty for religious people has been obliterated for a good many denominations and reduced for others," and "the evolution continues." *Id.* at 709.

B. This Court Should Reject The Kleins' Argument That Religious Disapproval Exempts Them From Complying With ORS 659A.403.

The Kleins claim that they refused to provide a cake for wedding for a same-sex couple because it would "conve[y] messages about marriage to which they do not ascribe and that contravene their religious beliefs," Op. Br. 23. But the fact is that the Kleins' religious objections to marriage for couples of the same sex led them to deny services because of the individuals' sexual orientation, and this harm to a minority group is precisely the kind of discrimination that Oregon law prohibits. The Kleins' interest in adhering to the tenets of their faith does not override the compelling governmental interest "in eradicating * * * discrimination." *Bob Jones Univ.*, 461 U.S. at 604. The Oregon Legislature added sexual orientation as a protected class to ORS 659A.403 in 2007, and the Kleins' request for permission to violate the law based on their religious beliefs should be rejected.

CONCLUSION

Based on the foregoing analysis, *amici curiae* respectfully request that this Court affirm the Final Order of the Oregon Board of Labor and Industries.

Respectfully submitted this 29th day of August, 2016.

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CERTIFICATE OF FILING AND SERVICE

I certify that on August 29, 2016, I directed the Brief of Amicus Curiae Anti-Defamation League and Twenty-Six Other Organizations in Support of Respondent to be electronically filed with the Appellate Court Administrator and directed a true and correct copy of the Brief of Amicus Curiae Anti-Defamation League and Twenty-Six Other Organizations in Support of Respondent to be served via eFiling upon the following:

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CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

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DATES this 29th day of August, 2016

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