NO. 91615-2

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* ANTI-DEFAMATION LEAGUE AND TWENTY-SIX OTHER ORGANIZATIONS IN SUPPORT OF RESPONDENTS

Of Counsel:

Jessica L. Ellsworth
Laura A. Szarmach
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004

Nicole E. Schiavo
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022

Steven M. Freeman
Seth M. Marnin
Michelle N. Deutchman
ANTI-DEFAMATION LEAGUE
605 Third Avenue
New York, NY 10158

Christian E. Mammen
WSBA #23493
HOGAN LOVELLS US LLP
3 Embarcadero Center
Suite 1500
San Francisco, CA 94111
(415) 374-2325
chris.mammen@hoganlovells.com

Kaitlyn A. Golden
WSBA #50200
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
kaitlyn.golden@hoganlovells.com

Counsel of Record for Amici

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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, described in an addendum to this brief, join ADL in this brief: Bend the Arc: A Jewish Partnership for Justice; Central Conference of American Rabbis; Faith Action Network; Global Justice Institute; Hadassah, The Women's Zionist Organization of America; Japanese American Citizens League; Keshet; Metropolitan Community Churches; More Light Presbyterians; Parity; People For the American Way Foundation; Presbyterian Welcome; ReconcilingWorks: Lutherans For Full Participation; Reconstructionist Rabbinical College

[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 v. Martinez*, 561 U.S. 661, 130 S. Ct. 2971, 177 L. Ed. 2d 838 (2010).

and Jewish Reconstructionist Communities; Religious Institute, Inc.; Sikh American Legal Defense and Education Fund; Sikh Coalition; Society for Humanistic Judaism; The National Council of Jewish Women; The National Council of Jewish Women – Seattle Section; T'ruah: The Rabbinic Call for Human Rights; Union for Reform Judaism; Women of Reform Judaism; and Women's League for Conservative Judaism.

Amici have a substantial interest in this case because it raises core questions about equality and constitutional rights. Appellants 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 adopt the Statement of the Case contained in the Response Brief of the Attorney General.

ARGUMENT

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

Appellants seek to justify their violation of the Washington Law Against Discrimination (WLAD) and the Consumer Protection Act (CPA) based on Barronelle Stutzman's "sincere religious beliefs." Op. Br. 2.

According to Appellants, it should not violate the WLAD and the CPA for Ms. Stutzman to refuse to sell flower arrangements for weddings of same-sex couples on the same terms that she does for other weddings.

Religious beliefs, however, do not legitimize violating public accommodation laws that protect sexual orientation just as they do not legitimize racial or sexual discrimination. Appellants' arguments rely on a mistaken premise that religious beliefs excuse compliance with neutral laws of general applicability like the WLAD and CPA. While Ms. Stutzman may feel that the burden placed on her right to freely exercise her religion is not inconsequential, the United States Supreme Court has recognized that "[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; *see also Backlund v. Bd. of Comm'rs of King Cty. Hosp. Dist. 2*, 106 Wn.2d 632, 724 P.2d 981 (Wash. 1986) (en banc) (holding that government's compelling interest in protecting health and safety outweighed physician's religious belief that professional liability insurance was not necessary). 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, Ms. Stutzman's religious beliefs, no matter how sincerely held, cannot be invoked to allow her to violate Washington public accommodation laws aimed at eradicating precisely the kind of discrimination that she practiced against Mr. Ingersoll and Mr. Freed's exercise their constitutional right to marry. *See Obergefell v. Hodges*, 576 U.S. ___ , 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015). [2]

[2] *See, e.g., Gifford v. McCarthy*, No. 520410, 2016 WL 155543 (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.*, No. 14CA1351, 2015 WL 4760453 (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

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, Appellants cannot rely on Ms. Stutzman's religious beliefs to justify refusing service to Mr. Ingersoll and Mr. Freed.

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

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(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 and Health Club, Inc.*, 370 N.W.2d 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).

it as wrong, both spiritually and philosophically.

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.

1. 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).

2. 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).

3. 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

672-674. 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 602-603.

4. 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 Justifications 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 724-725. 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.

1. 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 disabilities 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.

2. 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 705-706.

3. 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

[3] *Available at* http://www.hrc.org/resources/entry/faith-positions (viewed on Feb. 12, 2015).
[4] *Available at* http://www.hrc.org/resources/entry/stances-of-faiths-on-lgbt-issues-presbyterian-church-usa (viewed on Feb. 12, 2015).
[5] *Available at* http://www.elca.org/News-and-Events/6218?_ga=1.107752834.1287315157.1433951594 (viewed on Feb. 8, 2016).

women's rights. The bottom line is that "the tension between equal rights for gay people and 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 Appellants' Argument That Religious Disapproval Exempts Them From Complying With The Washington Law Against Discrimination.

Appellants claim that Ms. Stutzman's refusal to provide arranged flowers for a same-sex wedding was based on her belief "that marriage is a union of a man and a woman," CP 47, and not discrimination. But the fact is that Ms. Stutzman's religious objections to marriage for couples of the same sex led her to deny services because of the individuals' sexual orientation, and this harm to a minority group is precisely the kind of discrimination that Washington law prohibits. Ms. Stutzman's interest in adhering to the tenets of her faith does not override the compelling governmental interest "in eradicating * * * discrimination." *Bob Jones Univ.*, 461 U.S. at 604. Washington law prohibits discrimination on the basis of sexual orientation, and Appellants' request for permission to violate the law based on Ms. Stutzman's religious beliefs must be rejected.

CONCLUSION

Based on the foregoing analysis, *amici curiae* respectfully request that this Court affirm the opinion of the superior court.

Respectfully submitted this 8th day of February, 2016.

Of counsel:
Jessica L. Ellsworth
Laura A. Szarmach
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Nicole E. Schiavo
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022

Steven M. Freeman
Seth M. Marnin
Michelle N. Deutchman
ANTI-DEFAMATION LEAGUE
605 Third Avenue
New York, NY 10158

Christian E. Mammen
WSBA # 23493
HOGAN LOVELLS US LLP
3 Embarcadero Center
Suite 1500
San Francisco, CA 94111
(415) 374-2325
chris.mammen@hoganlovells.com

Kaitlyn A. Golden
WSBA#50200
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
kaitlyn.golden@hoganlovells.com

Counsel for Amici

ADDENDUM

Amicus curiae Bend the Arc: A Jewish Partnership for Justice, is a national organization inspired by Jewish values and the steadfast belief that Jewish Americans, regardless of religious or institutional affiliations, are compelled to create justice and opportunity for Americans.

Amicus curiae Faith Action Network (FAN)is a statewide, interfaith, advocacy organization in Washington state that educates, organizes, and mobilizes people of all faiths to work on systemic change in our state, country, and world primarily through the 'halls of power' so that all might thrive. We are a growing network of social justice advocates with over 100 faith communities and over 5500 individuals organized by state and congressional districts. FAN believes that religious belief and worship are not adversely impacted by government statute and regulation that prevents discrimination in the provision of services of a public business. Indeed, we believe that the core beliefs of most religious traditions call on governmental entities to enforce its anti-discrimination laws to promote equality for all in our state and society. Where laws are needed to protect people from being discriminated against we support the creation of those laws.

Amicus curiae The Global Justice Institute is the social justice arm of Metropolitan Community Churches. We are separately incorporated, though we originally began as a "ministry" of MCC. We are working in

Asia, Pakistan, Eastern Europe, Latin America, the Caribbean, Canada, the United States, East Africa and South Africa on matters of social justice and public policy primarily in the LGBTI communities, but also along lines of intersection with other marginalized communities.

Amicus curiae Hadassah, The Women's Zionist Organization of America, founded in 1912, has over 330,000 Members, Associates, and supporters nationwide. In addition to Hadassah's mission of initiating and supporting pacesetting health care, education, and youth institutions in Israel, Hadassah has a proud history of protecting the rights of women and the Jewish community in the United States. Hadassah vigorously condemns discrimination of any kind and, as a pillar of the Jewish community, understands the dangers of bigotry. Hadassah strongly supports the constitutional guarantees of religious liberty and equal protection, and rejects discrimination on the basis of sexual orientation.

Amici curiae Interfaith Alliance Foundation celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices. Founded in 1994, Interfaith Alliance Foundation’s members across the country belong to 75 different faith traditions as well as no faith tradition.

Amicus Curiae Japanese American Citizens League (JACL), founded in 1929, is the nation’s largest and oldest Asian-American non-

profit, non-partisan organization committed to upholding the civil rights of Americans of Japanese ancestry and others. It vigilantly strives to uphold the human and civil rights of all persons. Since its inception, JACL has opposed the denial of equal protection of the laws to minority groups. In 1967, JACL filed an *amicus* brief in *Loving v. Virginia*, urging the Supreme Court to strike down Virginia's anti-miscegenation laws, and contending that marriage is a basic civil right of all persons. In 1994, JACL became the first API non-gay national civil rights organization, after the American Civil Liberties Union, to support marriage equality for same-sex couples, affirming marriage as a fundamental human right that should not be barred to same-sex couples. JACL continues to work actively to safeguard the civil rights of all Americans.

Amicus curiae Keshet is a national organization that works for the full equality and inclusion of lesbian, gay, bisexual, and transgender (LGBT) Jews in Jewish life. Led and supported by LGBT Jews and straight allies, Keshet cultivates the spirit and practice of inclusion in all parts of the Jewish community. Keshet is the only organization in the U.S. that works for LGBT inclusion in all facets of Jewish life – synagogues, Hebrew schools, day schools, youth groups, summer camps, social service organizations, and other communal agencies. Through training, community organizing, and resource development, we partner with clergy,

educators, and volunteers to equip them with the tools and knowledge they need to be effective agents of change.

Amicus curiae Metropolitan Community Churches (MCC) was founded in 1968 to combat the rejection of and discrimination against persons within religious life based upon their sexual orientation or gender identity. MCC has been at the vanguard of civil and human rights movements and addresses the important issues of racism, sexism, homophobia, ageism, and other forms of oppression. MCC is a movement that faithfully proclaims God's inclusive love for all people and proudly bears witness to the holy integration of spirituality and sexuality.

Amicus curiae More Light Presbyterians represents lesbian, gay, bisexual, and transgender people in the life, ministry, and witness of the Presbyterian Church (U.S.A.) and in society.

Amicus curiae National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Laws and policies that provide equal rights for same-sex couples." Our principles state that "Religious liberty and the separation of religion and state are

constitutional principles that must be protected and preserved in order to maintain our democratic society" and "discrimination on the basis of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, or gender identity must be eliminated." Consistent with our Principles and Resolutions, NCJW joins this brief.

Amicus curiae National Council of Jewish Women Seattle Section (NCJW) is a grassroots organization founded in 1900. Our 325 volunteers and advocates turn progressive ideals into action. Inspired by Jewish values, NCJW and NCJW Seattle Section strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. Our Resolutions state that NCJW resolves to work for "Laws and policies that provide equal rights for same-sex couples." Our organization supports "Religious liberty and the separation of religion and state are constitutional principles that must be protected and preserved in order to maintain our democratic society" and "discrimination on the basis of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, or gender identity must be eliminated." Consistent with our Principles and Resolutions, NCJW Seattle Section joins this brief.

Amicus curiae Parity (formerly Presbyterian Welcome) is a faith-based LGBTQ-focused organization that creates open and nurturing

spaces – physically and spiritually to: Support emerging LGBTQ pastors (the forerunners of historical policy change) as they live into their callings; Empower LGBTQ and allied young people to integrate their spiritual, gender and sexual identities through a range of programs; and Proclaim this message of reconciliation through the Not So Churchy worshipping community. We work and pray for reconciliation, within our communities and within ourselves, so that we can create a world where gender or sexual identity are not barriers to living the whole, full lives that we are called to by God.

Amicus curiae People For the American Way Foundation (PFAWF) is a nonpartisan civic organization established to promote and protect civil and constitutional rights, including religious liberty, as well as American values like equality and opportunity for all. Founded in 1981 by a group of civic, educational, and religious leaders, PFAWF now has hundreds of thousands of members nationwide. Over its history, PFAWF has conducted extensive education, outreach, litigation, and other activities to promote these values. PFAWF strongly supports the principle of the Free Exercise Clause of the Constitution as a shield for the exercise of religion, protecting individuals of all faiths. PFAWF is concerned, however, about efforts, such as in this case, to transform this important

shield into a sword to attack the rights of third parties to be free from discrimination, and accordingly joins this brief.

Amicus curiae ReconcilingWorks: Lutherans For Full Participation embodies, inspires, advocates and organizes for the acceptance and full participation of people of all sexual orientations and gender identities within the Lutheran communion, its ecumenical and global partners, and society at large.

Amicus curiae Reconstructionist Rabbinical College and Jewish Reconstructionist Communities educates leaders, advances scholarship, and develops resources for contemporary Jewish life.

Amicus curiae Religious Institute, Inc. is a multifaith organization whose thousands of supporters include clergy and other religious leaders from more than fifty faith traditions. The Religious Institute, Inc. partners with the leading mainstream and progressive religious institutions in the United States.

Amicus curiae the Sikh American Legal Defense and Education Fund was founded in 1996 and is the oldest Sikh American civil rights and educational organization. We empower Sikh Americans through advocacy, education, and media relations. Sikh American Legal Defense and Education Fund's mission is to protect the civil rights of Sikh

Americans and ensure a fostering environment in the United States for future generations.

Amicus curiae the Sikh Coalition was founded on September 11, 2001, to (1) defend civil rights and liberties for all people; (2) promote community empowerment and civic engagement within the Sikh community; (3) create an environment where Sikhs can lead a dignified life unhindered by bias and discrimination; and (4) educate the broader community about Sikhism in order to promote cultural understanding and create bridges across communities. Ensuring the rights of religious and other minorities is a cornerstone of the Sikh Coalition's work. The Sikh Coalition joins this amicus brief out of the belief that state and federal anti-discrimination laws are indispensable safeguards for religious, ethnic, and other minority communities. Sikh Americans in Washington State have a vital interest in having recourse to legal remedies for discrimination, including religiously-motivated discrimination.

Amicus curiae T'ruah: The Rabbinic Call for Human Rights is an organization led by rabbis from all denominations of Judaism that acts on the Jewish imperative to respect and protect the human rights of all people. Our judges, "You shall not judge unfairly; you shall show no partiality" (Deuteronomy 16:19). Jewish law has developed strict guidelines to ensure that courts function according to this principle. The

rights and protections afforded by civil marriage are legal and not religious in nature. The case at hand addresses tax obligations that may be incumbent on some couples married according to the laws of their state, but not on others. Jewish law accepts that "the law of the land is the law," and upholds the right of the government to impose taxes on its citizens. However, major Jewish legal authorities classify as "theft" a tax levied on one subgroup and not on another (Maimonides, Mishneh Torah, Laws of Theft 5:14; Shulchan Aruch, Hoshen Mishpat 369:8). We thus believe it is important to state that people of faith are not of one mind opposing civil marriage equality, and that many interpretations of religion actually support such equality. The Universal Declaration of Human Rights similarly guarantees to every person equal rights, without "distinction of any kind," and specifies that "Men and women of full age * * * are entitled to equal rights as to marriage, during marriage and at its dissolution." While each rabbi or religious community must retain the right to determine acceptable guidelines for religious marriage, the state has an obligation to guarantee to same-sex couples the legal rights and protections that accompany civil marriage. Doing otherwise constitutes a violation of human rights, as well as the Jewish and American legal imperatives for equal protection under the law.

Amici curiae The Society for Humanistic Judaism is a secular Jewish denomination that celebrates the centrality of human judgment and human power from a uniquely Jewish perspective. The Society believes that reason, rather than faith, is the source of truth, and that human intelligence and experience are capable of guiding our lives.

Amici curiae The Union for Reform Judaism, whose 900 congregations across North America includes 1.5 million Reform Jews, the Central Conference of American Rabbis (CCAR), whose membership includes more than 2,000 Reform rabbis, and Women of Reform Judaism, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world, come to this issue rooted in their proud legacy of fighting for civil rights and social justice while defending both religious freedom and the separation of church and state.

Amicus curiae Women's League for Conservative Judaism (WLCJ) is the largest synagogue based women's organization in the world. As an active arm of the Conservative/Masorti movement, WLCJ provides service to hundreds of affiliated women's groups in synagogues across North America and to thousands of women worldwide. WLCJ strongly supports full civil equality for gays and lesbians with all associated legal rights and obligations, both federal and state and rejects discrimination on the basis of sexual orientation.

CERTIFICATE OF SERVICE

On February 8, 2016, I served a true and correct copy of the Brief of Amicus Curiae Anti-Defamation League via electronic mail upon the following:

Kristen Waggoner
kwaggoner@telladf.org

George Ahrend
gahrend@ahrendlaw.com

John R. Connelly
jconnelly@connelly-law.com

Alicia M. Berry
aberry@licbs.com

Michael R Scott
mrs@hcmp.com

Amit D. Ranade
amit.ranade@hcmp.com

Jake Ewart
mje@hcmp.com

Margaret Chen
mchen@aclu-wa.org

Elizabeth Gill
egill@aclunc.org

Todd Bowers
toddb@atg.wa.gov

Kimberlee Gunning
KimberleeG@atg.wa.gov

Christian E. Mammen
WSBA #23493
HOGAN LOVELLS US LLP
3 Embarcadero Center
Suite 1500
San Francisco, CA 94111
(415) 374-2325
chris.mammen@hoganlovells.com