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.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* LEGAL SCHOLARS IN SUPPORT OF EQUALITY AND RELIGIOUS AND EXPRESSIVE FREEDOM IN SUPPORT OF APPELLANTS

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS

Pursuant to Rule of Appellate Procedure 10.6, legal scholars respectfully move for leave to file the attached brief as *amici curiae* in support of Appellants. All parties have consented to this filing.

I. INTEREST OF THE *AMICI CURIAE*

Amici are legal scholars who, although differing significantly in their religious, political, and jurisprudential views, are committed to the achievement of a just respect for equality and also for religious and expressive freedom.

II. FAMILIARITY WITH THE ISSUES

Amici teach, research, and publish in the fields of antidiscrimination, freedom of religion, and freedom of expression. *Amici* fully understand the arguments the parties are advancing before this Court.

III. SPECIFIC ISSUES ADDRESSED BY *AMICI CURIAE*

In this brief, *amici* specifically address the challenge of achieving a proper and respectful balance between equality and religious and expressive freedom.

IV. REASONS FOR ADDITIONAL ARGUMENT

Amici hope and attempt to offer a balanced perspective less available to parties immediately immersed in adversarial proceedings.

Amici have no direct interest, financial or otherwise, in the outcome of this case.

For the forgoing reasons, *amici* respectfully request that their motion to file an *amici curiae* brief be granted. In addition, pursuant to Rule 10.3(a)(8) of the Rules of Appellate Procedure, *amici curiae* respectfully request permission to attach an addendum to their brief for the purpose of providing a list identifying *amici curiae* legal scholars.

Respectfully submitted this 30th day of September, 2016,

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INTEREST OF THE *AMICI CURIAE*

Amici are legal scholars who teach, research, and publish in the fields of antidiscrimination, freedom of religion, and freedom of expression, and who are committed to the achievement of a proper respect for each of these commitments. In this brief, *amici* specifically address the challenge of achieving such a proper and respectful balance. In pursuit of this goal, *amici* hope and attempt to offer a balanced perspective less available to parties immediately immersed in adversarial proceedings.

STATEMENT OF THE CASE

Barronelle Stutzman and her business Arlene's Flowers sold thousands of dollars worth of arranged flowers to Robert Ingersoll, without reservation, over a nine-year period, with full knowledge that Ingersoll is gay and that many of the arrangements were intended for his same-sex partner, Curt Freed, and for occasions such as Valentine's Day and birthdays. Memorandum Decision, 6-7[1]. When Ingersoll requested that she do the floral arrangements for his wedding to Freed, however, Stutzman politely declined and recommended three other florists. CP 546,

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[1] Memorandum Decision refers to the Superior Court's Memorandum Decision and Order Denying Defendants' Motion for Summary Judgment Based on Plaintiffs' Lack of Standing, Granting Plaintiff State of Washington's Motion for Partial Summary Judgment on Liability and Constitutional Defenses, and Granting Plaintiffs Ingersoll and Freed's Motion for Partial Summary Judgment, dated February 18, 2015. This decision will hereinafter be referred to as "MD."

1639-40. Stutzman's sincerely held Christian belief—one shared by tens of millions of Americans—is that marriage is between a man and a woman and that same-sex marriage is contrary to God's law; and she believes she must not use her God-given gifts to celebrate a marriage contrary to God's law. MD 6. Mrs. Stutzman has no objection to selling the "raw materials," or the flowers themselves, which could be used for purposes of a same-sex wedding; her objection is to using her artistic talents to design the floral arrangements and thereby actively participate in celebrating the wedding. MD 6.

Respondents Ingersoll and Freed together with the American Civil Liberties Union and the State of Washington then brought this lawsuit. Claimed monetary damages are *de minimis*—$7.91 by respondents' own estimate, for the cost of driving to another florist. MD 9. Respondents primarily seek to impose sanctions and to compel Stutzman to agree to do floral designs for future same-sex weddings. In negotiations, the Attorney General sought to induce Stutzman to make a written commitment that she would not act on her religious objection to same-sex marriage in the future. Stutzman declined. MD 9.

On these undisputed facts the Superior Court ruled that Stutzman and Arlene's Flowers had violated the Washington Law Against Discrimination (WLAD), RCW 49.60.030, and, derivatively, the

Washington Consumer Protection Act, RCW 19.86.020; and the court rejected appellants' constitutional and other defenses. The case is before this Court on appeal from that judgment.

SUMMARY OF ARGUMENT

The record in this case conclusively establishes two essential points: first, that Mrs. Stutzman has a sincere religious objection to celebrating same-sex marriage and, second, that Mrs. Stutzman does *not* have any objection to serving and selling to respondents or anyone else *on the basis of their sexual orientation*. In erroneously treating the religious conviction Stutzman *does* have as equivalent to a different and more troublesome objection that she does *not* have, the Superior Court departed from both the undisputed facts and the relevant legal principles.

More generally, the court disserved longstanding commitments to equality and also to religious freedom and freedom of expression. And the court flattened crucial distinctions on which a pluralistic society depends if a peaceful and mutually respectful community is to be maintained. In doing so, the court departed from the United States Supreme Court's recent admonition in *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602, 192 L. Ed. 2d 609 (2015), that many Americans support traditional marriage and oppose same-sex marriage on the basis of "decent and honorable religious

or philosophical premises" and that "neither they nor their beliefs [should be] disparaged . . . ."

ARGUMENT

I. Conflating a religiously-based refusal to celebrate a same-sex marriage with a refusal to serve gay people "because of" their sexual orientation was plainly mistaken, and doubly prejudicial, on the facts and record of this case.

On its face, a religious objection to same-sex marriage is manifestly not the same thing as a religious objection to working with and serving gays and lesbians; and in fact millions of Americans hold the first kind of reservation (as the Supreme Court respectfully recognized in *Obergefell*[2]) but would *not* assert (and indeed would condemn) the second. Yet the Superior Court treated the first kind of religious conviction (which Mrs. Stutzman holds) as equivalent to the second (which she emphatically and demonstrably does *not* hold). In doing so, the court erroneously treated Stutzman's decision not to participate in celebrating a same-sex wedding as a violation of Washington law, which regulates only actions taken "because of" a person's sexual orientation. In addition, the court undervalued Stutzman's constitutional rights by misinterpreting her religious convictions as offensive and invidious.

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[2] "Marriage, in [the view of proponents of traditional marriage], is by its nature a gender-differentiated union of man and woman. This view long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world." *Obergefell*, 135 S. Ct. at 2594.

To be sure, *under some facts* a refusal to provide a particular service may be equivalent to a refusal to serve on the basis of a forbidden factor such as race, gender, or sexual orientation: *but this case does not present such a situation.* To see why, consider how this case differs from superficially similar situations invoked by the lower court.

In one situation, a merchant's refusal of services is *on its face* based on a legally impermissible criterion, but the merchant attempts to justify this explicit criterion by reference to some other arguably more legitimate purpose. In *Lewis v. Doll*, 53 Wn. App. 203, 765 P.2d 1341, *rev. denied*, 112 Wn.2d 1027 (1989), for example, on which the Superior Court relied, MD 27-28, a young African-American man, Charles Lewis, attempted to enter a 7-11 Store to buy a Slurpee but was ordered to leave. The store's owner believed that black shoppers had been responsible for past instances of shoplifting, and had thus instructed employees not to allow any blacks to enter the store. In short, the explicit criterion of exclusion was a legally forbidden factor—namely, race—although the owner tried to justify the racial exclusion by reference to a more legitimate concern—namely, preventing shoplifting.

In such situations, the assertion of a legitimate objective (albeit, in *Doll,* a grossly overbroad one) cannot excuse the overt use of a legally forbidden consideration; and the court so ruled. The more legitimate

objective is explicitly tied to—and hence falls with—the illegitimate policy: overt racial discrimination remains discrimination, whatever justifications the discriminator may offer. Any other conclusion would effectively eviscerate antidiscrimination laws, because discriminators' ideas about race, sex, or sexual orientation will nearly always be grounded in other associated beliefs– about racial proclivities, proper gender roles, etc.

But although the court's conclusion in *Doll* was clearly correct, the present case is nothing like *Doll* but is more nearly its opposite. This case *would be* comparable to *Doll* if Mrs. Stutzman were to declare that she will not sell flowers to gays and lesbians because they might at some point ask her to do arrangements for a same-sex wedding, to which she has a religious objection. In that situation, she would be using a religious belief to justify a policy that on its face discriminates on a forbidden ground (as the owner did in *Doll*). But in fact this is emphatically *not* Stutzman's conviction or policy. Quite the contrary: She is happy to serve gay and lesbian customers, as she served Ingersoll for so many years. She is simply religiously opposed to participating in a same-sex marriage by providing one particular kind of service—namely, designing and creating flower arrangements to celebrate a same-sex wedding.

The point becomes clear if the positions are simply reversed. Consider a gay florist who happily sells flowers to Catholics, but who declines to do floral arrangements for a rally of "Catholics in Opposition to Same-Sex Marriage." The florist would decline service not "because of" the would-be clients' Catholicism, but rather because he does not want to endorse the message of the particular rally.

On different facts, to be sure, a merchant's stated and superficially legitimate reason for refusing service might be merely a manifestation of—or perhaps a pretext for—a forbidden reason. This observation points to a second situation in which the kind of conflation committed by the Superior Court might be permissible. Hypothetically, a florist might claim to be conscientiously opposed to same-sex marriage, but this declared reason might be a cover for opposition to serving gay or lesbian individuals generally. The florist might *say*, in others words, "I don't believe in same-sex marriage"; but his fundamental belief or reason might be "I don't want to work with gay or lesbian clients."

On such facts, it would be plausible to infer that the refusal of a particular service was *because of* the customers' sexual orientation. And on some such supposition, courts have occasionally treated an articulated objection to *conduct* as equivalent to animus against *persons* who characteristically engage in such conduct. *Lawrence v. Texas*, 539 U.S.

558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003), is perhaps the most notable instance in which a concurring Justice asserted such equivalency (although this assertion was largely peripheral to the Court's primary, liberty-based rationale for overturning a criminal sodomy law). *Id*. at 583 (O'Connor, J., concurring).

As *Lawrence* suggests, this sort of conflation may be plausible and permissible under some circumstances (although judges should be cautious about inferring that disapproval of *conduct* is a manifestation of animus against *persons*, as the United States Supreme Court recognized in *Obergefell,* 135 S. Ct. at 2602[3]). But although such an inference may be plausible in *some* cases, it is utterly implausible in *this* case. Respondents acknowledge that Mrs. Stutzman's religious objection to same-sex marriage is sincere, not pretextual. And her years of serving Ingersoll without reservation amply demonstrates that her opposition to celebrating a same-sex marriage is *not* a manifestation of or a pretext for a reluctance to serve homosexual customers because of their sexual orientation.

Strictly and logically speaking, in fact, Mrs. Stutzman's religious objection to participating in a same-sex marriage is not actually dependent on the sexual orientation of the couple seeking marriage. Under current

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[3] "Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here."

law, same-sex marriage is not restricted to homosexual couples; and very occasionally heterosexual individuals of the same sex may choose to marry—for political reasons,[4] for example, or in order to gain tax advantages.[5] Stutzman would be just as strongly opposed to celebrating a same-sex wedding involving heterosexual partners as she was in this case. Conversely, homosexual individuals sometimes marry opposite-sex partners. Stutzman's religious convictions would not prevent her from assisting with such a marriage, although one or even both of the opposite sex spouses might be gay or lesbian. Such cases are anomalous, obviously; but the point is simply that Stutzman's religious objection is to *same-sex marriage*, regardless of the sexual orientation of the parties to the marriage, not to serving *individuals* based on their sexual orientation.

In sum, the Superior Court was simply mistaken in treating Mrs. Stutzman's religious objection to celebrating a same-sex wedding as equivalent to an objection to serving respondents "because of" their sexual

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[4] *See, e.g.*, Nick Duffy, *U.S. Straight Guys Try to Marry Each Other to Experience State's Marriage Ban*, PINKNEWS (Nov. 23, 2014), http://www.pinknews.co.uk/2014/11/23/us-straight-guys-try-to-marry-eachother-to-experience-states-marriage-ban/.

[5] *See, e.g.*, *So can two straight best friends get married now?*, PHATMASS (June 27, 2015), http://www.phatmass.com/phorum/topic/137886-so-can-two-straight-best-friends-get-married-now/; *Can we marry, even though we're both straight and male?*, ASK METAFILTER (Feb. 1, 2010), http://ask.metafilter.com/144760/Can-we-marry-even-though-were-both-straight-and-male; Barbara Couden Hernandez, Naomi J. Schwenke & Colwick M. Wilson, *Spouses in mixed-orientation marriage: A 20-year review of empirical studies*, 37 J. MARITAL & FAM. THERAPY 273, 307-318 (2010).

orientation. And, as noted, this error infected both the determination of *prima facie* liability and the court's dismissive treatment of appellants' constitutional defenses.

II. Conflating a religiously-based refusal to celebrate a same-sex marriage with status-based discrimination devalues the commitment to ending truly invidious discrimination and subverts vital and longstanding constitutional commitments.

Judicial stretching of a law's scope may in some instances seem warranted in order to further an important public policy. The Superior Court may have believed as much in this case; the court pointedly quoted the maxim that antidiscrimination laws should be construed liberally to fulfill their purpose. MD 13. In this context, however, crucial but potentially competing public policies are implicated; so the distension of a law reflecting one policy is likely to undermine other important laws and policies. One-sided expansion thus works to subvert the settlement reflected in the confluence of various interacting laws.

Specifically, vital public policies that provide remedies for invidious discrimination interact with longstanding commitments to freedom of religion and to freedom of expression. Both kinds of commitments—to the elimination of invidious discrimination, and to the protection of religious and expressive freedom—are cherished and essential components of the American constitutional tradition.

Antidiscrimination policy reflects evolving conceptions of equality tracing back to the lofty assertion in the Declaration of Independence that "all men are created equal." The commitment to religious freedom resonates with Thomas Jefferson's revered Virginia Statute for Religious Liberty and of course with the First Amendment to the Constitution. More recently, the importance of religious liberty was eloquently expressed by President Bill Clinton when, in signing the Religious Freedom Restoration Act, he praised religious freedom as "perhaps the most precious of all American liberties" and urged Americans to "fight to the death to preserve the right of every American to practice whatever convictions he or she has."[6]

The First Amendment likewise protects the freedom of expression—including the freedom *not* to affirm by word or act ideas and causes in which one does not believe. *See, e.g.*, *Wooley v. Maynard*, 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977). This commitment would be violated by a legal decision ordering a Muslim baker to prepare a cake ridiculing Islam or Mohammed, for example, or sanctioning an

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[6] William J. Clinton, *Remarks on Signing the Religious Freedom Restoration Act of 1993*, THE AMERICAN PRESIDENCY PROJECT (Nov. 16, 1993), http://www.presidency.ucsb.edu/ws/?pid=46124.

African-American baker for refusing to fill an order from the KKK for a cake saying "Black Lives Don't Matter."[7]

All of these commitments—to equality, to religious freedom, and to the expressive freedom *not* to endorse ideas one disbelieves or to promote causes one opposes—are held dear by Americans, and have been for generations. All are embodied in current laws, at both the state and federal levels. In the State of Washington, more specifically, the antidiscrimination policy is reflected, obviously, in the WLAD; the commitment to freedom of religion is manifest among other places in Washington State Constitution, Art. I, sec. 11, which this Court has construed as affording greater protection to religious freedom than is provided by the Free Exercise Clause of the First Amendment. *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 642, 211 P.3d 406 (2009). Freedom of expression is protected in the Washington State Constitution, Art. I, sec. 5.

If pressed to its utmost possible scope, any of these commitments *could* subordinate or displace others; but given the vital importance of each, it is imperative that courts respect each through a sensitive construction of laws embodying each commitment. That imperative is all

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[7] *See* Ronald D. Rotunda, *Marriage Litigation in the Wake of Obergefell v. Hodges,* JUSTIA (Sept. 25, 2015), https://verdict.justia.com/2015/09/28/marriage-litigation-in-the-wake-of-obergefell-v-hodges.

the more urgent at the present time given the nation's increasing polarization, noted by numerous observers and social scientists.

Under such conditions, advocates will sometimes press an aggressive, "take no prisoners" agenda. Recently, for example, Harvard law professor Mark Tushnet declared victory in the so-called culture wars for the progressive party. *"The culture wars are over; they lost, we won."* Professor Tushnet added that "the question now is how to deal with the losers"; and he urged a "hard line," no compromises approach to religious traditionalists: "You lost; live with it."[8] A similar attitude is conspicuous in other advocates and advocacy groups.

But exhilarating as it might be simply to crush one's opposition while the political momentum happens to be on one's side, this course exalts one important public commitment at the expense of other equally vital commitments. At a time when national unity seems desperately needed, a course of uncompromising intransigence operates to aggravate rather than calm cultural conflicts. The judicial role, surely, is not to take sides by weighing in as champion for one or another faction, but rather to respect and reconcile the vital policies and commitments expressed in various laws that sometimes come into tension.

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[8] Mark Tushnet, *Abandoning Defensive Crouch Constitutionalism*, BALKINIZATION (May 6, 2016), http://balkin.blogspot.com/2016/05/abandoning-defensive-crouch-liberal.html.

Not every court will arrive at the same balance or reconciliation, of course, just as not every citizen (and certainly not every signatory of this brief) will favor the same kind of settlement in all its particulars. In a case in which a business simply asserted a blanket religious objection to providing goods or services to gays or lesbians (if such a case were to arise), some might conclude that the antidiscrimination policy should automatically prevail over claims of religious and expressive freedom; others might incline to a more contextual approach. It seems clear, in any case, that at least a sizable bloc of Americans is unsympathetic to merchants who might assert a religious objection to serving gay or lesbian customers: that is the scenario (whether real or hypothetical) most often posed in recent debates about existing or proposed religious freedom laws.

But however this Court might resolve that vexing issue if and when it ever arises, the crucial fact is that *the issue is not presented in this case.* Once again, Mrs. Stutzman is emphatically *not* the much-feared hypothetical merchant who asserts a religious objection to serving gays and lesbians. On the contrary: Stutzman's Christian faith permits and indeed demands that she serve all people, regardless of sexual orientation; it merely forbids her to use her artistic gifts to provide one particular service to celebrate an event she believes to be contrary to God's law.

To ignore or flatten such crucial distinctions, and to extend the antidiscrimination law beyond its "because of . . . sexual orientation" terms to condemn Stutzman's quite different religious objection, would be to distend one important policy while subordinating others, in disrespect of the longstanding laws and traditions that embody the commitments to freedom of religion and expression. It would in effect adopt the agenda of zealous advocates of simply bulldozing or crushing the political and cultural opposition: "You lost; we won; live with it."

Such a course is neither prudent, nor inclusive, nor faithful to our rich constitutional traditions, nor consonant with applicable law. Conversely, in tense times, for this Court to recognize and affirm the crucial distinction between a religious objection to *same-sex marriage* and the more dubious (and perhaps merely hypothetical) religious objection to *serving people because of their sexual orientation* would be an important step toward a sensible reconciliation of the laws and policies promoting both antidiscrimination and religious and expressive freedom.

III. Conflating a religiously-based objection to same-sex marriage with invidious status-based discrimination is inconsistent both with Supreme Court precedent and with the requirements of a peaceful and mutually respectful pluralism.

In conflating Mrs. Stutzman's actual religious objection to participating in a same-sex marriage with an imagined and unfairly

ascribed objection to serving customers "because of" their sexual orientation, the Superior Court purported to rely on Supreme Court precedents, which in one or two instances have treated a declared objection to homosexual *conduct* as equivalent to animus against persons based on their *status* as homosexuals. MD 28-30. In these cases, the Supreme Court asserted the equivalency almost in passing, devoting a paragraph or less to the question. Such remarks do not justify the conflation committed by the Superior Court *on the facts of this case*—for two principal reasons.

First, the decisions relied on by the lower court are not relevant here because, as careful examination will show, this case does not in reality even present the issue of conflating status and conduct. As her practice demonstrates, Mrs. Stutzman plainly does not have any objection to serving people who have the *"status"* of being homosexual. But neither did she attempt to censure Ingersoll's or Freed's sexual *conduct*. Indeed, Stutzman did not even discourage Ingersoll from proceeding with their wedding (despite her religious objection to such unions); on the contrary, she recommended three other florists that respondents could use, and she has indicated her willingness to supply the "raw materials" for Ingersoll's wedding, or other such weddings, so long as she is not asked to use her artistic gifts to create floral arrangements to celebrate the event.

In short, although her Christian faith does not approve of homosexual conduct, Mrs. Stutzman does not either as a legal or as a business matter make any opposition to *either* the status *or* the conduct of homosexuals. She merely asks not to be compelled creatively and personally to assist in a supportive and affirming way with a ceremony she believes to be contrary to God's law.

The status/conduct question *could* be relevant to this case if the facts were quite otherwise than they are. For example, if Mrs. Stutzman were to declare that she will sell flowers to gays and lesbians if but only if they are not sexually active, this policy would be comparable to the Supreme Court's interpretation of the Christian Legal Society's position in *Martinez v. Christian Legal Soc. Chapter of the Univ. of Cal.*, 561 U.S. 661, 130 S. Ct. 2971, 177 L. Ed. 2d 838 (2010), on which the Superior Court relied. MD 29. But of course this is *not*—and is not remotely similar to—Stutzman's position.[9]

Even if this case did turn on the status/conduct question, however, the cases relied on by the Superior Court would not apply here. In their

[9] In addition, the *Martinez* Court emphasized that Hastings's policy of requiring student associations seeking official certification and material support to accept "all comers" reflected the law school's management of the "public forum" dimension of its own property and resources. In such contexts, deference to a public institution's policy decisions is more appropriate, *cf., e.g.*, *Connick v. Myers*, 461 U.S. 138, 153, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983), than when the government is attempting to regulate and restrict the conscientious decisions of private individuals and entities operating on their own property without governmental certification or subsidies.

brief comments, those decisions did not come close to endorsing any all-purpose, across-the-board conflation of homosexual conduct and homosexual status, but instead briefly observed that the distinction might be unimportant in some circumstances. That observation seems correct: as already discussed, in some circumstances it may indeed be plausible to infer that disapproval of homosexual conduct is a manifestation of, or pretext for, animus against homosexual persons. Whether this inference is or was plausible in particular cases will often be debatable, of course. In *this* case, however, such an inference is utterly implausible, as Stutzman's practice over a period of years amply demonstrates.

More generally, and even more crucially, any categorical dissolution of the distinction between disapproval of *conduct* and hostility toward *persons* who engage in such conduct would be not only factually and analytically misguided; it would be constitutionally, culturally, and politically disastrous.

Ours is after all a pluralistic nation, culturally, morally, and religiously. *See* JOHN D. INAZU, *CONFIDENT PLURALISM: SURVIVING AND THRIVING THROUGH DEEP DIFFERENCE* (2016). Under conditions of pluralism, many and probably all citizens will inevitably disapprove of the beliefs and conduct of some of their fellow citizens. Thus, Stutzman's religious faith disapproves of same-sex marriage; for their part,

respondents disagree with Stutzman's belief that marriage should be between a man and a woman, and they disapprove of (and seek to sanction her for) acting in accordance with that belief. This sort of disapproval is simply an inescapable entailment of pluralism. If citizens are nonetheless to live together in peace and mutual respect, it is imperative that they be able to distinguish between *conduct* of which they disapprove and the *persons* who engage in such conduct. Citizens need to be permitted and indeed encouraged to say (as Mrs. Stutzman did), "I don't agree with some of what you do and believe, but I fully respect you as a person." Conversely, to dissolve the distinction between disapproval of *conduct* and disapproval of *persons* would be to eliminate this essential basis of mutual toleration, and thereby to turn pluralism into a perpetual struggle among mutually suspicious and hostile factions.

Interpreting brief dicta in one or two Supreme Court opinions as the Superior Court has done thus operates to dissolve an essential distinction upon which the possibility of peaceful pluralism depends. The United States Supreme Court has surely not mandated any such conclusion. On the contrary, even in recognizing a constitutional right to same-sex marriage, the Court took care to anticipate and preempt such thinking. "Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical

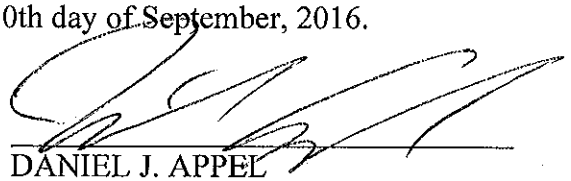
premises," the Court insisted in *Obergefell*, 135 S. Ct. at 2602, "and neither they nor their beliefs are disparaged here."

The Court's admonition is especially apt in this case. The admonition strongly counsels against conflating a sincere religious objection to promoting same-sex marriage with an imaginary and uncharitably ascribed discriminatory refusal to serve individuals "because of" their sexual orientation. The Supreme Court's counsel underscores the tragic imprudence of imposing crippling sanctions on a florist who has faithfully and cheerfully hired and served gays and lesbians for many years, in an effort to compel her to affirmatively participate in celebrating a ceremony she believes to be contrary to God's law.

CONCLUSION

In erroneously conflating Mrs. Stutzman's religious objection to celebrating same-sex marriage with a refusal to serve customers "because of" their sexual orientation, the Superior Court extended Washington's antidiscrimination law beyond its natural scope and meaning and also devalued longstanding constitutional commitments to freedom of religion and freedom of expression. This appeal presents this Court with a timely opportunity, in correcting the lower court's legal error, to strike a more measured and inclusive balance between the community's vital commitments both to equality and to religious and expressive freedom.

Respectfully submitted this 30th day of September, 2016.



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CERTIFICATE OF SERVICE

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