

In the Supreme Court of the United States

ARLENE'S FLOWERS, INC., D/B/A ARLENE'S FLOWERS
AND GIFTS, AND BARRONELLE STUTZMAN,
PETITIONERS,

v.

STATE OF WASHINGTON,
RESPONDENT.

ARLENE'S FLOWERS, INC., D/B/A ARLENE'S FLOWERS
AND GIFTS, AND BARRONELLE STUTZMAN,
PETITIONERS,

v.

ROBERT INGERSOLL AND CURT FREED,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF WASHINGTON

STATE'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Arlene's Flowers sold wedding flowers to the public, but refused to sell any flowers to a gay couple for their wedding. The company then adopted a policy that it would not prepare *any* flower arrangements for weddings of same-sex couples, even if it would prepare an identical arrangement for a heterosexual couple's wedding. This conduct violated Washington's neutral and generally applicable Law Against Discrimination. The State sent a letter to the business's owner, Barronelle Stutzman, asking her to serve customers equally. She refused. The State then brought this enforcement action, obtaining an injunction requiring Arlene's Flowers to serve customers equally, but not requiring Stutzman to "personally attend and participate in same-sex weddings." Pet. App. 4a. The questions presented are:

1. Whether a State court injunction that has been authoritatively construed by the State's highest court not to require Petitioners "to personally attend and participate in same-sex weddings" actually requires their participation in such weddings.

2. Whether a place of public accommodation has a free speech right to refuse to provide to gay and lesbian customers goods and services it would provide to heterosexual customers.

3. Whether Petitioners can demonstrate religious hostility based on their characterization of an online video outside the record depicting an incident that occurred years after the incident in this case and involved dramatically different facts.

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INTRODUCTION

The Petition asks this Court to grant review based on a version of events that never occurred and a lower court opinion that never existed. Reviewing the actual record and decision below demonstrates that this case falls far short of this Court's standards for granting certiorari. The Court should deny review.

When Robert Ingersoll went to Arlene's Flowers to request flowers for his wedding to Curt Freed, the owner, Barronelle Stutzman, refused to serve him before he could even describe what he wanted. Stutzman then adopted a policy that Arlene's Flowers would not prepare *any* flower arrangement for weddings of gay or lesbian couples, even arrangements copied from a picture book identical to those they would prepare for heterosexual couples.

The Washington Attorney General's Office became aware of this incident and policy, which violated Washington's Law Against Discrimination, and sent Stutzman a private letter asking her to comply with Washington law by serving customers equally regardless of sexual orientation. The letter made clear that if she agreed, the State would take no further action. She refused.

The State then filed this case, obtaining an injunction requiring Stutzman and Arlene's Flowers (Petitioners) not to discriminate against customers, but specifically not requiring Stutzman to "personally

attend and participate in same-sex weddings.” Pet. App. 4a. The State also sought and received minimal penalties and attorneys fees—\$1,001 in total.

Petitioners’ primary argument for certiorari gravely distorts these facts. The Petition asserts that Washington is “[r]equiring Barronelle to participate in sacred ceremonies[.]” Pet. 21. That is false. Stutzman refused to serve Ingersoll before he could say what he wanted, and he never requested that she attend his wedding. The trial court’s injunction requires only equal provision of goods and services Stutzman “provid[es] for a fee,” which does not include “participation” in the ceremony. Pet. App. 198a n.23. And Washington’s highest court has authoritatively construed the injunction not to require Stutzman to “personally attend and participate in same-sex weddings.” Pet. App. 4a. This Court should not grant certiorari based on a reading of an injunction that has been rejected by the courts with power to enforce it.

Petitioners next argue that flowers are “speech” and that requiring that they be provided equally to customers regardless of sexual orientation compels speech. But this Court has never treated an antidiscrimination law requiring equal service to customers as compelling speech. This case highlights why. Even if flowers could be “speech” in some hypothetical circumstance, Washington’s Law Against Discrimination does not regulate flowers at all, much less prohibit or dictate the content of any flower arrangement. It simply requires that if Petitioners provide wedding flowers to heterosexual customers, they do the same for gay and lesbian customers. This Court’s cases make clear that this

type of rule regulates conduct, not speech. *See, e.g., Rumsfeld v. Forum for Acad. & Institutional Rights (FAIR)*, 547 U.S. 47, 61-62 (2006). And neither selling flowers nor arranging them is the sort of inherently expressive conduct protected as “speech.” Stutzman concedes that providing flowers for a wedding expresses no endorsement of the couple or their beliefs, Pet. App. 43a, and whatever Stutzman may intend to convey by her flower arrangements or her refusal to provide them to gay and lesbian couples, her “message” cannot be understood without explanatory speech, which “is strong evidence that the conduct . . . is not so inherently expressive that it warrants protection[.]” *FAIR*, 547 U.S. at 66.

Petitioners also incorrectly claim that the Washington Supreme Court exempted executive branch officials from the Free Exercise Clause. Pet. 34. In reality, the Washington court made clear that executive branch officials are subject to constitutional restrictions. Pet. App. 26a. It explained that *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (Masterpiece)*, 138 S. Ct. 1719, 1730 (2018), dealt with a different issue: “an adjudicatory body deciding a particular case.” Thus, in reconsidering its decision post-*Masterpiece*, the Court focused on whether the adjudicatory bodies deciding this case—Washington courts—evidenced religious hostility, and concluded that they did not. Petitioners never argued otherwise until this Court.

Finally, Petitioners allege that State “hostility” to religion has driven this case, but their evidence falls apart under the slightest scrutiny. For example, they say that Washington improperly invoked other types

of discrimination, but it was Petitioners' own expert who argued that businesses should be allowed to refuse service "in the case of an interracial marriage." App. 102a. They cite an online video of an incident at a coffee shop years after the events at issue in this case to claim that the incidents are materially indistinguishable and the State had to handle them identically, but, in fact, the two situations differ dramatically. Among the differences, after Petitioners refused to serve Ingersoll, they adopted a policy formalizing their refusal to serve customers equally; after the coffee shop owner ejected several patrons who had been distributing graphically disturbing fliers to children, he agreed to and in fact did serve those same patrons in the future, publicly committing not to discriminate. *See infra* p. 31. Had Stutzman done the same, this case never would have started. This is no evidence of animus.

The Court should see through the misrepresentations in the Petition and deny review.

STATEMENT

Robert Ingersoll and Curt Freed have been in a committed, romantic relationship since 2004. Pet. App. 4a, 77a. In 2012, after the people of the State of Washington voted to recognize equal civil marriage rights for same-sex couples, Ingersoll and Freed decided to marry. Pet. App. 4a-5a, 77a, 152a.

On February 28, 2013, Ingersoll went to Arlene's Flowers, where he had been purchasing flowers for several years, to talk about purchasing flowers for his wedding. Pet. App. 5a, 78a, 153a. An employee told Ingersoll he would have to speak with

the owner, Barronelle Stutzman, who was not present. Pet. App. 6a, 78a, 153a.

The next day, Ingersoll returned to Arlene's Flowers to talk with Stutzman. Before he could tell her what kind of flowers he might want or anything else, she told him she would be unable to provide flowers for his wedding because of her religious beliefs. Pet. App. 6a, 78a, 153a-55a. There was no mention of custom floral arrangements, no discussion as to whether flowers would be delivered or picked up, and no suggestion that Ingersoll would invite Stutzman to attend or participate in the wedding. Pet. App. 6a, 78a, 154a-55a.

Stutzman's refusal led Ingersoll and Freed to change their wedding plans significantly, from a large ceremony in a rented venue to a small ceremony in their home, in part because they feared being denied service by other vendors. Pet. App. 7a, 79a, 155a.

After turning Ingersoll away, Stutzman instituted an unwritten policy at Arlene's Flowers that "we don't take same sex marriages." Pet. App. 8a, 155a. Stutzman made clear that Arlene's Flowers would not provide flower arrangements for weddings of gay and lesbian couples even if the arrangement was simply copied from a picture book of floral arrangements and even if another employee with no religious objection arranged the flowers. Pet. App. 8a, 80a, 374a; App. 91a, 100a. She stated that allowing Arlene's Flowers to provide floral arrangements would be tantamount to endorsing marriage equality for same-sex couples. Pet. App. 8a, 80a. Yet she denied that any similar endorsement might result if Arlene's Flowers provided flower arrangements for a Muslim

wedding or an atheistic wedding. Pet. App. 8a, 81a, 101a; App. 29a, 95a, 98a. Stutzman and Arlene's Flowers admitted that the unwritten policy would result in a future denial should another gay or lesbian couple seek their services. Pet. App. 183a.

Later in 2013, after this case began, Arlene's Flowers decided to stop providing wedding flowers to the public altogether. Pet. App. 391a. Wedding flowers had previously accounted for roughly 3% of the company's business. App. 2a.

When the Washington State Attorney General's Office became aware of Stutzman's conduct, it sent her a letter asking her to sign an "Assurance of Discontinuance" agreeing that she would not discriminate against customers based on their sexual orientation. Pet. App. 365a-70a. The letter made clear that by signing it she would not be admitting any violation of state law, and it advised that the State would seek no further formal action or costs against her if she agreed. Pet. App. 9a, 81a, 155a-56a, 365a-70a. She refused to sign the letter. Pet. App. 81a, 156a.

As a result, on April 9, 2013, the State filed a complaint for injunctive and other relief for violations of Washington's Consumer Protection Act, Wash. Rev. Code 19.86, and the Washington Law Against Discrimination, Wash. Rev. Code 49.60, against both Stutzman and Arlene's Flowers. Pet. App. 81a, 156a. Ingersoll and Freed filed a separate action against Arlene's Flowers and Stutzman. Pet. App. 82a, 156a.

Stutzman and Arlene's Flowers defended against both actions by claiming that their

refusal to serve Ingersoll was protected by the First Amendment, Fourteenth Amendment, and Washington law. Pet. App. 81a-82a, 196a. Defendants offered expert testimony that business owners should be allowed to refuse service based on their religious beliefs even “in the case of an interracial marriage, particularly if there are plenty of alternatives available to that couple.” App. 102a.

The trial court consolidated the two cases for certain purposes, rejected the defenses raised by Stutzman and Arlene’s Flowers, and ultimately entered two separate judgments and injunctions for the plaintiffs. Pet. App. 9a, 132a-37a, 138a-42a, 143a-227a, 228a-77a. Each injunction prohibits Stutzman and Arlene’s Flowers from discriminating based on sexual orientation in the sale of any goods or services they offer the public. Pet. App. 140a. They do not require Stutzman or Arlene’s Flowers to sell any particular goods or services, such as wedding flowers. Pet. App. 140a. They do not require Stutzman to personally attend or participate in weddings of same-sex couples. Pet. App. 4a, 12a. Indeed, in response to Stutzman’s claim that she occasionally attended weddings and did things such as “singing, standing for the bride, [or] clapping to celebrate the marriage,” the trial judge made explicit that Stutzman “does not claim that these are services that she is providing for a fee to her customers such that they would be covered by an injunction.” Pet. App. 198a n.23.

The Washington Supreme Court affirmed in a unanimous decision entered February 16, 2017. Pet. App. 75a-131a. The court carefully reviewed this Court’s decisions according free speech protection for conduct and found that they all dealt with conduct

that was clearly expressive in and of itself, without further explanation. Pet. App. 98a-107a. The court found that the sale of floral arrangements does not fall within this category. Pet. App. 99a-101a (citing *Spence v. Washington*, 418 U.S. 405, 410-11 (1974) (per curiam); *FAIR*, 547 U.S. 47).

The court rejected Stutzman’s free exercise claim, holding that Washington’s Law Against Discrimination (WLAD) is both neutral and generally applicable. Pet. App. 108a-14a. The court therefore applied rational basis review and held that the WLAD is rationally related to the government’s legitimate interest in ensuring equal access to public accommodations. Pet. App. 114a. But the court also explained that the WLAD would survive even if strict scrutiny applied. Pet. App. 121a-25a. It described the government’s compelling interest in eliminating discrimination in public accommodations and found there is no less restrictive means available to achieve that goal than to prohibit such discrimination. Pet. App. 121a-25a. The court explained that public accommodations laws do not simply guarantee access to goods or services. “[T]hey serve a broader societal purpose: eradicating barriers to the equal treatment of all citizens in the commercial marketplace. Were we to carve out a patchwork of exceptions for ostensibly justified discrimination that purpose would be fatally undermined.” Pet. App. 125a (footnote omitted).

Finally, the court rejected Stutzman’s attempt to invoke the “hybrid rights” doctrine because she had not demonstrated that her rights to speech and association were burdened by the WLAD. Pet. App. 127a-28a. The court also reiterated its earlier

conclusion that even if strict scrutiny applied, the WLAD satisfied that standard. Pet. App. 128a.

Stutzman petitioned for certiorari. This Court subsequently issued its decision in *Masterpiece*, 138 S. Ct. 1719, and then vacated and remanded the Washington Supreme Court’s decision “for further consideration in light of *Masterpiece*.” Pet. App. 74a.

On remand, the Washington Supreme Court fully embraced this Court’s holding in *Masterpiece*, recognizing that “[d]isputes like those presented in *Masterpiece Cakeshop* and *Arlene’s Flowers* ‘must be resolved with tolerance, without undue disrespect to sincere religious beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market.’” Pet. App. 2a-3a, 17a (quoting *Masterpiece*, 138 S. Ct. at 1732). The court carefully reviewed and reconsidered its prior decision in light of this principle, ultimately reaffirming the trial court in a unanimous decision entered June 6, 2019. Pet. App. 1a-73a.

The court first explained the scope of the issues encompassed by this Court’s remand. The court noted that while the petitioner in *Masterpiece* advanced broad free speech and free exercise arguments similar to those in this case, this Court did not adopt those arguments, instead ruling on the narrower ground that “[w]hen the Colorado Civil Rights Commission considered this case, it did not do so with the religious neutrality that the Constitution requires.” Pet. App. 16a (quoting *Masterpiece*, 138 S. Ct. at 1724). The petitioner in *Masterpiece* was thus denied his right “to a neutral decisionmaker who would give full and fair consideration to his religious

objection[.]” Pet. App. 17a (quoting *Masterpiece*, 138 S. Ct. at 1732).

With *Masterpiece*’s holding firmly in mind, the Washington court “painstakingly reviewed the record for any sign of intolerance” by the decisionmakers in this case, both in its own earlier proceeding and in the trial court. Pet. App. 3a, 19a-20a. The court noted that no party at any time had claimed that either court failed to act “with the religious neutrality that the Constitution requires.” Pet. App. 19a (quoting *Masterpiece*, 138 S. Ct. at 1724). The court explained that both state courts had acknowledged the sincerity of Stutzman’s beliefs and emphasized that they “intend[ed] no disrespect” to her or her beliefs. Pet. App. 20a (citing Pet. App. 215a n.31). Both courts made clear that discussion of cases involving racial discrimination “d[id] not mean to imply either that Stutzman possesses any racial animus, or that she has conducted herself in any way inconsistently with Resolutions of the [Southern Baptist Church]’s direction to condemn ‘any form of gay-bashing, disrespectful attitudes, hateful rhetoric, or hate-incited actions’ toward gay men or women.” Pet. App. 20a (alterations in Pet. App. 20a) (citing Pet. App. 215a n.31). Ultimately, the court concluded that both “courts remained neutral ‘in all of the circumstances in which this case was presented, considered, and decided.’” Pet. App. 19a (quoting *Masterpiece*, 138 S. Ct. at 1732).

The court rejected Petitioners’ remaining arguments. Pet. App. 4a, 13a, 20a-21a. First, the court specifically rejected Petitioners’ “suggestion that the permanent injunction requires them to personally attend and participate in same-sex

weddings.” Pet. App. 4a (internal quotation marks omitted). Second, the court rejected Petitioners’ attempt to raise again a selective enforcement claim that was rejected by the trial court and abandoned on appeal. Pet. App. 23a-24a. The court explained that the claim was not within the scope of the remand because *Masterpiece* says nothing about selective enforcement claims, that it was not supported by any cited precedent, and that it would have no effect in any event on the lawsuit filed by Ingersoll and Freed. Pet. App. 24a-25a. The court declined to supplement the record on this abandoned claim with “evidence”—a selectively edited video and talk radio excerpts—about an incident that occurred in 2017, nearly five years after the refusal at issue in this case and eight months after the Washington Supreme Court’s original opinion. Pet. App. 22a. Finally, the court reiterated portions of its prior opinion—such as its free speech and hybrid rights analysis—that were unaffected by *Masterpiece*’s holding.

REASONS FOR DENYING THE PETITION

A. Petitioners’ Lead Argument—That the Washington Court’s Decision Forces Them to Participate in Same-Sex Wedding Ceremonies—Is Based on Serious Mischaracterizations of the Record and the Decision Below

Defendants’ primary argument that the decision below merits certiorari relies on an untenable mischaracterization of the record. This Court should not reward such misrepresentations by granting review as to an issue not truly presented.

Stutzman contends that the rulings below require her to “participate in sacred ceremonies that violate her faith,” Pet. 21, but that ignores the facts of this case and explicit contrary holdings of both the trial court and the Washington Supreme Court. In this case, Stutzman refused to serve Ingersoll before she knew what he wanted, and there was no discussion of her attending his wedding. Pet. App. 6a, 78a, 153a-55a. More broadly, the injunctions issued by the trial court do not require her to participate in any ceremony, sacred or otherwise.

In the courts below, Stutzman described her “participation” as greeting guests, entertaining children, styling hair for the wedding party, cleaning a bride’s dress, counseling a bride, standing for the bride, clapping to celebrate the marriage, singing, and praying along with the officiant. Pet. App. 383a-85a. But as the trial court explained:

Stutzman does not claim that she was being paid to do any of these things. Said another way, she does not claim that these are services that she is providing for a fee to her customers such that they would be covered by an injunction. The degree to which she voluntarily involves herself in an event outside the scope of services she must provide to all customers on a non-discriminatory basis (if she provides the service in the first instance) is not before the Court.

Pet. App. 12a, 197a-98a n.23. The Washington Supreme Court confirmed this point, “reject[ing] appellants’ suggestion that the permanent injunction

requires them to ‘personally attend and participate in same-sex weddings.’” Pet. App. 4a.

Even though Petitioners now have a binding interpretation from Washington’s highest court that these injunctions do not require them to “personally attend and participate in same-sex weddings,” Pet. App. 4a, they ask this Court to grant review based on the opposite premise. Both for comity reasons and to avoid deciding hypothetical cases, this Court should not make Petitioners’ mistake.

In another attempt to evade the lower courts’ clear holdings, Petitioners redefine “participation” in a wedding ceremony as setting up flowers in advance and being available to fix arrangements gone awry. Pet. 23. But that definition is far too broad, raising a host of issues “that seem all but endless.” *Masterpiece*, 138 S. Ct. at 1723. Could a catering company, or a company that provides speakers and lighting, refuse to serve bar mitzvahs because their staff would need to set up in advance and be available during the event? Could a public university refuse to rent auditoriums or meeting rooms for religious events because staff would need to set up in advance and be present to monitor the events? Adopting such a broad definition of “participation” would mean that “a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations.” *Masterpiece*, 138 S. Ct. at 1727.

The Court should decline to grant review to decide an issue absent from this case. Given that the facts here involve no request for participation and that the rulings below explicitly do not require Petitioners to “personally attend and participate in same-sex weddings,” Pet. App. 4a, this case would be an inappropriate vehicle to address these topics.

B. The Washington Supreme Court’s Free Speech Analysis Follows This Court’s Controlling Precedent and Creates No Conflict with Decisions of Other Courts

Petitioners contend that the Washington court’s decision conflicts with free speech decisions of this Court and other courts on multiple fronts, but their arguments all turn on misrepresenting the issues in this case, misstating the law, or both. None of their free speech arguments merits certiorari.

1. The Washington court created no conflict by analyzing this case as one involving conduct

Petitioners incorrectly claim that the Washington Supreme Court created a conflict with other courts by analyzing this case as involving a regulation of conduct and by concluding that the conduct at issue is not “inherently expressive.” Pet. 27-30. But these conclusions are clearly correct under this Court’s precedent and create no conflict.

Petitioners first suggest that the Washington court should not have analyzed this case as one involving the regulation of conduct, inaccurately

claiming a conflict with decisions from other circuits “that visual art merits full speech protection.” Pet. 28. But their alleged conflict is illusory. Petitioners do not and cannot dispute that even businesses that sell products entitled to “full speech protection” are generally subject to antidiscrimination laws. See *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557 (1995); *Masterpiece*, 138 S. Ct. 1719. Just like bookstores, movie theaters, and law firms, businesses that sell “visual art” can generally be required to serve customers equally. Thus, in analyzing free speech claims, the question is not simply what the business sells, but rather whether the regulation being applied is best viewed as regulating the *content* of speech, or rather as one regulating conduct.

This Court’s decision in *FAIR*, 547 U.S. 47, makes clear that this is the correct approach. The law challenged in *FAIR* required universities to give military recruiters the same access to students that they gave other recruiters. The “recruiting assistance provided by the schools often include[d] elements of speech[,]” such as sending emails or posting flyers. *FAIR*, 547 U.S. at 61. Nonetheless, the Court held that the law was best analyzed as a “regulation of conduct[.]” *Id.* at 62 (“The compelled speech to which the law schools point is plainly incidental to the Solomon Amendment’s regulation of conduct . . .”). The law was best analyzed as a regulation of conduct because “[t]he Solomon Amendment . . . does not dictate the content of the [universities’] speech at all, which is only ‘compelled’ if, and to the extent, the school provides such speech for other recruiters.” *Id.*

The same conclusion this Court reached in *FAIR* is true here. Even if arranging flowers could be expressive in some circumstances, Washington law does not “dictate the content” of Petitioners’ flowers at all. It says nothing whatsoever about how flowers can or cannot be arranged and does not require or prohibit any particular type of flower arrangement. It simply says that if a person chooses to sell flower arrangements or other goods to the public, she cannot reject customers based on their race, religion, or sexual orientation. Wash. Rev. Code § 49.60.215; Wash. Rev. Code § 49.60.030(1). Indeed, the *FAIR* Court used antidiscrimination laws like the WLAD as an example of the type of law that should be analyzed the same way, saying: “Congress, for example, can prohibit employers from discriminating in hiring on the basis of race. The fact that this will require an employer to take down a sign reading ‘White Applicants Only’ hardly means that the law should be analyzed as one regulating the employer’s speech rather than conduct.” *FAIR*, 547 U.S. at 62.

Cases from other contexts addressing whether abstract painting, tattoos, or other art forms can qualify as speech are thus inapposite. Pet. 28. If antidiscrimination laws are best analyzed as regulations of conduct when they do not “dictate the content of” speech, *FAIR*, 547 U.S. at 62, they are clearly best viewed as regulations of conduct when they simply require a flower shop owner to serve customers equally, without dictating the content of any arrangement.

The Eighth Circuit’s recent decision in *Telescope Media Group v. Lucero*, 936 F.3d 740 (8th Cir. 2019), is not to the contrary. In that case, decided

on a motion to dismiss, the business owners alleged that they retained ultimate editorial control over their videos and that they used their videos to convey specific ideas about marriage, including that they “oppose the ‘current cultural narratives about marriage.’” *Telescope Media*, 936 F.3d at 751. On these allegations, the Eighth Circuit concluded that application of Minnesota’s antidiscrimination law impermissibly regulated the content of the plaintiffs’ speech—it “regulate[d] the videos themselves.” *Id.* at 757. None of these facts are present here: Washington does not seek to regulate the content of Petitioners’ flowers, Petitioners have admitted that their customers have ultimate control over any flower arrangements, and Petitioners offer no plausible argument that the flowers they provide support or oppose any particular views about marriage.

Petitioners also suggest that even if the WLAD is regulating their conduct in this case, the state court should have treated their conduct as protected speech under this Court’s cases because it is “inherently expressive.” Pet. 27, 29. Not so.

Because the WLAD does not regulate the content of Petitioners’ flower arrangements at all, the Washington Supreme Court correctly recognized that “the regulated activity at issue in this case” is not the arranging of flowers, but rather “Stutzman’s sale of wedding floral arrangements[.]” Pet. App. 41a-42a. The court went on to assess whether this “regulated activity” qualifies as “expressive conduct,” correctly concluding that it does not. Pet. App. 42a-43a. As the court explained: “The decision to either provide or refuse to provide flowers for a wedding does not

inherently express a message about that wedding.” Pet. App. 43a. Stutzman testified that she regularly refuses wedding orders for a variety of reasons that have nothing to do with expression, such as a lack of the requested flowers, or insufficient staff. App. 28a. Stutzman testified in her deposition that “providing flowers for a wedding between Muslims would not necessarily constitute an endorsement of Islam, nor would providing flowers for an atheist couple endorse atheism.” Pet. App. 43a; App. 95a. By the same token, selling flower arrangements to a same-sex couple would not constitute an endorsement of their marriage—particularly where state law prohibits discriminatory refusals of service based on sexual orientation.

As in *FAIR*, if Stutzman’s sales decision has an expressive element, it is “not created by the conduct itself but by the speech that accompanies it.” *FAIR*, 547 U.S. at 66. And when the conduct cannot be understood without explanatory speech, it “is strong evidence that the conduct . . . is not so inherently expressive that it warrants protection” under the First Amendment. *Id.*

Petitioners claim that *Masterpiece* and *Hurley* show that the Washington court erred in focusing on Petitioners’ refusal to serve rather than simply analyzing whether the product being sold was speech. Pet. at 29. Not a bit. The dictum Petitioners cite from *Masterpiece*, 138 S. Ct. at 1723, simply says that “few persons who have seen a beautiful wedding cake might have thought of its creation as an exercise of protected speech”—this says nothing about how a claim like this one should be analyzed. And as the Washington Supreme Court correctly explained,

Hurley involved a “peculiar” application of state law because there the state was treating a parade itself as a place of “public accommodation” and seeking to regulate the content of the parade; “the parade’s ‘inherent expressiveness’ distinguished it from the places traditionally subject to public accommodations laws—places that provide ‘publicly available goods, privileges, and services.’” Pet. App. 45a (citation omitted) (quoting *Hurley*, 515 U.S. at 568, 572). “*Hurley* is therefore unavailing to Stutzman” because her store is not inherently expressive, but rather “is the kind of public accommodation that has traditionally been subject to antidiscrimination laws.” Pet. App. 45a.

Even if the flower arrangements themselves were the relevant “conduct,” the facts of this case do not remotely involve the type of conduct that courts have found “inherently expressive.” Stutzman testified in her deposition that her goal in providing wedding flowers is not to express a particular message of her own. App. 26a (explaining that the shop seeks to convey whatever the customer wants conveyed); App. 43a (expressing that ultimately the customer has the final say on what they want from the flowers). Rather, she provides pictures of FTD and Teleflora arrangements that the customer may hire her to copy, and asks about the customer’s choice of colors and flowers as well as the customer’s “vision” of their wedding. App. 32a-33a, 26a. And if the customer asks the shop to provide the initial design, rather than copying an FTD or Teleflora design, the customer still ultimately “get[s] the last say” on the flowers. App. 43a. This case involves an especially straightforward set of facts, where no particular

flowers were even discussed. Petitioners refused service based on Ingersoll’s sexual orientation before he could say anything else—not based on any message he wanted to convey.

In sum, cases addressing whether particular art forms qualify as speech or whether particular activities are inherently expressive create no conflict with the decision below. Whether flower arrangements are speech or not, the Washington court properly applied this Court’s precedent and concluded that this case involved the regulation of conduct, conduct that was not “inherently expressive.”

2. The decision below creates no conflict with decisions of this Court or other courts as to compelled speech

Petitioners’ claim that the decision below conflicts with compelled speech cases of this Court and other courts is similarly flawed.

Petitioners begin by citing cases in which government forced individuals or businesses to make specific statements or subsidize speech with which they disagreed. *See* Pet. 30 (citing *Janus v. Am. Fed’n of State, Cty., & Mun. Emps.*, 138 S. Ct. 2448, 2464 (2018) (law required individuals to subsidize speech of others); *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2369-70 (2018) (law required organization to disseminate “government-drafted notice”); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (requiring motorists to display the state motto “Live Free or Die” on their vehicles); *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241 (1974) (requiring newspaper to print a politician’s statement against its

will)). This case involves nothing remotely similar. Washington does not require Petitioners to speak any particular message or to subsidize anyone else's speech.

Petitioners next incorrectly contend that requiring them not to discriminate in providing wedding flowers forces them to “celebrate same-sex marriage.” Pet. 32. But case law and their own testimony refute this. Petitioners acknowledge that “providing flowers for a wedding between Muslims would not necessarily constitute an endorsement of Islam, nor would providing flowers for an atheist couple endorse atheism.” Pet. App. 43a. And this Court's decision in *FAIR* makes clear that equal service requirements like this do not impermissibly compel speech. The WLAD, like the law at issue in *FAIR*, “does not dictate the content of [Petitioners'] speech at all, which is only ‘compelled’ if, and to the extent,” Petitioners provide such flowers for other couples. *FAIR*, 547 U.S. at 62. Petitioners mischaracterize *FAIR* in claiming that it dealt only with an “object[ion] to letting *others* speak[.]” Pet 32. In fact, the *FAIR* Court first rejected the argument that the law at issue impermissibly compelled “expression by law schools,” before separately rejecting the argument that it compelled the law schools to “accommodate another speaker's message.” *FAIR*, 547 U.S. at 61, 63.

Petitioners similarly attack strawmen in their two critiques of the Washington court's decision on this issue.

They first incorrectly claim that the Washington Supreme Court “distinguished compelled

speech from commercial activity,” creating a conflict with cases from other circuits recognizing that speech sold for profit is protected. Pet. 31 (citing Pet. App. 45a n.18). In reality, the footnote they cite addressed Petitioners’ now abandoned “freedom of association” claim, and simply pointed out that this Court’s freedom of association cases have addressed expressive organizations. Pet. App. 45a n.18. The footnote accurately describes this Court’s cases and has nothing to do with the issues in the Petition.

Second, they claim that the Washington court held that “the compelled-speech doctrine does not apply to ‘paradigmatic public accommodation[s],’” and that this notion somehow conflicts with *Hurley*. Pet. 31 (alteration in original). But the lower court made no such across the board declaration, instead simply citing *Hurley* for exactly the point this Court made there and reaffirmed in *Masterpiece*: that *Hurley* involved a “peculiar” application of an antidiscrimination law in which the State treated “the parade itself [as] a place of public accommodation” and forced the parade organizers to alter the content of the parade. Pet. App. 45a (quoting *Hurley*, 515 U.S. at 561-62); see also *Masterpiece*, 138 S. Ct. at 1727-28 (citing *Hurley* for the “general rule that [religious and philosophical] objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law”). Nothing remotely similar is happening here, and the Washington court carefully applied *Hurley*, creating no conflict.

Finally, Petitioners claim the Washington court’s decision conflicts with the compelled speech

analysis in *Telescope Media*, 936 F.3d 740, but there, unlike here, the court found that the state law at issue “regulate[d] the videos themselves.” *Telescope Media*, 936 F.3d at 757. Rather than simply requiring the equal provision of flowers, the plaintiffs in *Telescope Media* claimed that they would be required to include “‘positive’ messages” about same-sex weddings in their videos. *Id.* at 753. Here, by contrast, Washington’s law does not direct Petitioners to make any statement in favor of same-sex marriage, it simply requires them to provide wedding flowers equally.

3. The Washington court created no conflict in holding that Washington’s public accommodations law is content neutral and survives strict scrutiny

Petitioners also make passing arguments that the Washington court’s decision conflicts with other decisions by not treating this case as a “content-based application of a public-accommodation law” and by holding that application of the WLAD here survives strict scrutiny. Pet. 32-33. Neither claim holds water.

Petitioners’ violation of the WLAD does not turn in any way on the “content” of any message they are sending. To begin with, there could not possibly be any message at issue on the facts of this case, because Stutzman refused to serve Ingersoll before he could even say what he wanted. More broadly, Stutzman’s own testimony makes clear that when she creates flower arrangements for weddings, she is not attempting to convey a message of her own; rather, the customer is ultimately in charge. App. 26a, 43a. And Stutzman acknowledges that providing flowers

shows no endorsement of the couple's choice of spouse or religious beliefs. App. 95a.

These facts make this case differ sharply from *Telescope Media*, where the Eighth Circuit found application of Minnesota's public accommodations law content-based because it required the plaintiffs there "to convey the same 'positive' message[s] in their videos about same-sex marriage" based on their willingness to convey positive messages about opposite-sex marriages. *Telescope Media*, 936 F.3d at 753. Here, by contrast, Petitioners' flowers convey no positive or negative message about any particular type of wedding. Their duty to provide flowers equally does not turn in any way on any message those flowers send.

Differences between this case and *Telescope Media* also make Petitioners' claim of a conflict in their strict scrutiny analysis untenable. Pet. 33-34. *Telescope Media*, 936 F.3d at 755, rejected a claim of compelling state interest because "regulating speech because it is discriminatory or offensive is not a compelling state interest[.]" But the Washington court never held or implied that the State's compelling interest was in regulating discriminatory speech. Rather, the Washington court found the compelling interest at issue was "eradicating barriers to the equal treatment of all citizens in the commercial marketplace," Pet. App. 66a, an interest that the Eighth Circuit specifically recognized as compelling in *Telescope Media*, 936 F.3d at 754 (recognizing State's compelling "interest in ensuring 'that all people in Minnesota [are] entitled to full and equal enjoyment of public accommodations and services'" (alteration in original)).

By the same token, Petitioners are incorrect to claim that other cases suggest Washington has some narrower means available to prevent discrimination. Pet. 34. They claim the State could “define discrimination to exclude situations where” a business will serve gay customers generally but not for their weddings. Pet. 34. But this Court rejected exactly that suggestion in *Masterpiece*, explaining that it would allow “a long list of persons who provide goods and services for marriages and weddings [to] refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws[.]” *Masterpiece*, 138 S. Ct. at 1727.

In short, none of Petitioners’ claims of conflict as to the Washington Supreme Court’s free speech analysis withstand scrutiny, and none warrant certiorari.

C. Petitioners’ Free Exercise Claim Seeks Factbound Error Correction Based on Mischaracterizations of the Facts and Law

Petitioners say that the Washington Supreme Court misunderstood this Court’s decision in *Masterpiece* and applied it incorrectly to the facts here. Neither claim is tenable, but even if they had merit, neither would warrant certiorari because they seek factbound error correction where no error would actually be corrected. As detailed below, Petitioners’ arguments attack only the case brought by the State of Washington, not the case brought by Ingersoll and Freed, which resulted in an independent judgment and injunction entered against Petitioners, so even

accepting Petitioners' argument would have no effect on their legal obligations.

1. The decision below creates no conflict in the application of *Masterpiece*

Petitioners claim that in reconsidering its decision in light of *Masterpiece*, the Washington Supreme Court created a conflict with decisions of this Court and other circuits by supposedly exempting the Attorney General and the entire executive branch from the Free Exercise Clause. *See* Pet. at 34. The Washington court did no such thing, rendering Petitioners' alleged conflict entirely hypothetical.

The Washington Supreme Court explicitly rejected the idea "that the Washington attorney general is free to enforce the WLAD in a manner that offends the state or federal constitution." Pet. App. 26a. The Washington court simply disagreed with Petitioners' contention that *Masterpiece* created a new type of claim "of selective enforcement by the executive branch," instead understanding the decision as "requir[ing] neutrality from the adjudicatory bodies hearing a particular case." Pet. App. 26a. This was an eminently reasonable reading of *Masterpiece* given that the case involved "an adjudicatory body deciding a particular case," *Masterpiece*, 138 S. Ct. at 1730, and this Court's repeated emphasis on the adjudicatory nature of the proceeding and the Colorado Civil Rights Commission's failure to act as a neutral decision-maker. *See, e.g., id.* at 1724 ("When the Colorado Civil Rights Commission considered this case, it did not do so with the religious neutrality that the Constitution requires."), 1729 ("Phillips was entitled to the neutral

and respectful consideration of his claims[.]”), 1729 (“The neutral and respectful consideration to which Phillips was entitled was compromised here[.]”), 1730 (“[T]hese statements cast doubt on the fairness and impartiality of the Commission’s adjudication of Phillips’ case.”), 1731 (“[T]he Commission’s consideration of Phillips’ case was neither tolerant nor respectful of Phillips’ religious beliefs.”), 1732 (“Phillips was entitled to a neutral decisionmaker who would give full and fair consideration to his religious objection[.]”).

The Washington Supreme Court’s understanding of *Masterpiece* creates no conflict with the cases Petitioners cite, Pet. 35-36, all of which predate *Masterpiece* and thus could not possibly have interpreted it. Those cases all addressed whether laws or regulations were neutral and generally applicable under this Court’s decision in *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).¹ But *Masterpiece* itself distinguished *Lukumi* and made clear that it was applying a stricter neutrality standard because the case involved “an adjudicatory body deciding a particular case.” *Masterpiece*, 138 S. Ct. at 1730. *Masterpiece* also never cited or suggested it was modifying this Court’s longstanding precedent governing claims of discriminatory selective enforcement.

¹ See *Cent. Rabbinical Cong. of the U.S. & Canada v. New York City Dep’t of Health & Mental Hygiene*, 763 F.3d 183 (2d Cir. 2014); *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245 (10th Cir. 2008); *Booth v. Maryland*, 327 F.3d 377 (4th Cir. 2003); *Fraternal Order of Police Newark Lodge 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999).

Based on its reading of *Masterpiece* as focusing on the lack of a neutral adjudicator, the Washington Supreme Court on remand “painstakingly reviewed the record for any sign of intolerance” by the decisionmakers in this case: its own court and the trial court. Pet. App. 3a, 19a-20a. The court noted that no party at any time had claimed that either court failed to act “with the religious neutrality that the Constitution requires.” Pet. App. 19a (quoting *Masterpiece*, 138 S. Ct. at 1724). But it still conducted its own independent examination of how the state courts considered and decided this case. The court explained that both state courts had acknowledged the sincerity of Stutzman’s beliefs and emphasized that they “intend[ed] no disrespect” to her or her beliefs. Pet. App. 20a (alteration in original) (citing Pet. App. 215a n.31). Ultimately, the court accurately concluded that both “courts remained neutral ‘in all of the circumstances in which this case was presented, considered, and decided.’” Pet. App. 19a (quoting *Masterpiece*, 138 S. Ct. at 1732).

In short, the Washington court’s approach and conclusion on remand were accurate and create no conflict.

2. Petitioners’ claims of religious hostility are not supported by credible evidence and come nowhere close to justifying certiorari

Unable to demonstrate a legal conflict warranting certiorari, Petitioners ask this Court to grant review to correct alleged religious hostility by Washington’s Attorney General and Supreme

Court. These claims are baseless and provide no justification for this Court to grant certiorari.

Petitioners' primary claim is that the Attorney General's handling of this case can only be explained by religious animus. But from the very beginning of this case, the Attorney General has sought to resolve this case in a way that would bring Petitioners into compliance with the law while minimizing their costs and allowing them to remain in business.

When the Attorney General's Office first learned of Petitioners' refusal to serve Ingersoll, the Attorney General did not rush to court. Rather, the Consumer Protection Division of the Office sent a private letter simply asking Stutzman and Arlene's Flowers to agree not to discriminate in the future; the letter followed the Office's normal practice of attempting to resolve matters without litigation, and it made clear that if Petitioners agreed not to discriminate, the State would take no further action and Petitioners would face no costs and admit no violation. Pet. App. 365a-70a. The Attorney General commenced litigation only after Petitioners refused to voluntarily comply with the law.

Petitioners claim that the Attorney General took an "unprecedented step" by suing both Arlene's Flowers and its owner, Stutzman, Pet. 36, but for decades it has been commonplace for the Washington Attorney General's Office to sue both a business and its owner when the business is closely held and the owner was involved in the illegal conduct, as here. *See, e.g., State v. LA Inv'rs, LLC*, 410 P.3d 1183 (Wash. Ct. App. 2018) (naming as defendants both corporation and individuals who owned it); *State v.*

Mandatory Poster Agency, Inc., 398 P.3d 1271 (Wash. Ct. App. 2017) (same); *State v. Kaiser*, 254 P.3d 850 (Wash. Ct. App. 2011) (same); *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, 553 P.2d 423, 439 (Wash. 1976) (same, and explaining under Washington law that if “a corporate officer participates in the wrongful conduct . . . then the officer, as well as the corporation, is liable for the penalties”). Applying this longstanding practice provides no evidence of religious animus.

In the course of the litigation, the Attorney General’s Office offered multiple ways in which Stutzman could continue her business, and even continue providing wedding flowers, without compromising her religious principles or violating the law. For example, she could delegate to her employees the responsibility of providing wedding flowers to members of the public, which would allow her to incur no financial loss whatsoever while never having to personally provide flowers to a wedding that conflicts with her beliefs. Stutzman could even continue providing wedding services herself to her friends and family without violating state law, because then she would not be discriminating in a service offered to the public. As an alternative, Petitioners could simply stop providing wedding flowers to the public altogether, as they have done since 2013. Given that Petitioners’ business has continued successfully for the last six years with this restriction in place, and that weddings were historically only 3% of Petitioners’ business, this approach would clearly not undermine Petitioners’ ability “to earn a living.” Pet. 25. But Petitioners rejected these alternatives.

When the State ultimately prevailed in the trial court, the Attorney General sought and received only a minimal penalty (\$1,000) and asked for only one dollar in attorney fees and costs. Pet. App. 136a. If the Attorney General's goal were truly to "bankrupt" Petitioners and drive them out of the "business community," Pet. 37, this was a very odd way to go about it.

Unable to demonstrate hostility based on the actual facts of this case, Petitioners seek to compare it to an incident that occurred almost five years later, after the Washington Supreme Court had already ruled in the State's favor. Petitioners' "evidence" of that incident consists entirely of a selectively edited video posted online, which was not admitted into the record below. Pet. 20. While the video certainly shows a person profanely ejecting a group from a coffee shop, it provides no context about what prompted the interaction or what happened afterwards. It fails to show that the business owner in the video immediately stated publicly that he ejected the patrons because they had been distributing graphically disturbing images targeted to children in nearby parks (he is holding one of the fliers in the video). App. 106a-07a. It fails to show that he committed that he would serve people of any religious faith, that since the incident he had already served again the same customers he previously ejected, and that he would continue to serve the same customers if they came to his store again. App. 107a-10a. It fails to show that he made this public commitment not to discriminate based on customers' religion before any news of the incident reached the Attorney General's Office. App. 107a-10a. It also fails to show that the

Washington Human Rights Commission, which shares authority with the Attorney General for enforcing the WLAD, sent a letter to the coffee shop owner detailing the WLAD's requirements.²

In short, this video clip simply cannot bear the weight Petitioners claim of demonstrating that the two incidents are meaningfully comparable. To highlight just one of many important distinctions, the coffee shop owner publicly stated that he would serve customers regardless of their religious beliefs, and he even served again the same customers he had previously ejected. By contrast, after Petitioners refused to serve Ingersoll for his wedding, they adopted and announced a policy of discrimination, specifically refusing to provide gay or lesbian couples the same wedding services that they provided to heterosexual couples. Pet. App. 389a, 391a; App. 28a-29a. The coffee shop incident provides no support for Petitioners' claim of animus.

A comparison to *Masterpiece* is instructive. There, the Court found that the Colorado Civil Rights Commission failed to act neutrally in its handling of the complaint against the bakery based in part on a comparison with its handling of three other complaints filed against other bakeries around the same time. *Masterpiece*, 138 S. Ct. at 1728, 1730. But

² After Petitioners moved to supplement the record with the video, the Attorney General moved to supplement with materials that would give a more accurate picture of the incident, its antecedents, and the State's response. The Washington Supreme Court denied both motions, holding that the coffee shop incident had nothing to do with the issue on remand—the neutrality of the adjudicators in this case. Pet. App. 21a-26a.

nothing in *Masterpiece* suggests that a court should infer impermissible hostility based on incidents occurring five years apart in different types of businesses and with dramatically different facts.

Petitioners also suggest in passing that any reference by the Attorney General to other important civil rights protections is evidence of hostility toward Stutzman's religious beliefs. Pet. 37. The claim is absurd on its face. In *Masterpiece*, the Court repeatedly drew on the familiar rhetoric and precedent of antidiscrimination law to explain why religious objectors must still comply with neutral laws of general applicability. *See Masterpiece*, 138 S. Ct. at 1727 (citing *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402 n.5 (1968)). Just as the Court was not disparaging religion in using those examples, the State does not disparage religion when it uses the same or similar examples in explaining the purposes of antidiscrimination law and the harm presented by the kind of exemption Petitioners seek.

Finally, for the first time ever in this case, Petitioners now contend that the Washington Supreme Court failed to adjudicate this case with neutrality towards religion. Pet. 38. Their evidence for this claim consists solely of the Washington court's reasonable interpretation of *Masterpiece* and its conclusion that refusing to serve a gay couple for their wedding qualifies as discrimination based on sexual orientation. Pet. 38. Neither point can plausibly be described as evidencing hostility. Indeed, Petitioners' claim that a court's careful consideration and rejection of two of their arguments amounts to "animus" shows just how far-reaching and unworkable their definition of that term is.

3. This case is a terrible vehicle to address Petitioners' free exercise arguments because resolving those arguments will have no impact on the outcome

As detailed above, Petitioners are wrong to claim that the Washington court erred in how it applied *Masterpiece* to the State and wrong to claim that the State's case was tainted by religious animus. But even if their claims were true, that would have no impact on the judgment and injunction entered in the separate case brought by Ingersoll and Freed. This case is therefore a terrible vehicle to address these free exercise claims. The claims not only seek factbound error correction where no error occurred, but they would have no impact on Petitioners' ultimate rights. Certiorari is utterly unwarranted.

D. This Case Presents No Occasion for Applying a Hybrid Rights Analysis

As a final fallback, Petitioners in passing ask the Court to do something it has never done: apply a "hybrid rights" analysis. Pet. 39. They identify no conflict in the lower courts relevant to this claim. Indeed, the only case they cite, *Telescope Media*, 936 F.3d 740, did not apply a hybrid rights analysis. It simply held that the district court erred by prematurely dismissing the plaintiffs' hybrid rights claim, while also observing that it probably made little difference because the plaintiffs' free speech claim in that case already required the application of strict scrutiny. *Id.* at 760.

In this case, similarly, a hybrid rights analysis would make no difference, because the Washington Supreme Court held that the WLAD satisfies even strict scrutiny. Pet. App. 63a-67a, 69a. Contrary to Petitioners' assertion, there is no flaw in the Washington Supreme Court's strict scrutiny analysis. Pet. 33-34. This Court has repeatedly recognized a compelling state interest in public accommodations laws aimed at eradicating discrimination, like the WLAD. *See, e.g., New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 14 n.5 (1988) (recognizing "State's 'compelling interest' in combating invidious discrimination"); *Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (public accommodations laws serve compelling state interests); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623-25, 628 (1984) (same).

Moreover, application of the WLAD is narrowly tailored to serve the State's compelling interest in eliminating discrimination. There is no realistic less restrictive means to end discrimination in public accommodations than to prohibit such discrimination. *See Roberts*, 468 U.S. at 625-27 (ban on discrimination upheld as least restrictive means to assure equal access to goods, privileges, and places of public accommodation). The WLAD contains exemptions designed to minimize its impact on religious belief and practice. *See, e.g., Wash. Rev. Code* § 49.60.040(11). But the State is not required to eliminate such impacts altogether, for to do so would require giving up on the goal of eliminating discrimination.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

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APPENDIX

* * * * *

**CP 093-187—Transcript of the Testimony of
Barronelle Stutzman, Oct. 3, 2013**

CP 093

* * * * *

Q All right. So tell us more about Arlene's Flowers, has it always been in the same location?

CP 094

A **Yes, sir. Well, since I've had it.**

Q Since you've had it?

A **Yeah.**

Q Where was it before that?

A **It was down on the parkway.**

Q Okay. How long was it on the parkway?

A **Before there was business licenses.**

Q Okay. I won't ask to date that then.

At the time it was down on the parkway was Arlene's Flowers involved in flowers for weddings?

A **I have no idea.**

Q Okay. Your mother didn't own it at that time?

A **No.**

Q Okay. How long during the time your mother and you have owned the store has Arlene's Flowers been involved in selling floral arrangements and services for weddings?

A **Always.**

Q Always. Okay. And have you always been involved in it yourself?

A **Involved in the weddings?**

Q Yes.

A **No, not until I was trained.**

Q Trained. Okay. How much of your business in the last five years if you can estimate for us is related to

CP 095

weddings? Just approximately?

A **I don't keep track of that, so.**

Q Can you give me your best estimate, understanding that you don't keep precise track?

A **You want a percentage?**

Q If that works for you, yes.

A **I can't -- accurately I cannot give you a count.**

Q I'm not looking to pin you down to accurate.

A **Okay. If I'm guessing, maybe three percent.**

Q Okay. So just to put it in context. Arlene's Flowers sells flowers for all occasions; is that right?

A **Yes, sir.**

Q Okay. And all occasions includes things from the happy joy of babies to the sad occasion of people passing away and every life event in between.

Is that fair?

A **Yes, sir.**

Q How many people work at Arlene's Flowers?

A **Average is ten.**

Q Okay. Does that go up and down seasonally?

A **Yes, sir.**

Q Okay. And how many hours a week do you work at the store these days?

A **I'm scheduled for Monday, Wednesday and Fridays.**

Q Full days on those days?

CP 096

A **Full days, but then I also do work at home, so.**

Q Okay. Has that been the case for some time or is that new?

A **Yes, sir.**

Q Okay. And what are the -- just taking a --

A **Can I go back and clarify that?**

Q Of course.

A **What do you mean by some time? Have I been doing that for some time?**

Q Okay. Fair enough. Fair enough.

A **Okay.**

Q How long have you been doing that?

A **The three days a week?**

Q Yes.

A **About three years.**

Q Okay. All right. And over the last three years, that may be a convenient time frame for us to talk about today, over the last three days would you give us an overview of the positions of the approximately ten people on average who work at Arlene's Flowers, what are their respective roles?

A **Over the three days?**

Q No, over the last three years.

A **Okay. Repeat the question, please.**

Q Sure. Just taking the last three years as our frame

CP 097

of reference, you said on average about ten people work for Arlene's Flowers, right?

A **Yes, sir.**

Q What are the respective roles of those ten people?

A **Well, I have a manager. I have two drivers. I have three designers. And I have people that clean flowers, a greenhouse person.**

Q Okay. Does the manager get involved in designing floral arrangements?

A Yes, sir.

Q So when you say three designers is that one of the three or in addition to the three?

A That's one of the three.

Q Okay. Other than the three, who are the three designers?

A It'd be Janell, Leslie and myself. And then McKenna is sort of an all around everything, so she designs and does the computers and -- because she isn't a major designer.

Q Okay. Do all four of you including McKenna get involved in flowers for weddings?

A McKenna does not.

Q So three of you are involved in flowers for weddings; is that right?

A Yes, sir.

CP 098

Q Thank you.

And you say on average you have ten employees, are there times when you have more than ten?

A Yes, sir.

Q Tell us when that happens.

A Major holidays.

Q Okay. And during major holiday seasons what would be your head count? Employee head count?

A Are we counting just people I employ or people that also deliver for us that are on a -- a contribution?

Q Let's talk about both. But first, how many would you employ during that holiday season?

A 18.

Q Okay. And approximately how many people deliver for you during the holiday season?

A **Probably another 18.**

Q Okay. So I'd like to learn a little bit more about the people you employ who are involved in designing floral arrangements.

What is Janell's background?

A **She's worked for other flower shops, I don't know what her -- I can't say what her background is.**

Q Okay. Do you know what other flower shops she's worked for?

A **She's worked for Buds . . . and Blossoms, Too.**

CP 099

Q Can you spell that for our court reporter?

A **B-U-D-S . . . and Blossoms, B-L-0-S-S-0-M-S, Two, T-W-0 (sic).**

Q Thank you.

A **And she's worked at -- she's worked at quite a few shops, but you would have to ask her exactly what those are.**

- Q We'll be talking with her at some time.
Do you know approximately how many years she's been in the business?
- A **She's been with me I believe about 12, so. Yeah, I can't -- you have to ask her, I don't know exactly.**
- Q Fair enough. At the time she started working for you had she already been trained in floral design?
- A **Yes, sir.**
- Q Including training for weddings, floral designs?
- A **Yes, sir.**
- Q Okay. Has she had any additional training during that period of time with you?
- A **She's gone to seminars and update programs with me, yes.**
- Q And is it a business where like many businesses there are always new ideas and new ways to do things?
- A **Yes, sir.**
- Q Okay. And do you try to hire people who have their
- CP 100
- own independent creative ideas?
- A **Yes.**
- Q And Janell fits that description?
- A **Yes.**

Q What is Leslie's background?

A **Again, she's worked for a lot of flower shops, you'd have to ask her exactly who she's worked for. She's been in the business a long time.**

Q Can you estimate the number of years she's been in the business?

A **No, sir.**

Q You said a long time?

A **Yes, sir.**

Q Is that more than ten years?

A **Yes, sir.**

Q More than 20 years?

A **I --**

Q You don't know. Somewhere in there; is that right?

A **(Nods head.)**

Q Okay. And we've already talked about your background, of course.

Do you know where Leslie was trained in floral design?

A **No, sir.**

Q When did you hire Leslie?

CP 101

A **I couldn't -- I couldn't be for certain on that because she's come in and worked and then left for a while and then come**

back and worked and left for a while. So I'm not -- I'm not exact on that.

Q Had she been trained in floral design before you hired her?

A **Yes, sir.**

Q Including designs for weddings?

A **Yes.**

Q And has she received additional training during the time she's worked for you?

A **I can't remember if she's been with us on the trips or not.**

Q Okay. Do you allow your designers who you've said you hire because they're creative and have good ideas, do you allow them some freedom in their creativity in their work for you?

A **Yes, sir.**

Q Who supervises your designers?

A **Janell and I.**

Q Okay. And were the three of you the three designers who worked on wedding floral arrangements in March of this year?

A **I cannot remember if Leslie was there in March.**

Q Okay.

CP 102

A **But Janell and I were.**

Q Okay. Leslie you said has worked on and off for you; is that right?

A **Yes, sir.**

Q Is she hired seasonally or is there some other reason why she's on and off?

A **Well, she -- it just depends on the circumstances and when she wants to work or if there's a holiday or . . .**

Q Okay. I'd like to understand a little bit more about how you get your business.

Does some of your business just walk into the store, new customers walk in?

A **Yes, sir.**

Q And of course I'm sure you have customers who you've known and come in for long periods of time.

Is that also true?

A **Yes, sir.**

Q Do you take orders by phone as well?

A **Yes, sir.**

Q And how about online orders, do you take orders by computer these days?

A **Yes, sir.**

Q Okay. How long has that been going on?

A **I can't give you an exact date.**

Q Okay. Is there any way for you to estimate what

CP 103

percentage of your business is walk in versus phone versus computer?

A About 85 percent of ours is by phone and computer.

Q Okay.

A The rest is walk in.

Q Okay. And the 85 percent, is there any way to break that down further, phone/computer?

A I'm sure there is, but I haven't broken it down.

Q Okay. Does Arlene's Flowers advertise?

A Yes, sir.

Q How do you advertise?

A By radio, telephone marketing, internet, newspaper, word of mouth, reader board, brochures.

Q Okay. In the time frame for the three years leading up to March of this year, March of 2013, did any of your advertising at any of those media have a religious message as part of the advertisement?

A Not positive on that one.

Q Okay.

A There may have been something on the radio, but I'm not positive.

Q Okay. And when you say there may have been something on the radio what are you thinking of?

A I may have said something like blessing or -- but in general, no.

Q Nothing more than that that you can think of?

A **No, sir.**

Q So it sounds like possibly all but at least the vast majority of your advertising has not had any religious content to it; is that right?

A **Yes, sir.**

Q Is any of your advertising specifically -- strike that.

Has any of your advertising in the three years leading up to March of 2013 specifically been aimed at flowers for weddings?

A **No.**

Q And you and Janell Becker have been colleagues for some time, do you have a relationship that extends beyond the workplace to a friendship outside business?

A **Clarify that, please.**

Q I don't mean to put words in your mouth, so why don't you describe your relationship with Janell, is it business, social, some mixture of the two?

A **By social you mean do we go out to dinner or go to movies?**

Q Or whatever friends would do?

A **I need more clarification on that.**

Q Well, again, I want you to explain, do you and Janell see each other outside the workplace?

A Other than design shows.

Q Right.

A Where we have Christmas parties.

Q Correct.

A So.

Q And what is your answer to that? I'm confused. I'll ask the court reporter. We'll get on the same page, don't worry.

So you and Janell obviously work together, you go to trade shows together?

A Right.

Q And office Christmas parties for your employees together?

A Right.

Q Other than that kind of activity do you and Janell get together?

A No.

Q All right.

(Exhibit No. 3 marked for identification.)

Q (By Mr. Scott) Ms. Stutzman, the court reporter has handed you Exhibit 3 to your deposition, that's a copy of the bylaws for Arlene's Flowers, Inc. that were again produced to us in this lawsuit.

Do you recognize that as a copy of the articles of
of

incorporation for Arlene's Flower, Inc. dated January 31, 2000?

A Yes, sir.

Q And I'll note that January 31, 2000 is the same date as the agreement we looked at earlier marked Exhibit 2, which was the agreement by which you and your mother sold the store to you; is that right?

A Yes, sir.

MR. BRISTOL: Mike, I hope you don't mind, I just want to get a clarification on the record. These are bylaws that we're looking at, not articles.

MR. SCOTT: Thank you for that. I stand corrected, it is the bylaws of Arlene's Flowers, Inc., I misspoke.

Q (By Mr. Scott) Have these bylaws been in place the entire time you've owned the business?

A Yes, sir.

Q Okay. Thank you. That's all I need with those.

(Exhibit No. 4 marked for identification.)

Q (By Mr. Scott) Ms. Stutzman, you've been handed Exhibit 4 to your deposition.

Is that a copy of Arlene's Flowers, Inc. employee handbook, store policies and procedures?

A **Yes, sir.**

Q And how long has this handbook been in place?

A **I can't tell you exactly.**

Q Okay. Was it in place this entire calendar year?

A **Yes, sir.**

Q And for a couple years before that?

A **Yes, sir.**

Q Do you and your employees refer to this handbook in the course of business to help guide your employee conduct?

A **On a daily basis, on a yearly basis, on a --**

Q On a whatever kind of regular basis?

A **We don't look at it on a regular basis. But every employee gets one when they're hired.**

Q Okay. And you expect every employee to familiarize herself or himself with it?

A **Yes, sir.**

Q Okay. Would you turn to the second page of the exhibit, please?

A **(Witness complies.) The cover page?**

Q Yes, the page right behind the cover.

A **Okay.**

Q Paragraph 4 is what I want to ask you about, in paragraph 4 a nonharassment policy/ non-discrimination policy.

Do you see that?

A Yes, sir.

Q And it reads, "This company prohibits discrimination or harassment based on race, color, religion, creed, sex, national origin, age, disability, marital status, veteran status or any other status protected by applicable law."

Do you see that?

A Yes, sir.

Q And as the president of Arlene's Flowers, Inc. can you describe how you expect that to guide your employee conduct with respect to customers? Just in your own words?

MR. BRISTOL: I'm going to just object to the form of the question as vague.

Q (By Mr. Scott) You may answer.

A Clarify for me.

Q Well, in your own words how do you expect your employees to abide by this policy?

A I expect them to follow the policy.

Q Okay. What do you expect them -- what do you understand in this policy the word creed to mean?

A I'm sorry?

Q What do you understand the word creed to mean in this policy?

A Don't know.

Q Okay. Has that ever come up in discussions with your employees?

A No, sir.

Q Do you have a personal understanding of what that word would mean?

A No, sir.

Q Okay. If the dictionary definition of creed means belief or faith, would that be consistent with your understanding of creed generally?

A I've never looked it up.

Q Okay. This nondiscrimination, nonharassment policy does not specifically mention sexual orientation as a status protected by law.

Have you ever considered including sexual orientation in this policy?

A It's never come up before.

Q Are you aware that Washington law prohibits discrimination on the basis of sexual orientation?

A Yes, sir.

Q And is it policy of Arlene's Flowers to abide by that protection?

A Yes, sir.

Q Have you ever discussed that with any of your employees?

A **Discussed?**

Q Sexual orientation as a status protected by law?

A **No.**

Q Okay. Do your employees receive training, and by that I mean anything formal or informal, but training about your policy handbook?

A **Training on the handbook?**

Q Yes.

A **No, sir.**

Q Do you go over it with them or have your office manager go over the handbook with your employees when they're hired?

A **No.**

Q Okay. Have you ever had any training, again, formal or informal, at Arlene's Flowers that relates to your nondiscrimination policy?

A **I need that clarified. Nondiscrimination, explain to me what you mean by nondiscrimination.**

Q I mean the policy that we've been looking at in paragraph 4.

A **Have we had training?**

Q Yes.

A **No, sir.**

Q So is it fair to say, if I understand your testimony correctly, that you haven't had any meetings or

sessions at Arlene's Flowers with your employees where you've discussed this nondiscrimination policy?

A We had a meeting when it came to the decision not to be a part of the event, that's the only time.

Q And what event are you referring to?

A Robert and Curt's marriage.

Q Okay. We'll talk about that later.

Other than that you've never had a meeting or discussion with your employees about the nondiscrimination policy?

A No, it's never come up.

Q Has any employee of Arlene's Flowers ever raised a concern about discrimination, either of an employee or of a customer? And again, we'll leave aside the Rob and Curt situation for now.

A Never brought to my attention, no.

Q Okay.

(Exhibit No. 5 marked for identification.)

Q (By Mr. Scott) Ms. Stutzman, Exhibit 5 to your deposition is entitled Arlene's Flowers and Gifts' Mission and Procedure. And this was produced by Arlene's Flowers in this case.

Who wrote this document?

A I don't remember, it had to be me.

Q Okay. The first paragraph says that “Arlene’s has been in business for over 47 years.”

Where does that 47-year number come from?

A **From the previous Arlene’s Flowers.**

Q Okay. Which was started by your mother?

A **No. Started on the parkway before that, before my mom.**

Q Your mom bought that parkway business; is that correct?

A **She bought the business that’s on Lee now.**

Q Okay.

A **Parkway business moved to Lee.**

Q Got it. Thank you. Okay.

And it goes on to say, “Service is what we’re all about. We want to be our customers’ personal florist, not just a florist. We want our customers from birth to death. We are happy to refund or correct their order.”

Does that first paragraph, introduction to your mission and procedure, accurately describe the mission and procedure of Arlene’s Flowers during the time you’ve owned the business?

A **Yes, sir.**

Q And skipping the shop hours paragraph to the paragraph that begins “Customers.” This document says,

“Customers come first, whoever they are, however they are dressed, whatever they look like, whatever color or creed, what they are willing to spend.”

Has that -- does that sentence accurately describe the mission of Arlene’s Flowers during the time that you’ve owned the business?

A Yes, sir.

Q Okay. And what did you mean and what do you mean when you say, “Customers come first, whoever they are”?

A They’re the ones that write our paycheck.

Q Okay. And so does “whoever they are” mean in your mind people of all types and beliefs and faiths?

A Yes, sir.

Q Every type of different person?

A Yes, sir.

Q Okay. And one of the phrases in this sentence is “whatever color or creed.” Do you know what creed means in the context of this sentence, “whatever color or creed”?

A Religion.

Q Okay. What about people who aren’t religious, do you consider them to come first as well?

A Absolutely.

Q Okay. And does that also mean that you consider customers to come first no matter what their religion

CP 114

is, whether it's Christian or some other faith that you don't even know anything about?

A **I don't usually ask them what religion or [sic] they are when they come in.**

Q Okay. And is that also true of your employees, they don't usually ask your customers what religion they are when they come in?

A **No. Why would they?**

Q And that's true also I would assume of wedding customers, including wedding customers, you don't ask them what religion they are?

A **No, sir.**

Q Or even if they are a person of faith.
Is that true?

A **That's true.**

Q Okay. Do you ask your customers what their sexual orientation is?

A **No, sir.**

Q Okay. And that's true also of wedding customers.

Is that true? Let me rephrase that.

Do you ask or do your employees ask wedding customers what their sexual orientation is?

A **No, sir.**

Q Is there anything in Arlene's Flowers' mission statement that relates to providing flowers for same

CP 115

sex weddings?

A **It's never come up before.**

Q Okay. Were you aware that in the 2012 election Washington voters endorsed the legalization of same sex marriage?

A **Yes, sir.**

Q Did you consider whether or not to change your policies and mission statement at that time?

A **No, sir.**

Q Let's talk a little bit more about the wedding business in your company.

I understand it's difficult to put precise numbers or percentages on this. But in a typical month can you give me an estimate of how many wedding customers might come into your store through whatever avenue?

A **I don't have a typical month for weddings. Recently we've probably done two weddings a month.**

Q Okay. There are times of the year when that's higher, sometimes lower?

A **Depends on -- just depends.**

Q Okay. When a wedding customer contacts Arlene's Flowers what is the course of events?

Do you have a procedure that you follow with respect to wedding customers?

A Yeah. Get their name and their address, their phone

CP 116

number, their bride's name, the groom's name, the place of the wedding. If they want to come in and consult and we have all that information ready when they come in and then we talk with them about what they want.

Q Okay. And of your employees, is that done by any of your employees or are there certain of your employees who are expected to work with wedding customers?

A There are certain employees that are expected to work with wedding customers.

Q Who are they?

A Janell, Leslie and I.

Q The three designers?

A Yes, sir.

Q Okay. And when a customer comes in to talk about flowers for a wedding, is it often the case there's just one member of the couple that comes in?

A No, it's about half and half.

Q So sometimes both spouses, potential spouses will come in and sometimes just one?

A Yes, sir.

Q About half and half. Okay.

What kind of questions do you ask the customers during the course of your meeting with them, wedding customers?

CP 117

A Their name, their address, phone number, their -- the bride's name, the groom's name. The place of the wedding, date of the wedding. Pictures before or after.

Their color scheme, what their dress is like. Where the place they're getting married. Do they want it delivered, do they want it picked up. What type of flowers do they want, what colors do they want.

How they met. Their -- get to know their personalities. Their -- what their vision is of their wedding.

Q Okay. And talk about a few of those, you say you ask them about pictures before or after.

How does that affect your flower floral service?

A What time they want us there. And how long the flowers are going to last.

Q Okay. Approximately what percentage of your wedding customers want their flowers delivered as opposed to pickup?

A Lately there's been more pickups. Percent wise I couldn't give you -- there's more pickups now than deliveries.

Q Okay. You say you ask the wedding customer how he or she met their intended spouse.

What's the reason you ask that question?

CP 118

A **To get them -- to just get to know them more personally.**

Q Okay.

A **They like to tell about how they meet.**

Q Okay. And why is that significant to you?

A **Why is it significant to me?**

Q Uh-huh.

A **I like to be -- I like to be connected to them, find out about their lives and their -- their joy.**

Q Okay. You say you also ask about the place of the wedding, is that primarily for delivery purposes?

A **No, it's so I know how to decorate.**

Q Okay.

A **What to do, what to look for.**

Q Okay. You said you ask them about their vision, what do you mean by that?

A **What are they -- what in their mind do they want their wedding to be. What's the special point in their wedding that they want to convey.**

Q Okay.

A The importance of the wedding.

Q Okay. Now, do some of your customers come in with very specific ideas about what they want for flowers?

A Very few.

Q Okay. But do some?

CP 119

A Some, yes.

Q Okay. And others come in with very little idea about what they want for flowers?

A Yes.

Q Is it fair to say that people fall everywhere in between on that spectrum from very little idea about what they want to very specific ideas about what they want?

A The majority of them are not knowing.

Q Okay.

A They have ideas but they do not have concrete.

Q Okay. And is it an interactive process that you work with them to help --

A Yes, sir.

Q -- help develop the ideas?

A Yes, sir.

Q Okay. And so the input for the flowers comes from both parties, from you and your other designers and from the couple.

Is that accurate?

A Yes, sir.

Q Now, in connection with Arlene's Flowers' wedding business, has Arlene's Flowers ever declined to do a wedding for a customer other than Curt and Robert?

A Yes, sir.

CP 120

Q And what are the circumstances?

A Major holidays, when we don't have the staff or if they want particular flowers that we can't get in the time frame they need.

Q Other than a major holiday situation or a time or delivery constraint, Arlene's Flowers has not declined to do service for anyone other than Curt and Robert.

Is that fair?

A That's correct.

Q Does Arlene's Flowers have a policy about when it will decline service other than due to a major holiday or delivery constraint?

A Never had to.

Q Does it now have a policy?

A Not written, we have not written a policy.

Q Do you have any kind of unwritten policy?

A Yes, we don't take same sex marriages.

Q And when was that unwritten policy conceived of?

A **When it came out in Facebook. Or whenever -- wherever Curt put it, I believe it was on Facebook that we had a discussion about it.**

Q And what is the reason for that unwritten policy that you will not take same sex customer wedding orders?

A **Because biblically marriage is between a man and a woman.**

CP 121

Q Is there any other reason behind the policy?

A **No, sir.**

Q Would Arlene's Flowers sell flowers for the wedding of two atheists?

A **If they're a man and a woman.**

Q Okay. Would the same be the case for the wedding of two people of the Muslim faith?

A **If they were a man and a woman.**

Q Okay. So I take it that would be the case for a man and a woman marrying regardless of their faith or no faith.

Is that fair?

A **Yes, sir.**

Q All right. Does it matter -- does the -- strike that.

Would Arlene's Flowers sell flowers for the wedding of a man and a woman if the woman was pregnant at the time of the wedding?

A If it's a man and a woman, yes.

Q What about if one member of the couple had been previously divorced?

A If it's a man -- it's not my place to judge.

Q Okay. Would Arlene's Flowers sell flowers for the wedding of a man and a woman where the woman had been born a man but had sexual reassignment surgery?

A It's never come up.

CP 122

Q If it were to come up would Arlene's Flowers sell flowers to that couple?

A Are they telling me that when they come in?

Q Yes, assuming that they are telling you that?

A No.

Q You would not sell flowers?

A No, it's not between a man and a woman.

Q So in that situation, even though they're telling you that the woman is a woman but had been born a man and had sexual reassignment surgery, you would not accept the woman's identification of herself as a woman to you?

A No.

Q All right. So you've told us about the initial consultation with a wedding customer where you gather the information that you've described in some detail and I appreciate that.

In a typical wedding, if there is such a thing, average wedding, what's the next step in the process?

A **After we go through all the questions?**

Q Right.

A **To do their floral arrangements, to make their floral arrangements.**

Q Okay. And are the three designers principally the ones involved in that?

CP 123

A **Yes.**

Q Okay. Now, in your consultation with your customers that you talked about and how you have this interactive process to develop ideas for floral arrangements, do you make use of books of flower arrangements that are kept in your store?

A **Sometimes.**

Q Okay. And I understand that there are different sets of books.

Can you describe those for us?

A **There are pictures of weddings and bride bouquets, corsages, boutonnieres, decorations for the church, for the pews,**

for the aisles. And then there is a workbook that goes with those.

Q Okay. And is the workbook something that's kept in the back office or in the design area?

A **Yes.**

Q That's for the designers to work with.

Is that true?

A **Yes, sir.**

Q So for those of us who aren't familiar with your business, out in the front of the shop to work with your customers there'll be books of pictures of various wedding arrangements and types of flowers. And I think there's one from FTD; is that right?

CP 124

A **Yes, sir.**

Q And one from Teleflora; is that right?

A **Yes, sir.**

Q And I think there's a third one, I don't know the name of it?

A **John Henry.**

Q John Henry. Are those in your business the three principal resources that you use?

A **That's our main ones.**

Q Okay. And then the workbook, what's the difference between the workbook and the picture book that's out front?

A The workbook has a breakdown of each flower that's in it, each color that's in it.

Q Okay. Does it have some degree of direction as to how to put together the arrangement that's in the picture?

A No, no.

Q No. Okay. Do you make regular use of those workbooks?

A Regular use? No.

Q Do you occasionally consult with them?

A Yes. They are out on the tables at all times.

Q Okay. Did you contribute pictures to any of those books?

A No.

CP 125

Q Did you have anything to do with the development or assembly of the pictures in those books?

A No, sir.

MR. SCOTT: Why don't we take a short break here?

THE WITNESS: Okay. Works for me.

(Recess from 9:58 to 10:13 a.m.)

Q (By Mr. Scott) Okay. I want to understand a little bit better about the types of flowers that are sold by Arlene's Flowers in connection with weddings.

Is it the case that some of the flowers are for the place and others of the flowers are for the people in general?

A Yes, sir.

Q And are the majority of the flowers for the people personal flowers, like boutonnieres for the men and corsages for the women and the bride bouquet?

A Is that the majority?

Q Yes.

A Yes.

Q And the flowers that are for the place of the wedding, what types of arrangements are those?

A Just depends on what they want and where they're being married, what fits into the -- the place.

Q Okay. So you've mentioned that in the course of you

CP 126

and your other designers work with wedding customers you'll ask about the place.

Do you always visit the place?

A Not always.

Q Do you sometimes?

A (Nods head.)

MR. BRISTOL: Got to make sure to say "yes" or "no" so she --

A Excuse me.

Q (By Mr. Scott) And is it sometimes the case that you don't know how the flowers will be used in the place, you don't visit so you don't know exactly how they'll be placed?

MR. BRISTOL: I'm going to object as compound, there's too many questions in there.

MR. SCOTT: I'll rephrase.

Q (By Mr. Scott) Is it sometimes the case, Ms. Stutzman, that flowers are sold for weddings in locations where you have not visited and you and your employees don't know how the arrangements will actually be placed for the wedding ceremony?

A Not necessarily, because we do ask those questions, will it be on an altar, is it in the front, is it as you come in.

Q But ultimately will it be up to the couple and their

CP 127

friends and family to place the flowers where they want to place them?

A Yes.

Q And does Arlene's Flowers also sell flowers in bulk for weddings that the wedding couple and those who are helping them will place around the site of the wedding in their discretion?

A Sometimes.

Q Sometimes. And how common is that to sell flowers in bulk?

A **Not common.**

Q But not uncommon also? I'll withdraw that. You mentioned that you and your other designers always ask the names of the couple. Do you also ask the sex of each associated with each of those names?

A **No, sir.**

Q So if a name was a name that could be either a man's name or a woman's name you wouldn't necessarily know which was which.

Is that accurate?

A **We ask the bride's name and the groom's name.**

Q Okay. Do you always ask it in that way?

A **Yes, sir.**

Q Do you know whether or not your other designers ask it

CP 128

in the same way?

A **I don't know that.**

Q If a person came in for wedding flowers, just one, and gave you two names and you couldn't tell whether the names were that of men or women would you sell flowers anyway?

A **I don't know that that's been the case.**

Q If it did happen would you sell flowers to them for the wedding?

A **If I didn't know if it was a man or a woman?**

Q Right.

A **No.**

Q Why not?

A **Because marriage is between a man and a woman and I would have that clarified.**

Q All right. And you said it's increasingly common for customers, wedding customers to pick their flowers up.

When that happens Arlene's Flowers doesn't necessarily know how the flowers are actually used at the wedding, do you?

A **Correct.**

Q Now, the flowers that are sold for a wedding, whether they're picked up or delivered, do they have any signage that identifies them as coming from Arlene's Flowers?

CP 129

A **No.**

Q And even in connection with weddings where Arlene's Flowers delivers the flowers, the deliveries are made by your delivery people, correct?

A **Yes, sir.**

Q Okay. And your delivery people don't stay for the wedding, do they?

A No, sir. Let me rephrase that, they would stay at the wedding if the flowers needed to be transported someplace else after the wedding or they would go back and get them and transport them to the other place.

Q Okay. So that's a situation where there might be a reception at a different location?

A Yes, sir.

Q Okay. And one of two things would happen, the delivery people would stay and then transport them or return and transport them?

A Yes, sir.

Q Okay. In a situation where they would stay the delivery people don't participate in the wedding, do they?

A No.

Q And the designers don't go to the site of the wedding, do they?

A Sometimes.

CP 130

Q When does that happen?

A When they're asked to service the wedding.

Q And how common is that?

A It depends on how big a wedding it is. If it's a large wedding it's pretty common.

Q Is there an extra charge involved with that?

A **Yes, there is.**

Q How do you charge for that, is it by the hour?

A **Yes, sir.**

Q How much for the hour?

A **\$45 an hour.**

Q Okay.

(Exhibit No. 6 marked for identification.)

Q (By Mr. Scott) Ms. Stutzman, you've been handed Exhibit 6.

Would you identify that for us, please?

A **It looks like a wedding we took.**

Q And is this a form that you use at Arlene's Flowers?

A **Yes, sir.**

Q Did you develop this form?

A **No, sir.**

Q Where did you get it?

A **It's a John Henry form, I believe.**

Q Okay. Do you recognize the handwriting on this form?

CP 131

A **Yes, sir.**

Q Whose is it?

A **Mine.**

Q It's nice handwriting.

A **It is?**

Q Compared to mine.

How do you -- do you use this form during the course of the initial interview that you told us about?

A **Yes, sir.**

Q Do you remember this particular wedding for Connie Stevens?

A **No, sir.**

Q And is the reason you don't remember because you do large number of weddings?

A **Yes, sir. This was back in 2010.**

Q There's your handwriting under the bridal bouquet, would you read that for us, please?

A **"Bridal bouquet, lilies, deep rust, two-tone callas, deep rust and deep yellow papaya roses, hand tied orange and chocolate ribbon."**

Q Do you know whether the ideas for the arrangement described there came from Connie Stevens or from you or from a combination of the two of you?

A **I don't know.**

CP 132

Q Okay.

A **Since it's not specifics I would say it would be a combination of the two.**

Q Okay. And what does it say under the heading of the attendant flowers?

A **“Chocolate dress. She’s 5’11” tall. Two stems of,” I can’t read my own writing, “ribbon wrapped lilies, two stems of lilies ribbon wrapped.”**

Q And turning the page to the corsages section, what did you write there?

A **“Calla corsage, the bride’s mom.”**

Q Okay. Bottom of the page for boutonnières, what does that say in your handwriting?

A **“Papaya roses, one rose and one orange, burgundy calla lily.”**

Q And on the following page at the bottom of the page there’s a category for additional decor.

A **“Cake, orange roses and deep lilies, no top, lily or rose for top. And a bucket for the cake lady.”**

Q And if you’ll turn a few pages in there’s a page with a Production No. 79 at the bottom of it.

Connie Stevens’ wedding written --

A **Okay.**

Q Do you see that?

A **Uh-huh.**

CP 133

Q Is that because -- is this for the purposes of delivery of the flowers?

A **That's her purpose of knowing where the wedding is, possibly delivery, possibly not.**

Q Does it say, "Deliver by 7:00" on that page?

A **Yes.**

Q And is that in your handwriting?

A **No, that's Janell.**

Q Okay. And do you and Janell sometimes switch off and on with customers?

A **Yes.**

Q Leslie too in the mix?

A **Yes.**

Q So you're all there to serve whoever's available and works with the customer?

A **Yes.**

Q The next page with Production No. 080, it says, "To Bose's."

What's Bose's?

A **It's supposed to be Brose's, B-R-0-S-E-S.**

Q Okay.

A **That's our wholesaler; one of our wholesalers.**

Q Okay. Do you work with several wholesalers?

A **Yes, sir.**

Q Who else do you work with?

A Work with John Gustafson out of Portland, Brose's Roses & More out of Spokane and also Auction Flowers.

Q And the next page in with Production No. 081, that's a typed up page.

Is this a summary of the order?

A Yes, sir.

Q Okay. And is this typical of your procedures to summarize the order for the customer?

A Yes, sir.

Q At the bottom of that page it says, "We ask that you or someone you trust come in on Saturday, October 9th at noon and look over the flowers. Any changes will be made then."

Is that part of your standard procedure?

A Yes.

Q What's the reason for that?

A So if there's any corrections, additions, changes that they be made before they're delivered.

Q And ultimately does the customer get the last say as to what they want in your flowers?

A Yes, sir.

Q And if you'll turn a couple pages after that to the page with No. 083, which is labeled Wedding Confirm Form.

Is that the form that's used when they come in to

CP 135

do the final check of the flowers?

A Yes, sir.

Q And on this particular form can you read what it says under "I have checked over the flowers to my wedding and want these changes made"?

A "Seeded Eup. added to bride's bouquet."

Q Does that indicate that the bride had a change that she wanted?

A Yes, sir.

Q And the next page is No. 084, it's a photograph. Where did that come from?

A The bride.

Q Did she bring it in --

A Yes, sir.

Q -- after the consult?

A Uh-huh.

Q Is that common?

A Not common.

Q Okay. In this case what did the bride tell you about this picture that she brought in?

A She said she liked that style.

Q Okay. And does that help guide you then in the design of what she wants for her wedding?

A **Yes, sir.**

Q And next to that is a page labeled 085, it's a
CP 136
Teleflora page.

Where did that come from?

A **That's from a website, Teleflora website.**

Q Did the bride select this page?

A **Yes.**

Q And did she bring it in with her?

A **Yes.**

Q And was that also because this was a way for her to explain what she wanted by way of floral design for her wedding?

A **Yes, sir. Like the look.**

Q And the next page, page 086 has a couple pictures.

Where did those come from?

A **From the bride.**

Q And what was the purpose of her bringing these two pictures in?

A **She was talking about putting flowers on her cake.**

Q Was this to help guide you in the selection of the flowers that this customer wanted?

A **Not particularly, because she wanted calla lilies, so it changes the look.**

Q Okay. But to give some idea, help her explain what she wanted.

Is that fair?

A **No, because those were pictures that she saw that**

CP 137

according to what she ordered it would not look like those pictures.

(Exhibit No. 7 marked for identification.)

Q (By Mr. Scott) Before we turn to the next exhibit would you go back to the Connie Stevens form, Exhibit 6?

A **(Witness complies.)**

Q At the top of the form we see the bride's name, Connie Stevens.

Is there a groom's name on that form?

A **No, sir.**

Q So it's not always the case that you get the groom's name, is it?

A **Correct.**

Q Let's turn to Exhibit 7, please.

A **(Witness complies.)**

Q Can you identify Exhibit 7 for us?

A **It looks like a wedding for Nicole.**

Q A wedding that Arlene's Flowers provided flowers for?

A **Yes. I did not take this wedding.**

Q Can you tell who did?

A **No, I can't.**

Q Maybe you can help us at least understand the nature of some of these documents. The front page unlike the

CP 138

form we looked at for Connie Stevens is typewritten.

Can you tell from your experience as president of Arlene's Flowers how this typewritten form was generated?

A **It's on Word.**

Q Is it something that's done after the consultation with the bride or does the bride send this in or how does it work?

A **No, we do it after.**

Q Okay. And do you recognize any of the handwriting on page 2 of Production No. 260?

A **No, I don't.**

Q But you do recognize this as a set of documents that are kept in the regular course of business by Arlene's Flowers, Inc.?

A **Yes, sir.**

Q All right. We'll set that aside since you don't remember this one.

(Exhibit No. 8 marked for identification.)

Q (By Mr. Scott) Can you identify Exhibit 8, please?

A Again, it's not a wedding I took.

Q Okay. Do you recognize this as a wedding that the flowers were provided for by Arlene's Flowers, Inc.?

A Yes.

CP 139

Q And these are documents that were kept by Arlene's Flowers in the regular course of its business?

A Yes, sir.

Q It's a different type of form than the one we looked at first for Connie Stevens.

Where does this form come from?

A Let me go back to Connie's. You mean the wedding planner?

Q Yes.

A Okay. Well, it could have been John Henry, it could have been FTD's.

Q Okay.

A Or it would have been a generic one from Roses & More.

Q Okay. And did you say you don't recognize the handwriting on Exhibit 8?

A No, sir.

Q Okay. I do want to ask you though, if you know, under the heading on the first page, The Bride, Color and Style of Dress, next to that there's an alphanumeric designation TW-38-3.

Do you know what that is?

A That is a number out of one of the books.

Q One of the workbooks in the back?

A Yes, sir.

Q And why would that number be recorded in the course of

CP 140

your business?

A If she liked that style or liked that bouquet.

Q Okay. Does that mean your designer would then use that designation in the workbook to help create the bouquet?

A If that's the one she wanted, yes.

Q Okay.

(Exhibit No. 9 marked for identification.)

Q (By Mr. Scott) Can you identify Exhibit 9 for us please, Ms. Stutzman?

A It was a wedding that we took.

Q Did you take this wedding?

A I believe I did.

Q Okay. Do you remember this wedding?

A Yes, sir.

Q How come this one sticks out in your mind?

A The name.

Q It's also a thicker packet of materials than we've seen for other weddings.

Does that tell us anything about the nature of this particular order?

A **Yeah, there were either changes made or sometimes they change them three times.**

Q In fact, the second page in with Production No. 405 is

CP 141

labeled Revised 9-21-2010.

So does that indicate to you that that was a revision at some point?

A **Yes, sir.**

Q Is that typically the result of interaction with the customer who is changing some part or parts of the order?

A **Yes, sir.**

Q Do you remember anything about what this customer told you he or she wanted?

A **No.**

Q Who did you work with for this couple?

A **Who did I work with?**

Q Yes, was it Staci Fanciullo?

A **I believe it was, but I'm not positive.**

Q Okay. Is Staci -- was Staci the bride?

A **Yes, sir.**

Q Okay. If you'll look at the page that has Production No. 409 about, you know, six or seven pages in, I guess that's the one.

A **Uh-huh.**

Q What is that page?

A **Pardon?**

Q What is that page? Why is it in your packet here?

A **Well, because she liked that bouquet.**

CP 142

Q Did she bring that in to you?

A **She wanted a smaller version of that.**

Q Okay. That's what you've written here, smaller version?

A **Yeah.**

Q And that's your handwriting?

A **Yeah.**

Q Do you know where she got that picture?

A **It looks like it's out of one of the Teleflora books or FTD books.**

Q Okay. What is the name of Staci Fanciullo's spouse?

A **I don't have it on here.**

Q Did this customer have fairly specific ideas about what she wanted in terms of her floral arrangements?

A **As I recall, yes.**

Q If you'll turn to the pages marked 417 and 418, please.

A **(Witness complies.) Okay.**

Q And I'll ask you first about the E-mail at the bottom of the page.

Was that an E-mail from Staci Fanciullo to Arlene's Flowers on September 9, 2010?

A **That's what it looks like.**

Q And was Staci writing back after reviewing an order to comment on the order?

CP 143

A **It looks like Janell, she was talking to Janell.**

Q Okay. But in any event, does it look like the customer Staci was writing back to Arlene's Flowers, in this case Janell, to clarify some of what she wanted in the order?

A **Yes, sir.**

Q Okay. It says, "I did notice it said colors eggplant and cream but wasn't quite sure if it meant what were the colors of our wedding."

Do you see that?

A **Okay.**

Q And then she wrote "Because they are eggplant and sagey green."

Do you recall whether Staci had a particular specific shade of green that she wanted?

A **I do not recall.**

Q Okay. Would you turn to the page marked with Production No. 425?

A **(Witness complies.)**

Q In the top half of that page is an E-mail from Staci to orders@arlenesflowers.com dated April 14, 2010.

Does that appear to you to be an E-mail from Staci to Arlene's Flowers with some additional direction as to what she wanted in her wedding flowers?

A **Yes, sir.**

CP 144

Q And toward the bottom of her E-mail she wrote "What is the cost difference from picking them up or having them delivered."

Do you see that?

A **Where are you?**

Q Toward the bottom of that same E-mail.

A **Yes.**

Q Just the middle of the page.

A **Yes, sir. Uh-huh.**

Q Is that a factor from any of your customers, cost of delivery?

A **To some.**

Q Okay. And those who want to economize a bit will choose to pick up flowers rather than having them delivered?

A **Yes, sir.**

Q Do you recall whether or not the flowers for this wedding were delivered or picked up?

A **I don't, it says Prosser, so.**

Q Was this wedding as it says on the first page of Exhibit 9 at the Prosser Theatre?

A **Yes, sir.**

Q Does that help you remember whether or not the flowers were delivered?

A **No, I did do a wedding in Prosser, but I don't know if**

CP 145

it was hers or not.

Q All right. Have you ever attended yourself a same sex wedding?

A **No, sir.**

Q Does Arlene's Flowers make a distinction between weddings and commitment ceremonies for same sex couples?

A **I don't understand your question.**

Q Would Arlene's Flowers sell flowers to a same sex couple for a commitment ceremony if it wasn't called a wedding?

A **No, sir.**

Q And why is that?

A **Because it's between -- it's not between a man and a woman.**

Q Okay. Do you ever have wedding customers bring in specifications for flowers that are

essentially a complete design that Arlene's Flowers simply assembles for the customer according to their directions?

A Without any changes?

Q Right.

A No.

Q How do you know Robert Ingersoll?

A He's been a customer of ours.

Q Do you remember when he first became a customer?

CP 146

A I don't.

Q It's been quite a while?

A Yeah.

Q And do you also know Curt Freed?

A I don't know that I've met Curt.

Q Do you know who he is?

A Just through Robert.

Q Okay. And what do you understand is Curt's relationship to Robert?

A That they're a couple.

Q Okay. And when did you first learn that Curt and Robert are a couple?

A I don't remember exactly.

Q Was it several years ago?

A I'm sure, yeah.

Q You say you are sure?

A **Yeah, it was a couple years ago, or more.**

Q Were you aware that Mr. Ingersoll identifies as gay?

A **That he identified as gay?**

Q Yes.

A **Explain.**

Q I'll phrase it differently.

Were you aware that Robert Ingersoll is a gay man?

A **Yes.**

Q And when did you become aware of that?

CP 147

A **I couldn't tell you exactly.**

Q Was it several years ago?

A **Possibly.**

Q And how did you learn of this?

A **By him ordering flowers for Curt, talking about their relationship.**

Q Has Robert ordered flowers for Curt for a number of different occasions?

A **Yes, sir.**

Q Do you remember any of the types of occasions?

A **Birthday, anniversary.**

Q Valentine's Day?

A **Yes, sir.**

Q And have those flowers sometimes been delivered by Arlene's Flowers to Curt at his place of work or business?

A **I don't -- I'm not sure on that.**

MR. SCOTT: Counsel, I'm going to ask the court reporter to mark two exhibits I don't have copies of that were produced by Arlene's Flowers, but we'll get copies of them at the break, and I'm handing them to you to show you the documents.

MR. BRISTOL: Let's see, this will be what, appears to be Exhibit 10?

MR. SCOTT: 10 and 11.

CP 148

MR. BRISTOL: I think this is the same. Oh, okay.

(Exhibit No. 10 marked for identification.)

(Exhibit No. 11 marked for identification.)

Q (By Mr. Scott) Ms. Stutzman, the court reporter has handed you two exhibits that I just described on the record as I handed them to your counsel. They're marked 10 and 11.

Would you describe for us or identify for us what Exhibit 10 is?

A **It's the -- it's the computer printout of when he ordered flowers.**

Q When Robert Ingersoll ordered flowers?

A **Yes, sir.**

Q And this is Arlene's Flowers, Inc. computer ticket list?

A **Yes.**

Q Can you tell from this list, and it's a two-page list of documents --

A **Yes.**

Q -- or orders; is that right?

A **Yeah.**

Q This list seems to only go back to 2010.

CP 149

But Mr. Ingersoll's been a customer of yours for much longer than that, hasn't he?

A **I believe so.**

Q Did you have a new computer system that just started in that time?

A **Yes.**

Q And just to take an example, on the first page, 9-16-2011, under the customer name, Robert Ingersoll, as all of these are, the recipient is shown there as Curt, right?

A **Yes.**

Q And that indicates a delivery, doesn't it?

A **Yes, sir.**

Q Do you happen to know or can you tell from this document what the occasion for these flowers was?

A **No, sir.**

Q Okay. And if you'll turn to the next page there's a sale date of February 14, 2011, Valentine's Day.

And that was for Curt, right?

A **Yes, sir.**

Q Were those flowers also delivered?

A **Yes, sir.**

Q Do you know where they were delivered?

A **No, sir.**

Q Were you aware that Curt worked at Columbia Basin

CP 150

College?

A **No, sir.**

Q And just briefly for the record will you identify Exhibit 11 for us, please?

A **Again, it's a printout.**

Q A ticket list. Is this ticket list for Arlene's Flowers for a sale to Curt Freed?

A **Yes, sir.**

Q And although there's only one sale on here has Curt Freed been a customer of Arlene's Flowers before January of 2011?

A **I -- I don't remember.**

Q Okay.

A **He may have been, I don't remember.**

Q All right. Did Robert typically pick his flowers off the rack when he bought flowers for Curt?

A **No, sir.**

Q Did he sometimes -- let me understand better your store. I don't mean to be flippant when I say off the rack, that's probably an inartful term.

But do you have flowers in your shop that were prearranged that your customers will then pick out?

A **Yes, sir.**

Q Okay. And do you know whether or not Robert Ingersoll would pick those flowers out and ask that those be

CP 151

delivered to Curt?

A **I don't remember him ever doing that.**

Q Okay. What's your memory?

A **He always picked out unusual vases or containers, wanted something unusual and different in them.**

Q And would he tell you what he wanted that was unusual and different in the flowers?

A **He would just say, Do your thing.**

Q Would he give you any direction about what sort of flowers, colors or types he would want?

A **He may have. He may have. But usually it was just he wanted something creative**

and something off the wall. That's why it was always fun to -- to work with him.

Q Did you know prior to March of 2013 that Robert and Curt were planning to get married?

A **Janell had told me that he would be in.**

Q If you know, how did Janell come to know that they were going to be married?

A **I believe he came in to talk to Shari who was our front gal. And then she told Janell and then Janell told me.**

Q Okay. And why did that course of events take place as opposed to Janell just working with Robert?

A **He was asking for me.**

Q Okay. Do you know why he asked for you?

CP 152

A **Because he likes what I do.**

Q And when Janell came to you what did she tell you?

A **She said that Rob would be in to talk about wedding flowers.**

Q What did you tell her?

A **I told her that it was going to be a very difficult decision and I would have to go home and talk to my husband about it.**

Q So you hadn't made up your mind at that point in time whether or not to provide flowers for Robert for his wedding to Curt; is that right?

A **Correct.**

Q Now, your husband is also involved in Arlene's Flowers, Inc., correct?

A **Involved by how?**

Q He's an officer of the company?

A **Yes.**

Q What is his title as an officer?

A **Vice president.**

Q And what are his duties as vice president of the company?

A **He's just vice president.**

Q Okay. Do you consult with him as vice president from time to time regarding the business of Arlene's Flowers, Inc.?

CP 153

A **Yes, sir.**

Q Okay. What kinds of consultations do you have with him?

A **Decisions that need to be made about the buying or the store or just general business decisions.**

Q We looked earlier, and we can pull the document out if it's helpful to you at Arlene's Flowers' mission and procedures.

Was he involved with you in the creation and adoption of that document?

A **No, sir.**

Q Okay. That's solely your decision?

A **Yes.**

Q Okay. All right. Did you and Janell have any further discussions before you consulted with your husband?

A **No, not that I recall.**

Q Okay. And tell us about your consultations with your husband as vice president of Arlene's Flowers.

A **We just went through what we should do and what our faith was and our beliefs and we decided that because of our faith that we couldn't do it in good conscience.**

Q Okay. Had you and your husband had any previous discussions as the officers of Arlene's Flowers, Inc. about this topic of providing flowers for gay and

CP 154

lesbian couples?

A **Never came up before.**

Q And will you describe for us what are the reasons that you and your husband based your decision as the officers of Arlene's Flowers, Inc. on?

A **Our biblical -- biblical belief that marriage is between a man and a woman.**

Q Did you consult with anyone else other than your husband?

A **No, sir.**

MR. SCOTT: Why don't we take another short break here.

THE WITNESS: Okay.

(Recess, 10:58 to 11:09 a.m.)

Q (By Mr. Scott) After you talked with your husband about whether or not to sell flowers to Robert for his wedding to Curt, did you talk with anyone else prior to talking with Robert?

A **Janell.**

Q Describe your conversation with Janell, please.

A **I told her that Darrell and I had discussed it and that -- that was the conclusion we had come to.**

Q And did you tell her the reason for your conclusion?

A **Yes, sir.**

Q And what was Janell's response?

CP 155

A **She agreed.**

Q Did she have a say in whether or not Arlene's Flowers would sell flowers for this occasion?

A **No.**

Q The decision was strictly made by you and your husband?

A **Yes, sir.**

Q Did any of the other employees of Arlene's Flowers know prior to your meeting with

Robert that you would not sell flowers to him for his wedding?

A Not that I know of.

Q Okay. And do you remember when your conversation with Robert took place?

A Like a day, time?

Q Yes.

A No.

Q Tell me what you remember about your conversation with Robert.

A He came in and we were just chitchatting and he said that he was going to get married. Wanted something really simple, khaki I believe he said. And I just put my hands on his and told him because of my relationship with Jesus Christ I couldn't do that, couldn't do his wedding.

Q Did you tell him that before he finished telling you

CP 156

what he wanted?

A He said it was going to be very simple.

Q Did he tell you what types of flowers he would want?

A We didn't get into that.

Q Did you not get into it because you wanted to tell him that you would not sell to him?

MR. BRISTOL: Object to the form of the question. It's assuming facts not in evidence. My problem, Mike, is the word "sell."

Q (By Mr. Scott) You may answer the question.

A **I chose not to be a part of his event.**

Q Did he ask you to be a part of his event?

A **He ask -- he -- he wanted me to do his wedding flowers which would have been part of the event.**

Q If Robert Ingersoll had told you that what he wanted to purchase from Arlene's Flowers for his wedding was simply branches to use for the weeding would you have sold those to him?

A **Yes.**

Q If he had told you that he wanted to purchase just simple stems that he would then arrange would you have sold those to him?

A **Yes.**

Q But as your conversation turned out you told him you wouldn't sell for his wedding before he was able to

CP 157

tell you specifically what he wanted; isn't that right?

A **I told him --**

MR. BRISTOL: Object to the phraseology that she wouldn't sell him flowers.

MR. SCOTT: I'm going to object to the speaking objection, Counsel. You can object to the form but not coach your witness.

Would you please read the question back?

MR. BRISTOL: You're assuming facts not in evidence.

MR. SCOTT: You can object to the form but you may not coach your witness.

(LAST QUESTION WAS READ BACK BY THE COURT REPORTER.)

A Didn't tell him I wouldn't sell him flowers, I told him I wouldn't be part of his event. I told him I couldn't do his wedding flowers.

Q (By Mr. Scott) Robert did not ask you to attend his wedding, did he?

A No, sir.

Q He didn't even ask you to deliver flowers to his wedding, did he?

A We didn't get that far.

Q Okay. You didn't get that far because you told him you would not provide services for his wedding, right?

CP 158

A I told him I could not do his wedding.

Q And you could not do his wedding because he was getting married to Curt Freed, a man; is that right?

A **Because of my relationship with Jesus Christ I could not do his wedding.**

Q Okay. What else happened in that conversation with Robert?

A **We chitchatted a little bit, we hugged and Robert left.**

Q Just to make sure the record is clear, what was the chitchat about?

A **We talked a little bit about his mom and we talked about how he got engaged and just generic.**

Q What did he tell you about how he got engaged?

A **They were -- don't re -- I don't recall exactly, they were sitting in a restaurant and talking about their financial protection, to protect their financial assets. They thought it wise to be married.**

Q Do you remember anything else about the conversation?

A **Only that he was hoping his mother would walk him down the aisle, but he wasn't sure.**

Q Do you know his mother?

A **No, sir.**

Q Do you remember anything else about your conversation with Robert?

CP 159

A **Not right offhand, no.**

Q And where did that conversation take place?

A In the store.

Q Where in the store?

A Right inside the door on the left-hand side.

Q Was anybody else present during the conversation?

A No, sir.

Q Other than that you knew Robert wanted a simple wedding, did you ask anything else about the details of the wedding?

A No, sir.

Q Did you get so far as to ask him whether he wanted Arlene's Flowers to deliver flowers or other items to the wedding?

MR. BRISTOL: Objection, asked and answered.

Q (By Mr. Scott) You may answer.

A No, sir.

Q Prior to your meeting with Robert did you consider whether or not Arlene's Flowers would allow another designer who was willing to work with Robert and Curt to provide services for their wedding?

A No, sir.

Q Why not?

A Because they represent Arlene's.

CP 160

Q Arlene's Flowers, Inc., the business?

A **Yes, sir.**

Q How long did your meeting with Robert last?

A **Three or four minutes.**

Q Did you expect that Robert would be hurt by your decision?

A **It was a tough decision for both of us.**

Q Prior to today have you interacted with Robert between that conversation and today?

A **No, sir.**

Q After your meeting with Robert did you talk with others about your decision not to sell flowers for his wedding?

A **Yes, sir.**

Q Who did you next talk with?

A **The store. Other than Darrell.**

Q Okay. And how did you come to talk with the store?

A **We had a store meeting, I explained the situation.**

Q Was it the same day?

A **No.**

Q When was it in relation to the meeting with Robert?

A **When it came out on Facebook or wherever Curt printed.**

Q Do you know what day of the week your meeting with Robert was?

A **No, sir.**

CP 161

Q Do you know what day of the week your meeting with store employees was?

A **No, sir.**

Q Do you often call store meetings?

A **We have them once a month usually.**

Q Was this discussion at the monthly meeting or a different meeting?

A **Different meeting.**

Q Was it called specifically for the purpose of discussing your decision?

A **Yes, sir.**

Q And where was it held?

A **At the store.**

Q During nonbusiness hours?

A **No.**

Q What time of day was the meeting held?

A **I don't remember exactly. Usually mornings.**

Q Okay. And did you ask every employee to be present for the meeting?

A **Yes.**

Q And were they all there?

A **No, sir.**

Q Who was not there?

A **I'm not exactly sure.**

Q Do you remember specifically anyone who was not in

CP 162

attendance?

A **No.**

Q Do you remember who was in attendance?

A **No.**

Q Were most --

A **Not all of them.**

Q Fair enough. Who do you remember was there?

A **Most of them.**

Q Can you tell us approximately how many days after your meeting with Robert this meeting took place?

A **I believe it was the next day.**

Q Okay. And was Janell Becker present for the meeting?

A **Yes, sir.**

Q Was an employee by the name of Eryn present?

A **Yes, sir.**

Q What's Eryn's name?

A **Eryn Hugo. Hugo, I believe, H-U-G-0.**

Q Did you lead the meeting?

A **Yes, sir.**

Q What did you tell your employees at the meeting?

A **I told them what happened and that it was Darrell and my decision that we would not participate in that type of event. And that if they had any objections or they were concerned that if they wanted to quit they certainly had every right to do that. And that's the**

CP 163

sum of it.

Q How long did the meeting last?

A **Not positive.**

Q Was it more than a few minutes?

A **Yes.**

Q More than an hour?

A **It could have been, not sure.**

Q Okay. Did your employees raise concerns at the meeting?

A **Yes, sir.**

Q What concerns did they raise?

A **They asked why.**

Q What did you tell them?

A **I told them because I believe biblically that a marriage is between a man and a woman.**

Q Did they respond to that?

A **Yes.**

Q Let me first ask you, who asked why?

A **I don't -- I don't recall who asked why.**

Q Can you remember the names of any of your employees who raised concerns at that meeting?

A **Eryn was one. And I believe Bridgett.**

Q What is Bridgett's last name?

A **Lawyer.**

Q Can you spell that for us, please?

CP 164

A **L-A-W-Y-E-R.**

Q Like our profession?

A **Uh-huh.**

Q She's not a lawyer though I take it?

A **No.**

Q Other than in family name.

What concerns did Eryn raise?

A **Eryn didn't understand why.**

Q And did you tell her what you've told us already today?

A **Yes, sir.**

Q All right. Did she respond to that?

A **Yeah, she was very upset.**

Q Did she explain why she was upset?

A She said she was bisexual and she didn't agree with the decision I had made and that she would give her two weeks' notice.

Q And did she do so?

A No, actually she came in and gave us a letter the next day.

Q And did she cease being an employee at that time?

A Yes, sir.

Q Have you had any interaction with her since that time?

A She's been in the store a couple times to visit.

Q Okay.

CP 165

A But I have -- I have not been there when she's there.

Q All right. And you said Bridgett also raised concerns, correct?

A Uh-huh.

Q What did Bridgett say?

A She didn't understand either.

Q Did you give her the same explanation you've already told us about?

A I believe so, yes.

Q And did she respond to that?

A Not -- she just said okay.

Q Does Bridgett still work for Arlene's Flowers?

A **No, sir.**

Q When did she cease being an employee?

A **I don't know, you have those records. It was probably a month or so afterwards.**

Q Did she give a reason for leaving?

A **Yeah, she got a full-time job at Office Depot.**

Q Do you know whether or not her decision to leave Arlene's Flowers to go to Office Depot was related to your decision regarding Robert?

A **She never said.**

Q Did any of your other employees raise concerns at that meeting?

A **I think they all had concerns.**

CP 166

Q And were their concerns similar to those expressed by Eryn and Bridgett?

A **No.**

Q What other concerns were raised by employees?

A **Wondering how it would turn out, that they were pretty supportive.**

Q Other than Eryn or Bridgett did anyone express a concern that the decision was not the right decision?

A **No.**

Q Do you remember anything else that you said at that meeting?

A **No, there was a lot said, but I don't recall exactly what was said.**

Q Okay. During the course of that meeting did you talk about how this decision might affect other customers or types of customers other than same sex customers?

A **No.**

Q Do you remember anything else that anyone else said at that meeting?

A **Other than they were behind my decision, no.**

Q Those who expressed support for your decision, what did they say about why they support you?

A **That I had a reason that I had every right to believe what I believe.**

Q Did anyone at this meeting mention the Washington law

CP 167

against discrimination?

A **I don't recall.**

Q Were you aware of the Washington law against discrimination?

A **Yes, sir.**

Q What is your understanding of how that applies or might to same sex couples?

MR. BRISTOL: Objection, calls for a legal conclusion.

Q (By Mr. Scott) Just asking for your understanding, Ms. Stutzman, not a legal opinion,

A **Ask me the question again, please.**

Q What is your understanding of how the Washington law against discrimination applies in a situation such as where Robert came to your store wanting flowers for his wedding?

MR. BRISTOL: Same objection.

A **Yeah, I don't -- I don't understand the law, I'm not -- I don't know how to . . .**

Q (By Mr. Scott) Regardless of the Washington law against discrimination did anyone at your meeting express a concern that your decision might be unlawful?

A **Not that I recall.**

Q Did you hand anything out at the meeting?

CP 168

A **No, sir.**

Q At any point in time have you handed out a written statement of your position to your employees?

A **No, sir.**

Q Have your written policies been changed in any way since your meeting with Robert?

A **No, sir.**

Q After that meeting have you had any other meetings with your employees about this topic?

A **No.**

Q Did any of your customers react to your decision?

A **Yes.**

Q Which customers?

A **I can't give you names.**

Q Can you recall any names of customers who reacted?

A **No, I had very positive response.**

Q You can't remember the names of those?

A **No. I have a lot of customers.**

Q Did any of your customers react negatively or in disagreement to your decision?

A **We had a couple.**

Q Do you remember those names?

A **No, sir.**

(Exhibit No. 12 marked for identification.)

CP 169

Q (By Mr. Scott) Ms. Stutzman, we've handed you Exhibit 12 to your deposition, which is a document produced by Arlene's Flowers in response to our requests in this case.

Is that a copy of an E-mail from Heidi Fryer to Arlene's Flowers dated March 6th, 2013?

A **Yes, sir.**

Q Who is Heidi Fryer?

A **She must have had a wedding.**

Q Do you remember Ms. Fryer?

A **I don't, I do not.**

Q Do you remember receiving this E-mail?

A **No, sir, I received a lot of E-mails.**

Q In your role as president of Arlene's Flowers do you customarily review communications of this type that come into your store?

A **I'm -- not the volume that came in the store over this issue, no.**

Q All right. But you do acknowledge that this is a communication that came from a customer of Arlene's Flowers and is maintained in Arlene's Flowers' records?

A **Yes, sir.**

Q Do you recognize the handwriting at the bottom of the page?

CP 170

A **Yes.**

Q Whose handwriting is that?

A **That's mine.**

Q Okay. What does it say?

A **It says, "Heidi order canceled. I'm sure you'll find a florist you like. Thank you for letting us know and best wishes for your upcoming wedding."**

Q Okay. And does the fact that you wrote that on this page refresh your memory that you must have read the E-mail above it to respond to it?

A **No, sir, but obviously I did.**

Q All right. And did you write beneath that note that you just read, "Sent 3/7/13"?

A **Yes, sir.**

Q And is that -- strike that.

Other than your note -- did you send this note to Heidi?

A **Did I send it to her? Mail it to her?**

Q Right.

A **No.**

Q How did you get it to her?

A **I probably E-mailed her, I'm not positive.**

Q Why is it handwritten if you E-mailed it?

A **Because I would write on there what I did.**

Q So I understand, you would handwrite and then type in

CP 171

or have somebody type in?

A **I probably typed in and then I wrote what I said to her. I'm not sure, I'm not sure on this one.**

Q But your note written in your own handwriting was a note to Heidi, correct?

A **Yes, sir.**

Q All right. Did you have any conversation with Heidi about this topic?

A **No, sir. Not that I recall.**

Q Before we move on, Exhibit 12 has a yellow background on it.

Is that a style that Arlene's Flowers customarily uses for its E-mail communications?

A **No, I don't know where this yellow keeps coming up.**

Q Okay.

A **Let me rephrase that, we do have yellow paper in our copy machines and all our E-mails were copied, so that could be where that came from.**

(Exhibit No. 13 marked for identification.)

Q (By Mr. Scott) And this appears to be a copy of an E-mail that you kept in your records; is that right?

A **Yes, sir.**

Q Okay. Let's turn to Exhibit 13, please. Exhibit 13 was also produced in response to request for

CP 172

production in this case, directed to Arlene's Flowers. This was an E-mail, it states that it's an E-mail communication from Gale S. Kennedy dated Monday, March 11, 2013. Subject, Arlene's Flowers contact form.

Did Arlene's Flowers have a contact form on its website?

A Yes.

Q And is this the way the comment or contact comes out when a customer contacts you in that way?

A Yes, sir.

Q Do you recall this particular contact?

A I do not.

Q Do you know who Gale Kennedy is?

A I do not.

Q Do you know whether or not Arlene's Flowers responded to this contact?

A I do not.

Q In this contact the customer wrote, "Hi, Arlene's rep. I am a best man" -- or "I am best man at a friend's wedding in Richland come August and would like to check out what the choices and best buys are for the big wedding event for grand floral decor. I want to be able to do it up right so I thought I would start investigating prices in preparation for this happy

CP 173

couple five months from now.

"They have been together for five years now and since the new Washington State law has now made it legal, my friends Stan and Jeff finally deserve to have a rainbow of colors to highlight

their blessed same sex marriage. I look forward to hearing from you. Sincerely, Gale S. Kennedy.”

If you read this customer inquiry would you have responded to it?

A No, sir.

Q Why not?

A Because marriage is between a man and a woman.

Q So even if a customer wanted to buy floral arrangement from you for his friend’s wedding you would not sell to that person?

A If it’s for the event.

Q So is it your policy that you won’t sell anything regardless of whether it’s a single stem flower for an event that involves the marriage of a man to another man?

MR. BRISTOL: Objection, asked and answered.

Q (By Mr. Scott) You may answer.

A If it’s -- if I have to make the bouquet for the wedding I will not do it.

CP 174

Q And my question was, what if the customer wanted to buy a single stem flower for his friend’s wedding to another man, his male friend’s wedding to another man, would you sell that to him?

A If he wants to buy a flower off the shelf, yes.

(Exhibit No. 14 marked for identification.)

Q (By Mr. Scott) Ms. Stutzman, you've been handed Exhibit 14, which is a document of Production No. 587 produced by Arlene's Flowers in response to requests for production.

Does this represent copies of pages from Arlene's Flowers' website -- or excuse me, from Arlene's Flowers' Facebook page?

MR. BRISTOL: Mike, if you don't mind, could we specify for the record the full number just so we have it clear? It's 587 through --

MR. SCOTT: Yes, as counsel requests, this exhibit encompasses Production Nos. 587 through 596.

Q (By Mr. Scott) And do these pages represent copies of entries to Arlene's Flowers' Facebook page?

A Yes, sir.

Q All right. And I don't want to go through these in detail, Ms. Stutzman, but I did want to ask you about

CP 175

an entry at the top of page 1 of the exhibit with Production No. 587 where there's an entry under the words "In reply to comments on our site."

Who wrote the reply to comments that follow?

A I did.

Q Okay. And the date above that is March 4, isn't it?

A Yes, sir.

Q Okay. Do you remember whether or not you met with Robert on March 3, 2013?

A I do not remember.

Q Or was it March 1, 2013?

A I do not remember.

Q Okay. The first sentence after the reply introduction says, "Thank you for all your comments on facebook and E-mail concerning the customer that came in and asked us to do his wedding." And then the next paragraph in following says, "The customer has been in many times."

The words "The customer has been in many times" and following, is that a statement that you also typed up and handed out to your employees?

A No, sir.

Q Was it strictly made for purposes of this Facebook entry?

A Yes, sir.

Q All right. Okay.

CP 176

(Exhibit No. 15 marked for identification.)

Q (By Mr. Scott) Ms. Stutzman, Exhibit 15 to your deposition is also a copy of pages produced by Arlene's Flowers in response to requests for production, pages 868 and 869.

Are these also copies from Arlene's Flowers' Facebook page?

A **Yes, sir.**

Q And at the top of page 1 there's an entry that begins "The State of Washington and the ACLU have filed lawsuits against us."

Do you see that?

A **Yes, sir.**

Q Did you write that paragraph and the one below it that begins "Right now"?

A **I do not recall writing the statement.**

Q Do you know who did?

A **No, sir.**

Q Is there anyone else at Arlene's Flowers who was authorized to make entries of this type on Arlene's Flowers' Facebook page?

A **No, sir.**

Q Are you certain that you did not write this or just can't remember?

CP 177

A **I can't remember.**

Q Okay. To your knowledge, have there ever been any unauthorized entries, comments

from the Arlene's Flowers' side of Facebook communications that you did not authorize?

A On Facebook?

Q Right.

A There's all kinds of stuff.

Q Well, I don't mean comments that people have made in response to your posts, but what we just looked at is a post, isn't it, that came from the Arlene's Flowers site?

A I'm not sure where this came from. I'm not sure who wrote this.

Q Okay. But you do recognize it as an entry on the Arlene's Flowers website, right?

A Yes, sir.

Q Would Arlene's Flowers sell flowers to celebrate the adoption of a child by a same sex couple?

A Yes, sir.

Q Would Arlene's Flowers sell flowers to commemorate a divorce?

A Never been asked that.

Q Do you have any policy that would preclude you from doing that?

CP 178

A No.

Q Would Arlene's Flowers provide flowers to celebrate the birth of a baby to an unmarried woman?

A Yes.

Q Would Arlene's Flowers sell flowers for a wedding ceremony that was to be performed by someone ordained by an organization known as the Church of the Dude?

A **Would you -- sorry, that one sort of caught me off guard, what was it?**

Q Fair enough. Would Arlene's Flowers sell flowers for a wedding to be performed by someone ordained by an organization known as the Church of the Dude?

A **Never came up.**

Q If you were informed or given to understand that the Church of the Dude was a church that was related to a film called The Big Lebowski, would you on behalf of Arlene's Flowers allow flowers to be provided to the wedding of someone to be performed by an ordination from that organization?

MR. BRISTOL: I'm going to just interject and object. We're getting close to the line of harassment here.

MR. SCOTT: I certainly don't intend in any way to harass, this is based on facts that would be in the record, Counsel. So this is not a

CP 179

flippant or --

A **I have no idea what you're talking about.**

Q (By Mr. Scott) Okay. Fair enough. You've never heard of something called the Church of the Dude?

A **No, sir.**

Q Nor had I.

A **Okay. That's good to know. I think.**

Q Do you recall selling flowers to a customer by the name of Athena Kennedy?

A **Not right offhand.**

MR. SCOTT: Why don't we take our lunch break now, I don't think we'll be much longer after lunch, but I think it would be productive to take a lunch break at this time.

THE WITNESS: Okay.

(Lunch Recess, 11:48 to 1:13 p.m.)

Q (By Mr. Scott) At the time you met with Robert and told him of the decision you and your husband had made that Arlene's Flowers would not sell flowers to him for his wedding, did you suggest to him that there were other florists he could go to?

A **Yes, sir.**

Q Which florist did you direct him to?

A **Lucky Flowers, Shelby's and Buds . . . and Blossoms, Too.**

Q Did you know whether or not any of those florists

CP 180

would be willing to sell flowers to him for his wedding?

A **Not at that time.**

Q Have you contacted any of those florists since that time to discuss this issue with them?

A **Yes.**

Q Who did you speak with at Lucky Flowers?

A **I didn't speak to Lucky Flowers, I only called Shelby's.**

Q Right. And who did you speak with at Shelby's?

A **Janet, the owner.**

Q And what did you tell Janet?

A **I told her that -- asked her if she'd be willing to do same sex marriages and she said yes. And I said, Okay, may be sending some business your way.**

Q And why did you take that step to find out whether she was willing?

A **In case it happened again.**

Q And why did you feel it necessary to have that information or desirable to have that information in case it happened again?

A **To be willing to send people somewhere else if they so chose to go there.**

Q Would you please turn to Exhibit 8 in your stack?

A **(Witness complies.) Okay. Oh, that's 6, wait a**

CP 181

minute.

MR. BRISTOL: This one here.

Q (By Mr. Scott) It should be the wedding flower plan for Faith Richardson, is that the one you have in front of you?

A Yes.

Q I just have a brief question there. You'll recall that we talked about the TW-38-3 design.

Do you see that?

A Uh-huh.

Q And I think you testified that that related to a floral design in a workbook in the back of Arlene's Flowers; is that right?

A Yes, sir.

Q And my question is: If Robert Ingersoll had told you, That's the one I want and you don't need to do anything differently than what you find in your workbook, just put it together for me for my wedding, would you have sold that to him?

A No, sir.

Q I want to learn a little bit more about the flowers in your store kept in the -- I don't know what you would call it, is there a walk-in refrigerator or a cold case?

A Coolers.

CP 182

Q The coolers. Flowers in the coolers. If a same sex couple -- or strike that.

If a person came in and said, I'd like that arrangement right there and said nothing

about what occasion it was for, would you ask what occasion it's for?

A **Sometimes.**

Q Okay. And if in response to your question you were told, It's for my wedding, would you ask to whom?

A **No.**

Q Okay. And if a person had come in and said, I'd like that bouquet and it's for my marriage to my partner, and you were to learn that that partner was of the same sex, would you sell that to that person?

A **Yes.**

Q You testified today that the reason you've reached this decision not to sell flowers to Robert or anyone else that asked you to do so for a same sex wedding is based on your biblical beliefs; is that correct?

A **Yes, sir.**

Q Do you believe that selling flowers for a same sex wedding somehow implies or relates that you were endorsing same sex marriage?

A **Yes, sir.**

Q And how do you think you're endorsing it if you sell

CP 183

flowers for that occasion?

- A **If I make the flowers for that occasion I'm putting my -- my name on it, my store name on it.**
- Q But your name is not actually on the flowers that go to a wedding, is it?
- A **If somebody asked me if they came -- where they came from and they say Arlene's Flowers my name is on them.**
- Q But I just want to be clear for the record, your name is not physically on the flowers that leave your store for any occasion; isn't that right?
- A **No, that's not right.**
- Q How is it not right?
- A **Because we have stickers that say Arlene's Flowers that we put on our arrangements.**
- Q Where on the arrangements?
- A **Usually on the bow, on the cards, it's on the cards.**
- Q Are there cards attached to arrangements for weddings?
- A **There's -- no.**
- Q And stickers aren't attached on arrangements for weddings either, are they?
- A **Sometimes they're on the corsage, bouts -- or boutonniere bags or corsage bags.**
- Q Sometimes but not always?
- A **Not always.**

Q So you could leave the stickers off if you didn't want

CP 184

your name to go to a particular occasion; isn't that correct?

A **Why would I do that?**

Q If you didn't want your name attached to a particular event you could take your name, your sticker off the arrangement, couldn't you?

A **No.**

Q Why not?

A **Because if I'm not proud of my work, if I didn't want anybody to know where it came from, that would be the only reason I'd take my stickers off.**

Q When you sell flowers for the wedding of two atheists are you endorsing atheism?

A **I don't ask if they're atheist.**

Q Well, if you happened to know, regardless of whether you asked, you're selling flowers to people who are nonbelievers are you endorsing nonbelief?

A **No.**

Q If you sell flowers for the wedding of a Muslim couple are you endorsing Muslim as a religion?

A **No.**

Q Islam as a religion?

A **No.**

MR. SCHOWENGERDT: Mike, could you clarify for the proceedings, are you talking in the

CP 185

context of weddings or --

MR. SCOTT: Counsel, I don't mean to be disrespectful, but in our state procedure there can only be one person speaking on behalf of a party --

MR. BRISTOL: Is there a rule on that?

MR. SCOTT: There is, actually. I'll -- just to let you know, I know you're not from our state, and I will clarify as if it had been spoken by J.D. Just don't mean to make it cumbersome, but that's just the way it is.

Would you read back my question, please?

(LAST QUESTION WAS READ BACK BY THE COURT REPORTER.)

Q (By Mr. Scott) I'll leave the question as it stands. Would you please answer it?

A **Okay. Say again.**

Q I'll ask the court reporter read it one more time.

MR. BRISTOL: I'll object as asked and answered.

MR. SCOTT: The record is the Record. You're not the court reporter. Would you please read the question back?

(LAST QUESTION WAS READ BACK BY THE COURT REPORTER.)

A **No.**

Q (By Mr. Scott) And why not?

CP 186

A **Why am I not endorsing it?**

Q Right.

A **I -- I don't understand what you're asking me.**

Q All right. I'll try to clarify it.

The flowers that you might sell to a Muslim couple, you can assume with me for this question that your sticker is attached to at least some of the arrangements, is it still your testimony that you're not endorsing Islam as a religion when you sell for that occasion?

MR. BRISTOL: Asked and answered.

A **Clarify.**

Q (By Mr. Scott) In what respect are you not clear?

A **I'm not -- I'm not sure what you're asking me.**

Q It should be a clear question, I hope. I'll ask the court reporter to read it back.

A **Okay.**

(LAST QUESTION WAS READ BACK BY THE COURT REPORTER.)

A **That I'm not endorsing their wedding.**

MR. BRISTOL: Can you read back the question one more time, please?

(LAST QUESTION WAS READ BACK BY THE COURT REPORTER.)

A I'm not endorsing. I don't know how to answer that one.

Q (By Mr. Scott) Why don't you know how to answer it?

CP 187

A I -- I don't know how to answer it.

MR. BRISTOL: That question has been asked and answered.

MR. SCOTT: You've stated your objection. I'm entitled to follow up.

Q (By Mr. Scott) Can you tell me why you can't answer that?

A I'm not -- am I endorsing their wedding by selling them flowers?

Q Right.

MR. BRISTOL: No, that wasn't the question.

Q (By Mr. Scott) I'm asking a new question, that's the question I'm asking you now, are you endorsing the Muslim wedding by selling them flowers?

A No.

MR. SCOTT: Okay. Let's take a short break. I think I'm about done.

(Recess, 1:27 to 1:34 p.m.)

MR. SCOTT: That's all I have at this time. Thank you for your time, Ms. Stutzman.

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* * * * *

**CP 321— Deposition Of Robert Ingersoll
Jan. 24, 2014, page 49**

- Q. And what was that?
- A. Just some sticks or twigs in a vase and then we were going to do candles. We wanted to be very simple and understated.
- Q. Did you tell Barronelle that you wanted to do sticks or twigs?
- A. Barronelle never gave me the opportunity to discuss the flower arrangements.
- Q. And if you were just doing sticks or twigs for your wedding arrangement, why did you drive all the way over to Arlene's Flowers to put together sticks and twigs?
- A. Barronelle was our florist, we'd used her for awhile, and we knew that she would be able to get the things that we wanted.
- Q. And you believed she would use her creativity to create something beautiful?
- A. I did not at that time believe that we would have had her create them rather than to source them.
- Q. By source them, do you just mean purchase the product?
- A. Yes, that's what I mean.
- Q. Premade?
- A. Sticks and twigs aren't premade. You cut them.

Q. So they would need to be arranged, right? [end of CP 321]

* * * * *

**CP 2155—Deposition Of Mark David Hall,
Ph.D., Dec. 1, 2014, page 90**

Q. Sure. Take exactly the same facts as you described them. But instead of Curt Freed being a man, substitute in a Japanese American woman or a Hispanic woman.

And if Ms. Stutsman had refused to sell flowers to Mr. Ingersoll because he was marrying someone of a different race, and she thinks the Bible says people of different races shouldn't get married, are you -- is it your position that that is the kind of religious belief that should be accommodated, despite the law against discrimination?

A. Right. So I'm glad you restated it in that way. And what I was trying to lay out by saying you have stated trans (sic) versus religious conviction, I can imagine and would even say I think this is my position that the State has a greater interest in combating these sort of miscegenation laws that it does in combating a woman who doesn't want to participate in the same-sex ceremony.

So I could imagine saying a religious accommodation would be granted in one case, but not the other.

Q. So, if they were of a different race, then there should be no religious accommodation. But

because they happen to be -- instead of an interracial

**CP 2156—Deposition Of Mark David Hall,
Ph.D., Dec. 1, 2014, page 91**

couple they happen to be a gay couple, that now their civil rights should not be protected to the same degree? That's your opinion?

- A. What I think I would say is this. That the State has an interest in the varying weights in prohibiting different sorts of discrimination. And I can see that it's being greater in the case of -- of interracial marriage than in the case of same-sex marriage.

But I suppose when push comes to shove, I'm a pretty doggone powerful advocate of religious liberty. And so I would, in fact, argue for religious accommodation, in this case -- particularly in the case of an interracial marriage, particularly if there are plenty of alternatives available to that couple.

- Q. Same hypothetical, but instead of a Japanese-American woman, it's a -- it's a -- it's Mr. Ingersoll, who I -- I will profess to you I don't know what religious affiliation he has, if any. But let's assume he's a Protestant Christian for this. And he's marrying a Jewish woman. And I know there are people who interpret the Bible to say interfaith marriages should -- are not to be recognized.

Same question. Do you believe that Ms. Stutzman should be granted a religious [end of CP 2156]

NO. 91615-2

**SUPREME COURT OF THE STATE OF
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

ARLENE'S FLOWERS, INC., dba ARLENE'S FLOWERS
AND GIFTS, and BARRONELLE STUTZMAN,

Appellants.

ROBERT INGERSOLL and CURT FREED,

Respondents,

v.

ARLENE'S FLOWERS, INC., dba ARLENE'S FLOWERS
AND GIFTS, and BARRONELLE STUTZMAN,

Appellants.

**BRIEF OF RESPONDENT STATE OF
WASHINGTON**

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[original page 19]

F. Subsequent Events

Over four years after Defendants refused to serve Mr. Ingersoll and this case began, two and a half years after the superior court proceedings in this case ended, and months after this Court issued its decision, a series of events occurred that Defendants now try to make a centerpiece of this case. Br. of Appellants 20-23. Their description of those events is incomplete.

On the weekend of September 23-24, 2017, rainbow-colored notes folded into origami butterflies and other shapes began appearing in public parks and other locations in Seattle.¹⁰ When unfolded, the notes said in block letters: “YOU ARE NOT SAFE,” and included a date, “9/28/2017,” and a website, “allgodsmustdie.com.”¹¹ The notes also contained Seattle-specific images that were “threatening” and “creepy”—such as mirror images of the Seattle skyline, but with the Space Needle removed from one of the images; “the Fremont troll crying and surrounded by a [*sic*] what could be anything from a river of blood to a river of mud to a river of coffee”; or

¹⁰ Neal McNamara, *Threatening Origami In Seattle: Mystery Notes Warn ‘You Are Not Safe’*, Patch: Seattle, Washington, Sept. 26, 2017, <https://patch.com/washington/seattle/threatening-origami-seattle-mystery-notes-warn-you-are-not-safe> (Exhibit A attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

¹¹ *Id.*

an image that included a prominent Seattle Seahawks player with

[original page 20]

“devil horns” and a Starbucks “mermaid” with scars on her chest.¹² The origin of the notes was unclear, and they became a topic of local media interest and some people saw them as a threat of violence against the city.¹³

By September 27, 2017, there were reports that the notes might have been placed by anti-abortion activists.¹⁴ That theory was confirmed the next day when “groups of uniformed anti-abortion protesters” appeared at several locations in Seattle,¹⁵ and an

¹² *Id.*

¹³ Neal McNamara, *Seattle’s Creepy Origami Mystery is Solved, And Many Are Disappointed*, Patch: Seattle, Washington, Sept. 28, 2017, <https://patch.com/washington/seattle/amp/27280969/seattles-creepy-origami-mystery-is-solved-and-many-are-disappointed> (Exhibit C attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

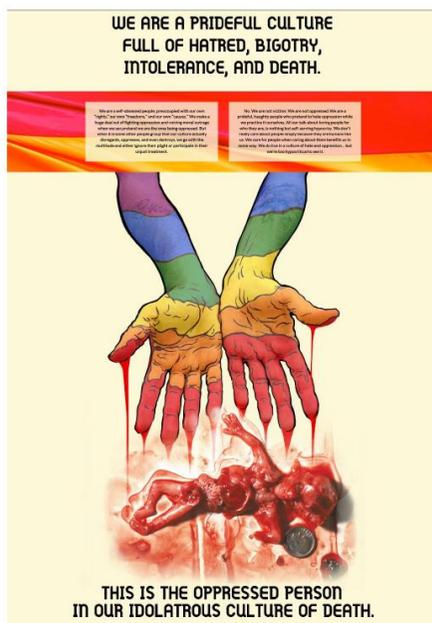
¹⁴ Neal McNamara, *Ominous Origami Notes In Seattle Might Be About Abortion*, Patch: Seattle, Washington, Sept. 27, 2017, <https://patch.com/washington/seattle/amp/27278972/ominous-origami-notes-in-seattle-might-beabout-abortion> (Exhibit B attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

¹⁵ Neal McNamara, *Seattle’s Creepy Origami Mystery is Solved, And Many Are Disappointed*, Patch: Seattle, Washington, Sept. 28, 2017, <https://patch.com/washington/seattle/amp/27280969/seattles-creepy-origami-mystery-is-solved-and-many-are-disappointed> (Exhibit C attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

internet site conveying anti-abortion messages began displaying the same images as were on the origami notes.¹⁶ A prominent image on the site was of rainbow-colored hands dripping blood

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onto an aborted fetus.¹⁷ That image is reproduced here:



¹⁶ Ted Land, *Anti-abortion campaign appears to be behind ominous origami butterflies*, King5 News, Sept. 28, 2017, <https://www.king5.com/article/news/local/seattle/anti-abortion-campaign-appears-to-be-behind-ominous-origami-butterflies/281-478869546> (Exhibit D attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

¹⁷ <http://thetenthmark.com/> (Exhibit E attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

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The same image—rainbow-colored hands dripping blood onto an aborted fetus—was prominent in fliers left in various places around Seattle. On October 1, 2017, members of the group disseminating those fliers entered a Seattle coffee shop, Bedlam Coffee, apparently after placing fliers outside.¹⁸ When Ben Borgman, the owner of Bedlam Coffee, learned that the persons in his shop had been distributing the fliers, he asked them to leave.¹⁹ They objected, the situation escalated into a confrontation, and they began recording video of the incident.²⁰ It is that video that Defendants submitted to the Court with their motion to supplement.²¹

In public statements after the incident, Mr. Borgman explained that he did not ask the patrons to leave because they were Christian: “They were put out because they print ugly crap and hand it out in my town, period. I would have thrown out a group that tried to print ugly crap about Christians, too. Trying

¹⁸ Dori Monson, *Bedlam Coffee owner: I didn't kick them out for being Christian*, MyNorthwest Staff, KIRO Radio (Oct. 10, 2017), <http://mynorthwest.com/780768/seattle-bedlam-coffee-ben-borgman/> (Exhibit J attached to Respondent State of Washington's Motion to Supplement Record or for Judicial Notice).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Appellants' Motion to Supplement Record or for Judicial Notice (filed Nov. 13, 2018), Ex. C.

to stir up hate and discontent is not how to fix things.”²²

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A local talk radio host interviewed the activists and Mr. Borgman. Mr. Borgman reiterated that religion had nothing to do with his actions: “This wasn’t about Christianity. I’m not anti-Christian[.] . . . I’m anti-people who print garbage and spread it around the city. If you want to hand out stuff, you put it in an adult’s hand. You don’t leave it wrapped up like a toy for a child to find. That’s what it’s all about.”²³ Mr. Borgman also stated that members of

²² Curtis M. Wong, *Gay Coffee Shop Owner Blasts Anti-Abortion Activists In Viral Video*, Huffington Post, Oct. 10, 2017, https://www.huffingtonpost.com/entry/seattle-coffee-shop-anti-choice-activists_us_59dbd39de4b0b34afa5b77d9 (Exhibit H attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice); see also Douglas Ernst, *Christian activists booted from Seattle coffee shop: ‘I’m gay. You have to leave’*, Washington Times, Oct. 6, 2017, <https://www.washingtontimes.com/news/2017/oct/6/christian-activists-booted-from-seattle-coffee-sho/> (Exhibit F attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice); Dan Avery, *Is It Okay For A Gay Business Owner To Refuse To Serve Anti-Abortion Activists?*, Logo.newnownext, Oct. 10, 2017, <http://www.newnownext.com/christian-group-gay-coffee-shop-ben-borgman/10/2017> (Exhibit G attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

²³ Dori Monson, *Bedlam Coffee owner: I didn’t kick them out for being Christian*, MyNorthwest Staff, KIRO Radio (Oct. 10, 2017), <http://mynorthwest.com/780768/seattle-bedlam-coffee-ben-borgman/> (Exhibit J attached to Respondent State of

the anti-abortion group have been back into Bedlam Coffee since the incident and that he will serve them in the future.²⁴

The chair of the Washington State Human Rights Commission learned of the incident from the radio interviews and called in to the radio show.²⁵ She explained that the Commission would send Mr. Borgman a letter informing him that “in the State of Washington you can’t discriminate

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against someone in your place of business based on your beliefs.”²⁶ Defendants submitted a copy of that letter to the Court with their motion to supplement.²⁷ Neither the Attorney General’s Office nor the Human Rights Commission has received any complaint alleging that Bedlam Coffee or Mr. Borgman has a

Washington’s Motion to Supplement Record or for Judicial Notice).

²⁴ *Id.*

²⁵ Decl. Laura Lindstrand (Exhibit L attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice). No complaint involving Bedlam Coffee was received by the Human Rights Commission. *Id.*

²⁶ Dori Monson Show, *Seattle cafe can expect an education in discrimination from the state*, KIRO Radio, Oct. 11, 2017, <http://mynorthwest.com/779684/seattle-cafe-richland-florist-beliefs/> (Exhibit K attached to Respondent State of Washington’s Motion to Supplement Record or for Judicial Notice).

²⁷ Appellants’ Mot. to Suppl. R. or for Judicial Notice (filed Nov. 13, 2018), Ex. A at 089-090.

policy of turning away customers based on their religion.²⁸

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²⁸ Exhibit A, attached to Appellants' Motion to Supplement the Record or for Judicial Notice, includes a number of communications received by the Attorney General's Office about the Bedlam Coffee incident, Ex. A at 002-088, all from individuals who apparently had no personal contact with Bedlam Coffee and who were responding to news reports or social media accounts. Three of those communications were received by the Consumer Protection Division of the Attorney General's Office, which the Division handled as consumer complaints, offering the informal dispute resolution process routinely provided to facilitate communication between the complainant and Bedlam Coffee. Ex. A at 002-044. Neither Bedlam Coffee nor the complainants accepted the offer. The other communications were sent to the general email address of the Attorney General's Office and were treated as commentary on the Office's performance.