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No. 91615-2

Ronald R. Carpenter
Clerk

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
Respondent,

v.

ARLENE'S FLOWERS, INC., d/b/a/ ARLENE'S FLOWERS AND
GIFTS, and BARRONELLE STUTZMAN,
Appellants,

INGERSOLL and FREED
Respondents,

v.

ARLENE'S FLOWERS, INC., d/b/a/ ARLENE'S FLOWERS AND
GIFTS, and BARRONELLE STUTZMAN,
Appellants,

**BRIEF OF AMICUS CURIAE
INTERNATIONAL CHRISTIAN PHOTOGRAPHERS
IN SUPPORT OF APPELLANTS**

Attorneys for Amicus Curiae International Photographers Association

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I. INTRODUCTION & IDENTITY OF AMICUS CURIAE

The International Christian Photographers (“ICP”) is an association of professional photographers who believe their faith influences the artistic photography they practice and create. Founded several decades ago, the ICP boasts members from every state and several countries around the world. The ICP uniquely understands that photography tells stories and expresses powerful messages to clients and the public. ICP members regularly create expressive photography memorializing and affirming a wide range of activities, including weddings. Its members are Christians, dedicated to promoting the highest moral standards and business ethics by providing exceptional quality photography and service.

ICP members regularly create photographic art for weddings in Washington, so the ICP has a significant interest in the present case for two reasons. First, ICP supports Appellants because if this Court embraces the Superior Court’s reasoning, the freedoms of speech, expression, and conscience would be significantly diminished for members who hold the religious conviction that marriage is only permissible between one woman and one man. The Superior Court’s reasoning reaches far beyond the context of wedding florists. Its reasoning would compel other expressive artists, particularly photographers, who hold those convictions to create and express artistic messages that memorialize and affirm same-sex

weddings. Second, this compulsion would force them to violate their professional and ethical obligations to same-sex clients. Photographers forced to express messages with which they fundamentally disagree may very likely find it impossible to produce the exceptional, quality photography they strive to create for every client, a striving they view as a professional and ethical obligation.

Some ICP members hold the religious conviction that marriage may only permissibly exist between one woman and one man. *Some do not.* But all ICP members agree that the First Amendment (and the Washington Constitution)¹ protects artists from expressing messages and ideas with which they fundamentally disagree. This protection extends to the solemnization, affirmation, and celebration of same-sex weddings.

II. ARGUMENT

A. The Superior Court’s decision undermines the rights of many individuals and businesses far beyond Ms. Stutzman and florists.

The Superior Court determined that the Washington Law Against Discrimination (“WLAD”), Ch. 49.60 RCW, compels Arlene’s Flowers and Barronelle Stutzman to “design and create floral arrangements to decorate and beautify Mr. Ingersoll’s upcoming wedding,”² even though

¹ See U.S. CONST. AMEND. I (hereinafter “First Amendment”); WA. CONST. ART. I, § 5.

² See Memorandum Decision and Order re: December 19, 2014 Summary Judgment at 26, n. 14.

Ms. Stutzman's faith demands that she not directly or indirectly promote, solemnize, or celebrate a same-sex wedding.³ Applying the WLAD in this manner will jeopardize the rights of other artistic professionals, particularly photographers, who desire to act and speak in accordance with their beliefs. Notably, this case does not involve same-sex couples' rights to receive state marriage licenses and marriage benefits recognized in *United States v. Windsor*, 133 S. Ct. 2675 (2013), and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Rather, it involves (1) whether an artist's refusal to create art affirming, solemnizing, or promoting same-sex marriage is equivalent to sexual orientation discrimination; and (2) whether public accommodation laws can compel an artistic professional who fundamentally disagrees with same-sex marriage to create art that promotes, solemnizes, or affirms a same-sex wedding. These are practical, recurring questions arising from a highly divisive but important social issue. Serious interests may be in conflict, but freedom of speech and thought exist to protect ideas discordant to the majoritarian consensus. Indeed, robust free speech rights are essential to maintaining a vibrantly pluralistic, tolerant society. The Superior Court's decision does not inaugurate a freer, more inclusive future. It portends a future defined by vapid conformity to government-prescribed orthodoxies. This Court

³ *Id.* at 28.

should reject that future and reaffirm Ms. Stutzman’s free speech rights.

1. Wedding Photography is the artistic expression of the photographer and is thus protected by the First Amendment.

Wedding photography is storytelling that powerfully expresses a message that memorializes and celebrates a wedding. As professionals trained to create and tell those stories, ICP members and other photographers are engaged in protected First Amendment expression. For almost two centuries, “photography has been a vital means of communication and expression.” BEAUMONT NEWHALL, *THE HISTORY OF PHOTOGRAPHY* 7 (5th ed. 1988); BRUCE BARNBAUM, *THE ART OF PHOTOGRAPHY: AN APPROACH TO PERSONAL EXPRESSION* 1 (1st ed. 2012) (“Photography is a form of non-verbal communication.”).

“A photograph conveys a thought from one person, the photographer, to another, the viewer. In this respect, photography is similar to other forms of artistic communication such as painting, sculpture, and music.” W. Eugene Smith, *Photographic Journalism*, *PHOTO NOTES*, 4-5 (Jun. 1948), *reprinted in* *PHOTOGRAPHERS ON PHOTOGRAPHY* 103 (Lyons, ed. 1966) (photography is a “potent medium of expression”). Indeed, photography is visual communication’s “most simple, direct, [and] universal language.” Edward Steichen, *On Photography*, 42 *DAEDALUS* 136, 136-37 (1960), *reprinted in* *PHOTOGRAPHERS ON PHOTOGRAPHY* 103,

supra 106, 107; HOWARD CHAPNICK, TRUTH NEEDS NO ALLY: INSIDE PHOTOJOURNALISM 1 (1994) (“Like music, [photography] is a language that all mankind can understand.”); BILL HURTER, THE BEST OF WEDDING PHOTOJOURNALISM 15 (2d ed. 2010) (“Above all, the skilled wedding photojournalist is an expert storyteller.”).

But more than a mode of communication, photography is unquestionably a form of artistic expression. NEWHALL, *supra* at 167 (remarking that by the beginning of the twentieth century, unmanipulated photographs were accepted as a legitimate art medium); Dorothea Lange, *Photographing the Familiar*, 1 APERTURE, no. 2, 1952 at 4-15, *reprinted in* PHOTOGRAPHERS IN PHOTOGRAPHY, *supra* 68, 69 (“[t]hough not a poet, nor a painter, nor a composer... [a photographer] is yet an artist”). Especially relevant, “Selection of proper picture content comes from a fine union of trained eye and imaginative mind.” BERENICE ABBOTT, *Photography at the Crossroads*, UNIVERSAL PHOTO ALMANAC 42 (1951).

Furthermore, a photograph is a unique expression of its photographer, not its subject. As Ansel Adams noted, “[a] great photograph *is a full expression of what one feels about what is being photographed in the deepest sense[.]*” Ansel Adams, *A Personal Credo*, 58 AMERICAN ANNUAL OF PHOTOGRAPHY 7, 7-16 (1944), *reprinted in* PHOTOGRAPHERS IN

PHOTOGRAPHY, *supra* 25, 29 (emphasis added).⁴ The Federal Judiciary agrees. “Visual artwork is as much an embodiment of the artist’s expression as is a written text.” *Bery v. City of New York*, 97 F.3d 689, 695 (2d Cir. 1996).⁵ Every ICP member (and likely every non-ICP photographer) endeavors to create exceptional, quality photography, by which she expresses certain ideas and messages. But in order to creatively and uniquely express those ideas, photographers must feel some enthusiasm for the ideas they are expressing. BARNBAUM, *supra*, at 5.

Because photography is inherently expressive, it merits full free speech protection. *See Bery*, 97 F.3d at 696 (“photographs... always communicate some idea or concept to those who view it, and as such are entitled to full First Amendment protection.”); *see also ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 924 (6th Cir. 2003) (“The protection of the First Amendment is not limited to written or spoken words, but includes other mediums of expression, including music, pictures, films, *photographs*, paintings, drawings, engravings, prints, and sculptures.”) (emphasis added). “[V]isual art is as wide ranging in its depiction of ideas,

⁴ A photographer’s endeavors to create art “are wasted unless the motive power which impelled [the photographer] to action is strong and stirring.” ABBOTT, *supra*, at 21. Moreover, “people who attempt creative work of any type—scientific, artistic, or otherwise—without feeling any enthusiasm for that work have no chance at success.” BARNBAUM, *supra*, at 5.

⁵ Importantly, “[i]t is well settled that a speaker’s rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak.” *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 801 (1988).

concepts and emotions as any book, treatise, pamphlet or other writing, and is similarly entitled to full First Amendment protection.” *Bery*, 97 F.3d at 695; *see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 569 (1995) (“[T]he Constitution looks beyond written or spoken words as mediums of expression.”).

All the authorities uniformly acknowledge that the creation of photography is expressive, artistic speech entitled to full First Amendment protection. And it is long-settled that “[s]peech is protected even though it is carried in a form that is sold for profit.” *ETW Corp.*, 332 F.3d at 924 (citing *Smith v. California*, 361 U.S. 147, 150 (1959)); *see also Riley*, 487 U.S. at 801 (“a speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak.”). Therefore, photographers engage in protected First Amendment activity when they create wedding photography. When doing so, a photographer is expressing her unique story about that wedding. But in the same way it preserves the ability to speak freely, “the First Amendment bars the government from dictating what we... speak.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245 (2002). To that end, no law, including the instant public accommodation laws,⁶ may constitutionally compel a photographer to express a unique wedding story with which she

⁶ RCW 19.86 et. seq.; RCW 49.60 et. seq.

fundamentally disagrees. Such compulsion proves every bit as insidious as any deprivation, for it is, in fact, a governmental attempt to control thought. Compelled thought directly attacks First Amendment freedoms. As the U.S. Supreme Court acknowledged, “[t]he right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.” *Id.* at 253.⁷

2. The Superior Court’s decision will curtail the rights of Christian Photographers who have a religious conviction that precludes support for same-sex marriage.

This Court should reject the Superior Court’s reasoning because it would apply to a whole range of professionals who regularly create artistic messages for weddings but believe they cannot celebrate or affirm same-sex weddings. For these photographers, the risk of compelled speech is real, particularly because the Superior Court adopted the reasoning and holding in *Elane Photography v. Willock*, 309 P.3d 53 (N.M. 2013).

In *Elane Photography*, the New Mexico Supreme Court interpreted a public accommodation law similar to the WLAD, and determined that a wedding photographer committed sexual orientation discrimination by refusing to create photography promoting, solemnizing, and affirming a same-sex wedding. *Id.* at 62. To reach this conclusion, the court held that

⁷ See also *Riley*, 487 U.S. at 801 (“Broad prophylactic rules in the area of free expression are suspect. *Precision of regulation* must be the touchstone in an area so closely touching our most precious freedoms.”) (emphasis added).

the general prohibition on sexual orientation discrimination “similarly protects conduct that is inextricably tied to sexual orientation.” *Id.* (concluding with sparse analysis that same-sex marriage is inextricably tied to sexual orientation). The court next concluded that because Elane Photography was a “for-profit public accommodation,” state law could regulate “its provision of services” “even though those services include artistic and creative work.” In doing so, it erroneously framed the photographer’s protest as a belief “that because it is a photography business, it cannot be subject to public accommodation laws.” *Id.* at 65-66. For these reasons, the New Mexico Supreme Court concluded that Elane Photography’s First Amendment right to be free from compelled speech is not violated when state law forces it to create artistic photography that promotes, affirms, or solemnizes same-sex marriage. *Id.* at 68.

Because the Superior Court explicitly adopted *Elane Photography*’s reasoning, this Court’s adoption of that standard would certainly influence the business practices of Washington photographers and other artistic professionals who provide wedding services. *See Craig v. Masterpiece Cakeshop, Inc.*, 2015 COA 115, ¶ 35, ___ P.3d ___ (Colo. App. 2015) (the Colorado Court of Appeals adopted *Elane Photography*’s reasoning in concluding that a professional baker who declined to bake and decorate a cake for a same-sex wedding because of his religious convictions

discriminated on the basis of sexual orientation).

This case's facts and issues are not limited to wedding florists. If affirmed, the Superior court's reasoning would thrust many expressive professionals' First Amendment rights into question. The facts below illustrate this potential. Ms. Stutzman owns a floral shop and over the years has thrived due to her ability to create custom artistic floral arrangements.⁸ Ms. Stutzman is also a Christian who believes that she may not discriminate against any person on the basis of his or her sexual orientation *and* that she may not directly or indirectly promote or affirm same-sex marriage.⁹ Ms. Stutzman regularly served Mr. Ingersoll, and made many artistic arrangements for him and his partner, Mr. Freed.¹⁰ But when Mr. Ingersoll asked Ms. Stutzman to "do" his wedding, which she understood to mean creating custom arrangements celebrating the act of his marriage to Mr. Freed, she declined, explaining that she could not do so because of her Christian faith.¹¹ Many wedding photographers share Ms. Stutzman's religious convictions, and under the Superior Court's reasoning, those photographers would be compelled to express ideas contrary to their convictions. Photography is a touchstone form of expression entitled to special First Amendment protection. That protection

⁸ See Memorandum Decision & Order re: Dec. 19, 2014 Summary Judgment at 6-7.

⁹ *Id.* at 6 n. 7.

¹⁰ *Id.* at 6-7.

¹¹ *Id.* at 7-9, 26.

guarantees photographers the freedom from compelled expression.

B. The Superior Court’s holding will undermine broadly held First Amendment rights.

1. An artistic professional does not commit sexual orientation discrimination by refusing to create expression that memorializes or affirms a same-sex wedding.

Declining to express messages memorializing or affirming a same-sex wedding is not sexual orientation discrimination. In fact, the State concedes as much. *See* Appellee Br. 25 (“[I]t was undisputed in *Hurley* that the state could force the parade organizers to allow gay and lesbian people to march in the parade, even though the parade was expressive.”).

The State is correct, but for the wrong reason. As *Hurley* explained,

[The private parade organizers] disclaim any intent to exclude homosexuals as such, and no individual member of GLIB claims to have been excluded from parading... *Instead, the disagreement goes to the admission of GLIB as its own parade unit carrying its own banner.* Since every participating unit affects the message conveyed by the private organizers, the state courts’ application of the statute produced an order essentially requiring petitioners to alter the expressive content of their parade.

Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, 515 U.S. 557, 572-73 (1995) (internal citations omitted) (emphasis added).

Clearly, the parade organizers in *Hurley* did not discriminate against persons because of their sexual orientation. *Id.* On the contrary, they declined to express content that would alter the message they intended to express through their parade, and prevailed in doing so. *Id.*

The *Hurley* distinction exists here. For years, Ms. Stutzman has provided floral arrangements to gay and lesbian people, maintaining business and personal relationships with Mr. Ingersoll and others who are gay. Ms. Stutzman has never discriminated against gay and lesbian people based on their sexual orientation. Indeed, she only declined to create custom arrangements that would compel her to express affirmation for a message (same-sex marriage) contrary to her faith and beliefs.

The State's cited cases are fundamentally distinguishable because they do not address the instant scenario: a law compelling artistic professionals to express messages contrary to their convictions. In *Christian Legal Soc. Chapter of the University of California, Hastings College of Law v. Martinez*, 561 U.S. 661 (2010), a Christian student group's bylaws excluded from membership persons who engaged in "unrepentant sexual conduct." *Id.* at 672. But the Court did not compel the group's students to provide expressive support for actions contrary to their religious convictions. On the contrary, the Court explicitly noted that the First Amendment limits the reach of anti-discrimination policies:

Hastings' policy... conveys the Law School's decision to decline to subsidize... conduct of which the people of California disapprove... *State law, of course, may not command that public universities take action impermissible under the First Amendment.*

Id. at 689-90 (emphasis added and internal quotations omitted).

Similarly, in *Roberts v. U.S. Jaycees*, 468 U.S. 609, 626 (1984), the Court relied heavily on the fact that “the Jaycees [the men’s club which would not allow women to attend] has failed to demonstrate that the [state public accommodation law] imposes any serious burdens on male members’ freedom of expressive association.” In fact, the Court found that the public accommodation law required no change in the organization’s creed and “impose[d] no restrictions on the organization’s ability to exclude individuals with ideologies or philosophies different from those of its existing members.” *Id.* Thus, *Jaycees* dictates that where a public accommodation law *does* impede an organization’s protected expressive activities, a different outcome would result. *Id.* at 626-27.

Unlike the state actions in *Martinez* and *Jaycees*, the government here seeks to affirmatively compel an artist, Ms. Stutzman, to express messages contrary to her religious convictions. Compelled speech is anathema to the First Amendment, and both *Martinez* or *Jaycees* expressly reject the contention that public accommodation laws so construed prevail over conflicting First Amendment rights. This Court should do the same.

2. *The Superior Court’s opinion threatens free speech rights.*

Free speech is more than a cherished privilege; it is “essential to the preservation of a political democracy.” *Bery*, 97 F.3d at 694. As a fundamental right, it is woven into the very fabric of the nation. *See West*

Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943) (“[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and establish them as legal principles to be applied by the courts.”); *see also* *Washington v. Glucksberg*, 521 U.S. 702, 722 (1997) (“the ‘liberty’ specially protected by the Fourteenth Amendment...have at least been carefully refined by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition.”); *see also* Stewart Jay, *The Creation of the First Amendment Right to Free Expression: From the Eighteenth Century to the Mid-Twentieth Century*, 34 WM. MITCHELL L. REV. 773, 1017 (2008) (emphasizing that “liberty of speech is the normal or baseline condition of American society, and departures from that baseline by the state require strong justifications.”); *see also* *Wooley v. Maynard*, 430 U.S. 705, 713 (1977) (“The right to speak and the right to refrain from speaking are complementary components of the broader concept of “individual freedom of mind.”). As Justice Brennan remarked,

Freedom of speech is itself an end because the human community is in large measure defined through speech; freedom of speech is therefore intrinsic to individual dignity. This is particularly so in a democracy like our own, in which the autonomy of each individual is accorded equal and incommensurate respect.

Herbert v. Lando, 441 U.S. 153, 183 n.1 (1979) (Brennan, J., dissenting).

Compelled speech is incompatible with free thought and individual dignity. When government “forces an individual...to be an instrument for fostering public adherence to an ideological point of view [s]he finds unacceptable...[it] invades the sphere of intellect and spirit which is the purpose of First Amendment to our Constitution to reserve from all official control.” *Wooley*, 430 U.S. at 714-15 (internal quotations omitted). “A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts.” *Id.* See also *United States v. United Foods*, 533 U.S. 405, 410 (2001) (“Just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views[.]”). The right against compelled speech “boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control.” *Hurley*, 515 U.S. at 573.

Specifically, the First Amendment forbids government attempts to compel *expressions of adherence* to a particular ideological message chosen by the government.¹² *Barnette*, 319 U.S. at 642 (“If there is any

¹² Speech is expressive when the speaker exercises discretion in choosing the message's composition. *Hurley*, 515 U.S. at 573. In *Hurley*, for example, parade organizers' strategic selection *and rejection* of parade participants was protected expression. “Rather like a composer, the Council selects the expressive units of the parade from potential participants, and though the score may not produce a particularized message, each

fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. *If there are any circumstances which permit an exception, they do not now occur to us.*") (emphasis added); *Wooley*, 430 U.S. at 717 (for laws requiring persons "to disseminate an ideology, *no matter how acceptable to some*, such interest[s] cannot outweigh an individual's First Amendment right to avoid becoming the courier for such message.") (emphasis added); *see also Hurley*, 515 U.S. at 574. The WLAD requires business owners to serve all comers irrespective of their sexual orientation, *but it may not compel business owners to create, convey, and disseminate particular ideological messages. See Id.; Pacific Gas and Elect. Co. v. Public Utilities Com'n of California*, 475 U.S. 1, 14-15 (1986).

An artist's work unquestionably qualifies as expressive speech. Whether she is creating custom floral arrangements, photography, or finely decorated confectionaries, an artist's expressive craft is anything but a routine provision of goods, services, or an exact replication of the

contingent's expression in the Council's eyes comports with what merits celebration on that day. Even if this view gives the Council credit for a more considered judgment than it actively made, the Council clearly decided to exclude a message it did not like from the communication it chose to make, and that is enough to invoke its right as a private speaker to shape its expression by speaking on one subject while remaining silent on another." *Id.*

customer's speech (indeed, customers hire particular artists because of the customers' preference for *that artist's* expressive work). Instead, the artist pours considerable time and deliberation into each project to create a work that intentionally conveys meaning. Through their respective mediums, artists convey numerous messages; a floral arrangement or photograph may convey hope, promise, renewal, foreboding, fear, joy, love, and countless other possibilities. The artist's choice of particular materials or technique indelibly contributes to the rhythm, harmony, unity, balance and overall message of the final work. And an artist cannot readily sequester her personal beliefs from the expressive nature of the art, so an artist's beliefs and perceptions inextricably permeate the art's ultimate message.¹³

The State may not constitutionally compel individuals to participate in the dissemination of ideological messages they oppose. *Wooley*, 430 U.S. at 715. In *Wooley*, New Hampshire required noncommercial vehicles' license plates to include the state motto, "Live Free or Die." *Id.* at 707. However, the complainants "consider[ed] the... motto to be repugnant to their moral, religious, and political beliefs" and covered their plates. *Id.* at

¹³ See *Hurley*, 515 U.S. at 575-76 ("Indeed, in *Pacific Gas & Electric*, we invalidated coerced access to the envelope of a private utility's bill and newsletter *because the utility may be forced either to appear to agree with the intruding leaflet or to respond...* [regarding parade organizers,] there is no customary practice whereby private sponsors disavow any identity of viewpoint between themselves and the selected participants.") (emphasis added) (internal quotations omitted). See also *Turner Broadcasting System, Inc., v. FCC*, 512 U.S. 622, 655 (1994).

715. The Court agreed, prohibiting the state from forcing a dissenter “to be an instrument for fostering public adherence to an ideological point of view he finds repugnant.” *Id.*

Here, Washington attempts to force Ms. Stutzman to be an instrument for fostering public adherence to its policy promoting same-sex marriage. *See* RCW 26.04.010.¹⁴ Many artistic professionals, including some ICP members, hold religious or ideological convictions that foreclose their ability to express affirmation for same-sex weddings. Yet the State forges ahead in its crusade to foster public adherence to an ideological viewpoint on same-sex marriage that many artists oppose. And hauntingly, it attempts to deputize those very dissenters to its cause. The First Amendment thankfully prohibits this compulsion. The State may not force any individual to be an instrument for fostering public adherence to an ideological point of view with which that individual fundamentally disagrees. Such an ability to compel would existentially threaten freedom of the mind and individual autonomy.

The First Amendment’s prohibition on compelled speech prevails over conflicting state public accommodation laws. *Hurley*, 515 U.S. at 573

¹⁴ It is highly relevant that in the same statute legalizing same-sex marriage, the State explicitly excuses clergy and religious organizations from providing services that are related to “solemnizing, celebrating, strengthening, or promoting” a same-sex marriage. *See* RCW 26.04.010(4)-(7). The First Amendment provides this type of protection to Ms. Stutzman and other artistic professionals.

(acknowledging that the First Amendment fundamentally protects a speaker’s “autonomy to choose the content of his own message.”). In *Hurley*, the Court noted that

When the [public accommodation] law is applied to expressive activity as in the way it was done here, *its apparent object is simply to require speakers to modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own. But in the absence of some further, legitimate end, this object is to merely allow exactly what the general rule of speaker’s autonomy forbids.*

Id. at 578 (emphasis added). *Hurley* explicitly declared that public accommodation laws are not such a “further, legitimate end:”

The very idea that a [public accommodation law can] be *used to produce thoughts and statements acceptable to some groups or, indeed, all people, grates on the First Amendment, for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression.*

Id. at 579 (emphasis added). And finally,

While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.

Id. If the WLAD was instantly applicable (it is not, because Ms. Stutzman did not discriminate against Mr. Ingersoll on the basis of his sexual orientation), even its noble purpose to “eradicate discrimination and protect the public welfare, health, and peace,” Appellee Brief 10, cannot overcome First Amendment rights. Using a public accommodation law in

such an attempt “is decidedly fatal.” *Hurley*, 515 U.S. at 579.

III. CONCLUSION

Prompted by her sincere religious beliefs, Ms. Stutzman did not commit sexual orientation discrimination when she refused to create expressive art memorializing or affirming Mr. Ingersoll’s same-sex wedding. Furthermore, Ms. Stutzman’s First Amendment rights as an expressive artist protect her from the WLAD’s demand that she memorialize or affirm a same-sex wedding. Freedom of speech protects against even well-meaning laws. This Court should rule for Ms. Stutzman and reaffirm the essential values of autonomy, pluralism, and diversity vital to the maintenance of political democracy. For the foregoing reasons, Amicus Curiae ICP respectfully requests that this Court reverse the Superior Court’s ruling and find for Ms. Stutzman.

RESPECTFULLY SUBMITTED this 5th day of February, 2016.

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DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on February 5, 2016, I filed with the Court the foregoing document, the motion, and this certificate of service and served the same documents via e-mail and certified mail upon:

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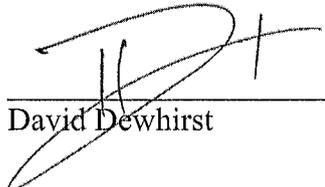
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Good afternoon:

Attached please find the International Christian Photographers' motion to file a brief as amicus curiae in support of Appellants, along with its amicus brief in support of Appellants (both in one document). Please notify me immediately if you have any problems with the document.

These documents will be served by certified mail on the recipients listed in the Declaration of Service. Please let me know if additional recipients should be added.

Thank you.

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