

Supreme Court No. 91615-2

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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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ROBERT INGERSOLL, et al.,  
*Plaintiffs-Respondents,*

v.

ARLENE'S FLOWERS, INC., et al.,  
*Defendants-Appellants.*

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STATE OF WASHINGTON,  
*Plaintiff-Respondent,*

v.

ARLENE'S FLOWERS, INC., et al.,  
*Defendants-Appellants.*

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**BRIEF OF AMICUS CURIAE AMERICANS UNITED  
FOR SEPARATION OF CHURCH AND STATE  
IN SUPPORT OF RESPONDENTS**

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## IDENTITY AND INTEREST OF AMICUS CURIAE

Americans United for Separation of Church and State is a national, nonsectarian public-interest organization that is committed to preserving the constitutional principles of religious freedom and the separation of church and state. Americans United represents more than 125,000 members and supporters across the country, including many in the State of Washington. Since its founding in 1947, Americans United has frequently participated as a party, as counsel, or as an amicus curiae in the leading church-state cases decided by the U.S. Supreme Court, the federal appeals courts, and state courts throughout the country.

Americans United has long supported reasonable accommodations for religious exercise. *See, e.g.*, Brief of Americans United for Separation of Church and State as Amicus Curiae in Support of Petitioner, *Holt v. Hobbs*, 135 S. Ct. 853, 190 L. Ed. 2d 747 (2015) (No. 13-6827), 2014 WL 2361896 (supporting exemption from prison grooming policy for Muslim prisoner); Brief of Americans United for Separation of Church and State and the American Civil Liberties Union as Amici Curiae in Support of Petitioners, *Cutter v. Wilkinson*, 544 U.S. 709, 125 S. Ct. 2113, 161 L. Ed. 2d 1020 (2005) (No. 03-9877), 2004 WL 2945402 (supporting religious accommodations for prisoners and proposing factors, that the U.S. Supreme Court adopted, for evaluating whether accommodations are permissible). Consistent with our support for the separation of church and state and the U.S. Supreme Court's holdings on the constitutionality of religious accommodations, Americans United opposes accommodations that harm third parties. That

concern is especially strong when the requested exemption would allow discrimination against a class of people that have historically been the target of disfavor and disapproval.

### **STATEMENT OF THE CASE**

We adopt and incorporate the Statements of the Case in Respondents' briefs.

### **SUMMARY OF ARGUMENT**

Like many other jurisdictions, Washington has enacted laws to ensure that customers will not endure “the deprivation of personal dignity that surely accompanies denials of equal access to public establishments,” *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 85 S. Ct. 348, 354, 13 L. Ed. 2d 258 (1964). These laws—the Washington Law Against Discrimination, chapter 49.60 RCW, and the Consumer Protection Act, chapter 19.86 RCW—are crucial because “such discrimination threatens not only the rights and proper privileges of [Washington’s] inhabitants but menaces the institutions and foundation of a free democratic state.” RCW 49.60.010.

Arlene’s Flowers maintains that the First Amendment permits it to disregard these laws and deny service to same-sex couples. The commercial florist insists that selling its flower arrangements to these couples “would compel [its owner] to express a message with her creativity that violates God’s commands.” CP 16–17. But if that argument were sufficient to authorize Arlene’s to violate antidiscrimination laws, an almost unlimited range

of for-profit businesses that market goods or services to the public would have that same right to discriminate. Nearly “[a]nyone who makes goods might be thought to engage in an artistic endeavor.” Mark Strasser, *Speech, Association, Conscience, and the First Amendment’s Orientation*, 91 Denv. U. L. Rev. 495, 525 (2014). As a result, the argument made by Arlene’s “might be used to refuse to provide any services at all to a vast array of individuals for fear of promoting objectionable lifestyles or practices.” *Id.* at 530.

This argument, moreover, could apply equally to refusals to provide service on the basis of race, national origin, or religion. Restaurants, hotels, hairdressers, make-up artists, clothiers, and other businesses whose proprietors object to same-sex couples (or to, say, interfaith or interracial couples or couples in which one of the partners was previously married and divorced) would be entitled to violate antidiscrimination laws with impunity. *See id.* at 529–30. In some communities, members of protected classes “might be forced to pick their merchants carefully, like black families driving across the South half a century ago.” Robin Fretwell Wilson & Jana Singer, *Same-Sex Marriage and Conscience Exemptions*, Engage: J. Federalist Soc’y Prac. Groups, Sept. 2011, at 16–17, <http://tinyurl.com/WilsonandSinger>.

These concerns are more than hypothetical: All sorts of businesses—most of them represented by the same organization that represents Arlene’s Flowers—have raised similar First Amendment defenses to liability for illegal discrimination on the basis of sexual orientation. A commercial photog-

rapher in New Mexico invoked the First Amendment to justify her company's refusal to photograph a same-sex couple's commitment ceremony. *Elane Photography, LLC v. Willock*, 2013-NMCA-040, 309 P.3d 53, 63 (N.M. 2013) (upholding finding of liability for discrimination), *cert. denied*, 134 S. Ct. 1787, 188 L. Ed. 2d 757 (2014). Bakeries in Colorado and Oregon have argued that wedding cakes are expressive and therefore that they may refuse to sell baked goods to same-sex couples. *See Craig v. Masterpiece Cakeshop, Inc.*, \_\_\_ P.3d \_\_\_, 2015 WL 4760453 ¶¶ 4, 44, 74 (Colo. App. Aug. 13, 2015) (rejecting bakery's argument that "decorating cakes is a [constitutionally protected] form of art"), *petition for cert. filed*, No. 2015SC000738 (Colo. Oct. 23, 2015); *In re Klein*, Nos. 44-14 & 45-14 at 85-86 (Or. Bureau of Labor & Indus. July 2, 2015) (final order) (holding baker liable), <http://tinyurl.com/ORbakery>, *appeal filed*, No. A159899 (Or. Ct. App. July 17, 2015). Property owners in New York claimed a free-speech right to exclude same-sex couples from their rental wedding pavilion. *See Gifford v. McCarthy*, No. 520410, slip op. at 10 (N.Y. App. Div. Jan. 14, 2016), <http://tinyurl.com/Gifforddecision>; Brief for Appellants at 24, 31, 35, *Gifford v. McCarthy*, No. 520410 (N.Y. App. Div. June 25, 2015), <http://tinyurl.com/NYweddingvenuebrief>. A Kentucky screen-printing shop argued that it engaged in expressive conduct when screen-printing its clients' messages on T-shirts and thus could refuse to make shirts for a Gay Pride organization. Complaint & Notice of Appeal ¶¶ 40-41, *Hands on Originals v. Lexington-Fayette Urban Cty. Human Rights Comm'n*, No. 14-CI-04474 (Fayette Cir. Ct. Apr. 27, 2015), <http://tinyurl.com/HOOCcomplaint>. And an Iowa art gallery argued

that the First Amendment permitted it to deny a wedding venue and planning services to same-sex couples because the owners use the gallery “to consistently manifest both their artistic views and religious beliefs . . . .” Verified Petition ¶ 49, *Odgaard v. Iowa Civil Rights Comm’n*, No. CVCV046451 (Iowa Dist. Ct. Oct. 7, 2013), <http://tinyurl.com/IAgallery>.

The overwhelming majority of courts, as well as state and local human-rights commissions, have rightly rejected these attempts to elevate rank discrimination into protected religious expression.<sup>1</sup> As these decisions reflect, commercial businesses that provide service to the public have no First Amendment right to violate laws that prohibit discrimination in public accommodations on the basis of sexual orientation—just as they have no right to violate laws that prohibit discrimination in public accommodations on the basis of any other protected class or status.

Accepting the flower shop’s arguments not only would put Washington courts at odds with First Amendment decisions from across the country, but would also allow nearly any business to discriminate as it pleases simply

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<sup>1</sup> See *Elane Photography*, 309 P.3d at 63 (commercial photographers); *N. Coast Women’s Care Med. Grp. v. San Diego Cty. Super. Ct.*, 44 Cal. 4th 1145, 189 P.3d 959, 967–68, 81 Cal. Rptr. 3d 708 (Cal. 2008) (physicians); *Gifford*, slip op. at 11–12 (wedding venue); *Masterpiece Cakeshop*, 2015 WL 4760453, at \*8 (bakery); *In re Klein*, Nos. 44-14 & 45-14, at 96, 105 (bakery); *Bernstein v. Ocean Grove Camp Meeting Ass’n*, No. CRT 6145-09 (N.J. Div. on Civil Rights Oct. 22, 2012) at 11, <http://tinyurl.com/NJweddingvenue> (wedding venue); see also Grant Rodgers, *Grimes’ Gortz Haus to Stop All Weddings in Wake of Discrimination Complaint*, Des Moines Register (Jan. 28, 2015), <http://tinyurl.com/IAgallerysettles> (gallery owners settled discrimination complaint by agreeing to stop hosting weddings altogether); but see *Hands on Originals v. Lexington-Fayette Urban Cty. Human Rights Comm’n*, No. 14-CI-04474 (Fayette Cir. Ct. Apr. 27, 2015), <http://tinyurl.com/HOOTrialDecision>, *appeal filed*, 2015-CA-000745 (Ky. Ct. App. May 15, 2015).

by contending that its provision of goods or services is expressive. Gay men, lesbians, and members of other protected classes (and their children) would not know which businesses they could patronize and could not expect the law to protect their rights of access to public accommodations. The First Amendment does not require such retrogression.

## **ARGUMENT**

### **I. Selling flowers is not compelled speech.**

#### **A. Selling flowers is not protected expression.**

Although the First Amendment’s Free Speech Clause protects both the right to speak and the right to refrain from speaking, *Wooley v. Maynard*, 430 U.S. 705, 97 S. Ct. 1428, 1435, 51 L. Ed. 2d 752 (1977), there is a world of difference between protected speech and unprotected conduct. And while “[i]t is possible to find some kernel of expression in almost every activity a person undertakes . . . [,] such a kernel is not sufficient to bring the activity within the protection of the First Amendment.” *City of Dallas v. Stanglin*, 490 U.S. 19, 109 S. Ct. 1591, 1595, 104 L. Ed. 2d 18 (1989). Conduct may be treated as protected speech only when (1) it reflects the intent to convey a specific message and (2) “the likelihood [i]s great that the message would be understood by those who viewed it.” *Spence v. Washington*, 418 U.S. 405, 94 S. Ct. 2727, 2730, 41 L. Ed. 2d 842 (1974).

Washington’s antidiscrimination and consumer-protection statutes regulate conduct, not speech. Flower shops and other public accommodations must provide service on equal terms to all patrons whether or not they

are members of a protected class. To comply with the law, Arlene's Flowers need not say a word. And no matter how creative its florists may be, selling flowers to customers does not convey the shop's message, compelled or otherwise; the marrying couple may find meaning in the flowers, but neither they nor their guests understand the flowers to convey a message from the florist. *Cf. Elane Photography*, 309 P.3d at 69 ("It is well known to the public that wedding photographers are hired by paying customers and . . . may not share the happy couple's views . . ."). Arlene's Flowers is not required to proclaim any particular belief about its customers or their marriages—not on its property, not on its owners' personal belongings, and not on the company's websites, signs, or promotional materials.

Accordingly, the U.S. Supreme Court's decision in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* disposes of this case. *See* 547 U.S. 47, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006). In *FAIR*, a group of law schools sought to express their disapproval of a military policy barring service by openly gay individuals by excluding military recruiters from on-campus employment fairs; their actions violated a federal statute requiring them to give military recruiters the same access to students as all other employers received. *See id.* at 1302–03. The law schools argued that by requiring them to allow military recruiters on campus, the statute compelled them to speak—that is, to express support for the military and its policies. *See id.* at 1307–08. But the U.S. Supreme Court rejected that argument, concluding that the act of "treating military recruiters differently from other recruiters" was "not inherently expressive." *Id.* at 1310.

So too here. Marrying couples, wedding guests, and bystanders who see Arlene’s Flowers comply with its legal obligation to sell flowers to same-sex couples would not conclude that the shop was taking a position on the propriety of same-sex relationships any more than customers and observers would think that Arlene’s Flowers believes the couple to have optimal chemistry or compatible personalities. If the marrying couple thought at all about it, they would likely conclude that the flower shop wished to maximize its revenue by serving as many customers as possible, that the shop took no interest in its customers’ sexual orientation because such information is not pertinent to commercial transactions, or that the shop was merely meeting its legal obligation to comply with state antidiscrimination laws. *See FAIR*, 125 S. Ct. at 1310 (even “high school students can appreciate the difference between speech a school sponsors and speech the school permits . . . pursuant to an equal access policy”); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 2044, 64 L. Ed. 2d 741 (1980) (no compelled speech where business owner “could disclaim any sponsorship of the message and could explain that the persons are communicating their own messages by virtue of state law”).

By the same token, that Arlene’s Flowers did not sell bouquets for a particular same-sex couple’s wedding does not by itself communicate to observers anything about why (or even whether) the flower shop declined to provide the service. The company may have refused to serve the couple because of the florists’ views about same-sex relationships or for some other discriminatory reason; it may have lacked sufficient stock or employees to

fulfill the order; or the couple may simply have chosen a shop that offered lower prices or better service.

Only the addition of explanatory speech—such as a “gay couples not welcome” sign in the flower shop’s window—would cause observers to conclude that Arlene’s Flowers was refusing to provide service because it believes weddings of same-sex couples to be sinful. *See FAIR*, 126 S. Ct. at 1310–11 (“An observer who sees military recruiters interviewing away from the law school has no way of knowing whether the law school is expressing its disapproval of the military, all the law school’s interview rooms are full, or the military recruiters decided for reasons of their own that they would rather interview someplace else.”); *see also Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 131 S. Ct. 2343, 2350, 180 L. Ed. 2d 150 (2011) (legislator’s act of voting is not symbolic speech because, although the vote “discloses . . . [whether] the legislator wishes” that a measure be adopted, the act of casting a vote itself “symbolizes nothing”). The need for “such explanatory speech . . . is strong evidence that the conduct at issue here is not so inherently expressive that it warrants protection . . . .” *FAIR*, 126 S. Ct. at 1311.

Here, if an observer recognized any message in the floral arrangements, that message would be attributed to the couple who ordered and paid for the flowers, not the company that sold them. Thus, the Supreme Court of New Mexico rejected the argument in *Elane Photography* that requiring a wedding photographer to comply with New Mexico’s public-accommoda-

tions law amounted to compelled speech. *See* 309 P.3d at 65–66. In accordance with *FAIR*, the New Mexico court correctly concluded that compelled-speech claims arise only from “direct government interference with the speaker’s own message, as opposed to a message-for-hire.” *Id.* at 66.

What was true for photography is even more true for flower-arranging. Although customers may sometimes allow the florist to choose, say, different colors or flower types, enforcement of an antidiscrimination statute that requires service to all patrons does not constitute compelled speech. Appellants’ Br. 5. Virtually any production and sale of a good or service requires decisions about design: A watch may be made from aluminum or steel or gold; a desk may be made to look antique or modern; a room may be painted white or beige or blue. Yet nobody would seriously contend, and no court has held, that horologists, carpenters, and painters engage in constitutionally protected expression when practicing their trades.

That is the case even when, unlike here, the service at issue is entirely verbal. For instance, when appearing in court a lawyer speaks for her client, not for herself. Thus, in *Nathanson v. Commonwealth of Massachusetts Commission Against Discrimination*, 16 Mass. L. Rptr. 761 (Mass. Super. Ct. 2003), the court rejected a family-law attorney’s argument that she had a free-speech right to refuse male clients. *See id.* at \*6. There was no violation of the lawyer’s free-speech rights, explained the court, because the antidiscrimination law regulated “the client’s access to legal rights and remedies, rather than use of [the lawyer’s] speech and her law office as a vehicle for

[the lawyer’s] own expression.” *Id.* Arlene’s Flowers has an even weaker defense: unlike lawyers, whose stock in trade is words, florists sell plants.

Indeed, even something as symbolic as the American flag is not so expressive that a court would “automatically conclude[] that any action taken with respect to our flag is expressive.” *Texas v. Johnson*, 491 U.S. 397, 109 S. Ct. 2533, 2540, 105 L. Ed. 2d 342 (1989). Wearing a uniform bearing an American-flag patch, for example, is not speech if there is “no evidence that observers would likely understand the patch or the wearer to be *telling* them anything about the wearer’s beliefs.” *Troster v. Pa. State Dep’t of Corrections*, 65 F.3d 1086, 1092 (3d Cir. 1995); *see also, e.g., Cotto v. United Techs. Corp.*, 738 A.2d 623, 633 (Conn. 1999) (“Even though the flag is a symbol of government, [not] every work assignment involving the flag implicates an employee’s constitutional rights of free speech.”). If that is true of the American flag—our nation’s most recognizable symbol—it is also true of a vase of flowers.

**B. Calling oneself a “floral artist” changes nothing.**

Recognizing that the work of flower shops is not inherently expressive within the meaning of the First Amendment, Arlene’s Flowers seeks to create an exception for a subset of florists that it terms “floral artists.” The flower shop’s putative expert opines that the company’s floral arrangements reflect “a high level of talent, emotional and intellectual investment, and skill” that evince “artistic creativity, originality, custom tailoring, and

attention to detail.” Appellants’ Br. 5 (quotation marks omitted). The company then argues that its asserted skill and creativity convert its conduct into speech and thereby allow it to strip its customers of the protections provided by antidiscrimination laws.

But that is not how the First Amendment works. Whether activity constitutes protected expression is a legal question for the courts, not fodder for expert witnesses. *See Johnson*, 109 S. Ct. at 2539 (describing legal standard for determining whether conduct is expressive); *King Cty. Fire Prot. Dists. No. 16, No. 36 & No. 40 v. Hous. Auth. of King Cty.*, 123 Wash. 2d 819, 826 n.14, 872 P.2d 516 (1994) (“legal opinions on the ultimate *legal* issue before the court are not properly considered under the guise of expert testimony”).

And while the flowers that Arlene’s sells may be complicated to arrange, the law does not transform acts into speech merely because the actor is skillful. A mechanic does not engage in protected expression even if an expert opines that she is an “automotive-repair artist.” A landlord does not engage in protected expression by donning the label “shelter-management artist.” And a delicatessen does not become a speaker for First Amendment purposes by describing its employees as “sandwich artists.” *Cf. Job Descriptions: Sandwich Artist*, Subway, <http://tinyurl.com/SubwayCareers> (“The Sandwich Artist greets and serves guests, prepares food, maintains food safety and sanitation standards, and handles or processes light paperwork.”). If the use of skill, creativity, or artistry were sufficient to transform

customer service into protected speech, nearly any businesses could claim the right to discriminate against members of protected classes.

Indeed, the very methods that purportedly distinguish Arlene's Flowers from other shops and thereby immunize it from liability are practiced by service providers in almost every industry. The company's expert opined that floral artists "incorporate components of previous eras and cultures." Appellants' Br. 5. So do chefs and architects. The company's expert opined that floral artists "not only reflect the mood and look desired by the couple, but also the personal style and creativity of the artist." *Id.* at 6. So do tailors and barbers. And the company's expert opined that floral artists "use fabrics, pictures, and a variety of other objects to generate ideas." *Id.* at 5. So do interior designers at Pottery Barn. As a result, the "limited religious exception" sought by Arlene's Flowers, *id.* at 38, would swallow antidiscrimination law whole.

Even worse, the legal regime proposed by Arlene's Flowers would create a two-tiered system of rights and obligations: No-frills providers would be required to comply with antidiscrimination laws, while skilled professionals would be free to discriminate at will. *See* Appellants' Br. 5 (arguing that a "floral design artist" is different from other florists, who "may not approach their work as art"). A dime-store lunch counter would be required to serve interracial couples but an upscale bistro could turn them away; a Motel 6 would be required to offer rooms to interfaith couples but a Ritz Carlton could exclude them. And who knows what a Holiday Inn or a Hilton could or couldn't do? Courts would have to determine, case by case,

whether each individual business in any given industry provided services of sufficient skill or artistry to claim a constitutional right to discriminate. Meanwhile, members of protected classes would be relegated to the lowest-quality providers—replacing modern antidiscrimination protections with a rule of “separate and unequal.” Far from being required by the First Amendment, this result would stand the Bill of Rights on its head.

## **II. Selling flowers does not impede expressive association.**

Nor does requiring Arlene’s Flowers to comply with basic antidiscrimination laws burden the flower shop’s right to expressive association. Neither accepting customers nor fulfilling their orders constitutes expressive association protected by the First Amendment.

First, in order to have a First Amendment right to expressive association, “a group must engage in some form of expression.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 120 S. Ct. 2446, 2451, 147 L. Ed. 2d 554 (2000). As detailed above, however, Arlene’s Flowers is not speaking for First Amendment purposes when it provides or withholds flowers. Unlike a youth organization such as the Boy Scouts, *see id.* at 2451–52, or a civic association such as the Jaycees, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 3254–55, 82 L. Ed. 2d 462 (1984), Arlene’s is in the business of providing goods and services in exchange for money. The customers who patronize the flower shop are typically strangers to one another (and, for that matter, to the shop’s owners); they “are not members of any organized association;

they are patrons of the same business establishment.” *Stanglin*, 109 S. Ct. at 1595.

Second, there would be no violation of the flower shop’s associational rights even if it did engage in expressive conduct. The right to expressive association can be infringed only by laws imposing “serious burdens” on a group’s “collective effort on behalf of its shared goals.” *Roberts*, 104 S. Ct. at 3252, 3254. Thus, there must be actual impairment of the entity’s actual expression. Such a burden may result from forcing the Boy Scouts to hire a particular youth leader or requiring a parade organizer to allow a particular banner. *See Dale*, 120 S. Ct. at 2454 (youth leader); *id.* (analyzing parade banner at issue in *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995)). But nothing like that is going on here.

Quite the contrary. Customers individually come to Arlene’s to buy flowers in arms’-length transactions; they do not join with other customers and the flower shop to convey shared ideals collectively. And the flower shop’s interactions with customers are so short and discrete that observers are unlikely to confuse a customer’s views for those of the vendor. Because of this dynamic, the Supreme Court held in *FAIR* that the associational rights of law schools were not infringed by a requirement that they allow military recruiters the same access to their campuses as others; the military recruiters were mere “outsiders who come onto campus for the limited purpose of trying to hire students—not to become members of the school’s ex-

pressive association.” 126 S. Ct. at 1312. In the same way, couples buy flowers to decorate their wedding hall, not to embrace or communicate the ideological identity of the flower shop or its owner.

For these reasons, courts have repeatedly rejected association-based challenges to laws requiring individuals or entities to engage in arms'-length business transactions. *See, e.g., Priests For Life v. U.S. Dep't of Health & Human Servs.*, 772 F.3d 229, 269–70 (D.C. Cir. 2014) (“interacting with [insurance-]coverage providers that must make contraceptive coverage available . . . does not make those providers part of the organization’s expressive association or otherwise impair its ability to express its message”), *cert. granted*, 136 S. Ct. 446 (2015); *Miller v. City of Cincinnati*, 622 F.3d 524, 538 (6th Cir. 2010) (requiring groups to coordinate with City officials to arrange for use of space inside City Hall does not significantly burden right of association); *cf. Fields v. City of Tulsa*, 753 F.3d 1000, 1012 (10th Cir. 2014) (police officer’s freedom of association not infringed by order to perform regular job duties at Islamic Society event because officer “was never required to be anything more than an outsider with respect to the Islamic Society”), *cert. denied*, 135 S. Ct. 714 (2014). Even groups like the Rotary Club—a nonprofit organization that had long denied full membership to women—have no First Amendment right to discriminate unless they can “demonstrate that admitting women . . . will affect in any significant way the existing members’ ability to carry out their various purposes.” *Bd. of Directors of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 1947, 95 L. Ed. 2d 474 (1987). Nothing about being required to serve all patrons

equally, regardless of sexual orientation, “affect[s] in any significant way” a flower shop’s ability to sell flowers. *Id.*

Washington law requires public accommodations to engage in commercial transactions with same-sex and different-sex couples alike—nothing more. Accordingly, the First Amendment does not bar Washington from requiring Arlene’s Flowers to treat all customers equally.

### CONCLUSION

The judgment of the Superior Court should be affirmed.

Respectfully submitted,

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Supreme Court No. 91615-2

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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ROBERT INGERSOLL, et al.,  
*Plaintiffs-Respondents,*

v.

ARLENE'S FLOWERS, INC., et al.,  
*Defendants-Appellants.*

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STATE OF WASHINGTON,  
*Plaintiff-Respondent,*

v.

ARLENE'S FLOWERS, INC., et al.,  
*Defendants-Appellants.*

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**BRIEF OF AMICUS CURIAE AMERICANS UNITED  
FOR SEPARATION OF CHURCH AND STATE  
IN SUPPORT OF RESPONDENTS**

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