Supreme Court No. 91615-2

SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT INGERSOLL, et al. Plaintiffs-Respondents,

v.

ARLENE FLOWERS, INC., et al. Defendants-Appellants

STATE OF WASHINGTON Plaintiff-Respondent,

v.

ARLENE FLOWERS, INC. et al. Defendants-Appellants

AMICUS CURIAE BRIEF OF PROTECTING CONSTITUTIONAL FREEDOMS INC.

PROTECTING CONSTITUTIONAL FREEDOMS INC.

IVEY Law Offices, P.S. Corp.
Floyd Edwin Ivey, WSBA #6888
7233 W. Deschutes Ave., Ste C, Box #3
Kennewick, Washington 99336
Telephone: (509) 735-6622
feivey@3-cities.com

Filed with the Supreme Court 2/26/2019

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[1] *Federal Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n. 5, 92 S.Ct. 898, 905 n. 5, 31 L.Ed.2d 170 (1972); *Spiegel, Inc. v. Federal Trade Comm'n*, 540 F.2d 287, 293 (7th Cir.1976). FTC letter of December 17, 1980.... *Blake, supra* 310 (emphasis added).

[2] Tri-City Guest Opinion by Mr. Robert Ferguson, December 10, 2018.

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I. INTEREST OF *AMICUS CURIAE*

The interest of *AMICUS CURIAE is* protecting constitutional freedoms.

II. ISSUES TO BE ADDRESSED BY *AMICUS CURIAE*

1. Did the Washington State Supreme Court err in not finding Impermissible hostility to the bona fide sincere religious beliefs of Mrs. Stutzman by the Trial Court and by the Washington State Attorney General and reverse the Trial Court or return the case to the Trial Court for further consideration.
2. Did the Washington State Supreme Court err in not finding that the Trial Court and the Washington State Attorney General equated Mrs. Stutzman's reasons for not providing services as personal preferences rather than as religious beliefs?
3. Did the Supreme Court err in not applying the Federal Trade Commission requirement that before consumer injury can be found to be unjustified or "unfair," the injury to consumers must be substantial; it must not be outweighed by any countervailing factors; and the injury must be one that consumers reasonably could not have avoided and reverse the Trial Court or return the case to the Trial Court for further consideration.?

II. STATEMENT OF THE CASE

A.Impermissible hostility to the bona fide sincere religious beliefs of Mrs. Stutzman Arlene's Flowers is the defining characteristic of the Trial Court's Decision and Order, the Attorney General's brief to the Washington State Supreme Court and of the recently vacated decision of the Washington State Supreme Court.

A(1).A criminal statute was acclaimed by the Trial Court and the AG as fundamental in their understanding and conclusions regarding Mrs. Stutzman's Religious Beliefs, That conclusion indicts the State Legislature and the Executive.

A(2).Motivation exists for construing RCW 9A.36.078 to be applied to render Mrs. Stutzman's bona fide religious beliefs bigoted, biased, hateful and criminal. Legislative acts, AG briefing, Superior Court and Supreme Court rulings may be pursued to advance sexual orientation issues to full acceptance in society. Personal preferences may oppose religion and religious beliefs with the personal preference guiding the positions taken in courts and legislatures. Anti-Religion preferences are pursued to challenge Religions. Advancement of gender dysphoria may erode issues involving "one man and one woman" controversies.

B.It is the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint. The government, consistent with the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to religious beliefs[1] … and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices. The Trial Court and the Attorney General's reliance on criminal statute RCW 9A.36.078[2], a legislative finding, Trial Court page 35/line 22 to 36/line 1 and AG brief page 20, fn 5, characterized Mrs. Stutzman's religious beliefs as criminal, threatening, biased, bigoted and hateful. The legislative finding is that the

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[1] Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n, 138 S.Ct. 1719, __ U.S. __, 201 L.Ed.2d 35, 86 U.S.L.W. 4335, 27 (2018)

[2] The Trial Court, re: RCW 9A.36.078, page 36/ fn 22, stated "The first full paragraph of the legislative finding reads as follows: "The legislature finds that **crimes and threats** against persons because of their race, color, religion, ancestry, national origin, gender, **sexual orientation**, or mental, physical, or sensory handicaps are serious and increasing. The legislature also finds that **crimes and threats** are often directed against interracial couples and their children or couples of mixed religions, colors, ancestries, or national origins **because of bias and bigotry** against the race, color, religion, ancestry, or national origin of one person in the couple or family. The legislature finds that the state interest in preventing **crimes and threats** motivated by bigotry and bias goes beyond the state interest in preventing other felonies or misdemeanors such as criminal trespass, malicious mischief, assault, **or other crimes that are not motivated by hatred, bigotry, and bias,** and that prosecution of those other crimes inadequately protects citizens from **crimes and threats motivated by bigotry and bias. Therefore, the legislature finds that protection of those citizens from threats of harm due to bias and bigotry is a compelling state interest."**(emphasis added)

protection of citizens, regarding sexual orientation, from threats of harm due to bias and bigotry is a compelling state interest.

B(1).Criminal statute RCW 9A.36.078, conflated with the same sex marriage statute RCW 26.04.010(1), was selected to be the basis for the conclusion that Defendants' refusal to provide floral services for a same-sex wedding was "an unfair or deceptive act or practice". The Trial Court and the AG cited *Blake v. Federal Way Cycle Center,* 40 Wn.App. 302, 310, 698 P.2d 578 (1985), regarding the "unfairness" determination, but omitted the concluding ultimate and principal instruction for determining "unfairness" given by the FTC, *Blake, supra*, 310. Ignoring the guidance of *Blake, supra,* 310, and failing to illuminate the "unfairness" analysis, violated the AG's RPC 3.3 obligation to the Trial Court and the Supreme Court. RPC 3.3 burdens counsel to disclose pertinent legal authority to the tribunal.

C.The Trial Court concluded that any objection to any act or action preferred by a person within the group protected because of their "sexual orientation" to be an act of bigotry and bias. This conclusion is arrived at without regard for the basis of the opposition. The Trial Court that persons with religious beliefs opposing a public accommodation involving sexual orientation, for any reason to be bigots and biased.

C(1).Bigotry is "one obstinately or intolerantly devoted to his own opinions and prejudices (Webster's Ninth New Collegiate)".

C(2).The scope of the Trial Court's ruling is broader than and is not limited to public accommodation discrimination. The Trial Court's ruling is that discrimination against any person included in the group protected because of sexual orientation is a bigot and is biased. By basing the ruling on a criminal statute and associated legislative finding, the ruling asserts that such person is also a criminal. That is, that person, whether atheist, agnostic or religious, belonging to no sect or being Christian, Jew, Muslim, etc. or nondenominal, is a bigot, is biased, is criminal and is engaging in and acting on beliefs forbidden by these Washington State Statutes on same-sex marriage and RCW 9A.36.078.

D.Hostility in the Trial Court's ruling is clearly revealed by parsing that statute. The Trial Court states at page 36 fn 22 that: "The first full paragraph of the legislative finding (RCW 9A.36.078) reads as follows: The **legislature finds** that **crimes and threats against persons because of their...sexual orientation...are serious and increasing. The legislature also finds that crimes and threats are often directed against ...[protected groups]... because of bias and bigotry**...**The legislature finds that the state interest in preventing crimes and threats motivated by bigotry and bias goes beyond the state interest in preventing other felonies or misdemeanors** such as criminal trespass...**or other crimes that are not motivated by hatred,**

bigotry, and bias, and that prosecution of those other crimes inadequately protects citizens from crimes and threats motivated by bigotry and bias. Therefore, **the legislature finds that protection of those citizens from threats of harm due to bias and bigotry is a compelling state interest.**

D(1).RCW 9A.36.078 uses the phrase "crimes and threats" four times , is not limited to "discrimination" in public accommodation, addresses all instances where preferences of individuals from protected groups are resisted or criticized or denied or are found repugnant.

D(2).The Trial Court and the AG by their assertion of and reliance on RCW 9A.36.078, categorizes Mrs. Stutzman's resistance as a crime and a threat to a person based on that person's sexual orientation. The Trial Court and AG assert to the citizens of the State of Washington that Christians, Jews, Muslims et al are engaging in criminal acts by asserting the religious belief of marriage only between a man and a woman. The Trial court and the AG assert to the citizens that individuals holding religious beliefs, harm and threaten individuals who, because of their sexual orientation, seek to be wedded to a person of the same sex.

E.The Trial Court made no reference to constitutionally protected beliefs and intentionally and parenthetically omitted, at page 35/line 12-

13, the 4th prong or perhaps ultimate prong of *Blake, supra* at 310[3] stating:

the most important of the above criteria for establishing unfairness is unjustified consumer Injury. Before consumer injury can be found to be unjustified or "unfair," the injury to consumers must be substantial; it must not be outweighed by any countervailing factors; and the injury must be one that consumers reasonably could not have avoided. FTC letter of December 17, 1980, 5 TRADE REG.REP. (CCH) § 50,421; see Commercial Law Deskbook, Washington Consumer Protection Act, § 27.5(4).

E(1).The Supreme Court, *Arlene's* at 852 paragraph 77, suggests that it, the Court, while surely observing the Trial Court's intentional omission of the "...most important of the above [FTC] criteria..." nevertheless also did not consider that "most important...criteria.." and "...agreed with the plaintiffs that "this case is no more about access to flowers then civil right cases in the 1960s were about access to sandwiches...As every other court to address the question has concluded, public accommodations laws do not simply guarantee access to goods or

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[3] *Federal Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n. 5, 92 S.Ct. 898, 905 n. 5, 31 L.Ed.2d 170 (1972); *Spiegel, Inc. v. Federal Trade Comm'n*, 540 F.2d 287, 293 (7th Cir.1976). FTC letter of December 17, 1980.... *Blake, supra* 310 (emphasis added).

services. Instead they serve a broader societal purpose: eradicating barriers to the equal treatment…in the commercial marketplace…"

E(2).In the 1960's there were NO SANDWICHES in the marketplace based on race.

E(3).The 1960's, sandwiches and race have no analogous relationship with protected religious beliefs and flowers and "emotions" experienced by Ingersoll and Freed. FLOWERS WERE READILY AVAILABLE. MARRIAGE WAS READILY AVAILABLE.

E(4). The record shows that the injury to plaintiffs was $7.90, deemed by the Trial Court to be substantial. It is rumored that a cup of coffee at Starbucks may cost $5.00 equating the injury to plaintiffs to be substantial equates their injury to be the price of a cup or two. Is one cup of coffee substantial or insignificant? There were and are countervailing constitutionally protected rights which outweighed the "cost" and "emotions". The injury, whether "a cup of coffee" or "emotions", could have been avoided with ease. Another flower vendor and the flowers would have been done. Ingersoll and Freed had access to "the commercial marketplace" and their marriage was not opposed.

E(5).The Washington State Supreme Court disparages Mrs. Stutzman and citizens of this state with the dismissal of Religious Belief at 852-53 "...Were we to carve out a patchwork of exceptions for ostensibly justified discrimination, that purpose would be fatally undermined." There is no equating of the 1960's, race and sandwiches with flowers, marriage and sexual orientation.

F.In enacting the CPA, the Washington legislature made clear its intent for Washington courts to be guided by federal court and Federal Trade Commission..." *State v. LG Elecs., Inc.*, 340 P.3d 915, 185 Wn.App. 123, 133-34 (Div. 1 2014) with guidance from Federal Statute 15 U.S.C. 45(a) and citing Blake, supra, and Klem, supra commenting 15 U.S.C. 45(n) - Current federal law suggests that a "practice is unfair [if it] causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits." Federal Trade Commission Act of 1914, 15 U.S.C. § 45(n)[4].

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[4] 15 U.S.C. 45(n)Standard of proof; public policy considerations:
The [Federal Trade] Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

RCW § 19.86.920 provides as follows.

"The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of ... unfair.. practices in order to protect the public and foster fair and honest competition. **It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts... and the federal trade commission...It is...the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business** or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se".

F(1).Trial Court's cite to *Blake, supra,* considered only the first three prongs of *Blake, supra,* omitting the fourth which the FTC identified as the most important of the criteria. The Trial Court's omission was noted by the Trial Court at p35/lines 12-13 as **"...(further quotation omitted)...**" Trial Court thereby justified its refusal to follow and apply guidance from both the Federal Trade Commission Act and from a United States Supreme Court decision. By that omission the Trial Court justified its hostility to religious belief in not considering the substance of "the injury to consumers", the "weight of countervailing factors" and the fact that the "injury" to the plaintiffs could easily and reasonably been avoided.

F(2). Plaintiff's injury was about one cup of coffee with that injury not analyzed for substantiality by the Trial Court, the AG or the

Supreme Court. The Trial Court did not grace the parties with its "substantial" analysis. The Trial Court's holding was not well founded.

F(3).The Trial Court failed to analyze the "weight of countervailing factors" which include constitutionally protected religious belief, the ease and wide availability of wedding flower services, the inconsequential injury. The Trial Court did not undertake the judicial heavy lifting in weighing the countervailing factors.

F(4).The Trial Court Decision and Order revealed with clarity, to the Washington State Supreme Court, that its ruling in conflating two Washington State Statutes rendered criminal the individuals adhering to religious beliefs which opposed an act preferred by individuals because of their sexual orientation and failed to justify the granting of the State's Motion for Summary Judgment.

G.Hostility by the Washington State Attorney General is revealed in its Brief to the Washington State Supreme Court at page 20, fn 5, where the AG relied on RCW 9A.36.078. The Attorney General asserted to the Supreme Court the opinion that persons opposing acts or actions preferred by people on the basis of sexual orientation, were bigots, were biased and were criminal in violating RCW 9A.36.078. The Attorney General asserts

that those who believe that marriage is between a man and a woman, a doctrine of the Southern Baptist Convention, are held by the Attorney General to be bigots, are biased and are violating RCW 9A.36.078. This understanding is not limited to public accommodation transactions.

G(1).The AG and the Trial Court demonstrate their understanding of RCW 9A.36.078 to be that any discrimination on the basis of sexual orientation is bigoted, biased and violative of a criminal statute. This understanding is asserted to the State Supreme Court that discrimination on the basis of sexual orientation has been abolished and is criminal. Both the Attorney General and the Trial Court refute Justice Kennedy in Obergefell, cite 19, where Justice Kennedy comforted and assured those who rely on religious belief in their lives by saying:

> "Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here." *Obergefell v. Hodges,* 135 S.Ct. 2584, __ U.S. __, 192 L.Ed.2d 609, 83 U.S.L.W. 4592 (2015)

G(2).The AG, Trial Court and the State Supreme Court disparage Mrs. Stutzman and those in Washington State who hold that same-sex marriage violated doctrines of their bona fide religion beliefs. The Washington State Supreme Court sustained the Trial Court's grant of the plaintiff's Motion for Summary Judgment. In that verdict, *State v.*

Arlene's Flowers, Inc., 187 Wn.2d 804, 825, 389 P.3d 543 (2017) the court stated:

> Finally, last year, the Supreme Court likened **the denial of marriage equality to same-sex couples itself to discrimination,** noting that such denial " works a grave and continuing harm," and is a " disability on gays and lesbians [that] serves to disrespect and subordinate them." *Obergefell v. Hodges*, ___ U.S. ___, **135 S.Ct. 2584**, 2604, 2607-08, 192 L.Ed.2d 609 (2015) …

G(3).In *Arlene's* the plaintiffs were denied flowers but were not denied marriage. They were not denied flowers elsewhere.

G(4).The Washington State Supreme Court was cognizant of the Trial Court's reference to and refusal to fully consider and implement *Blake, supra,* at 35. The Court did not refer to the Federal Trade Commission Act or the United States Supreme Court case regarding "…the most important of the…criteria for establishing unfairness…" The State Supreme Court, by its refusal to acknowledge *Blake, supra,* expressed its allowance of the Trial Court and the AG's hostility to Religious Belief.

G(5).The Washington State Supreme Court thereby disparaged those in Washington State who hold that same-sex marriage violates doctrines of their bona fide religions.

H.The Washington State Attorney General, Mr. Robert Ferguson, has enlightened the readers of the Tri-City Herald newspaper by his Guest Opinion on December 10, 2018[5]. Therein the Attorney General addressed *Arlene's Flowers*, and attempted to analogize a circumstance where he, a Catholic, and his twin sons might seek, but be refused, sandwich service at a restaurant. There, the refusal by the restaurant would be because of the celebration of Mr. Ferguson's sons' first communion as Catholics. In an analogy where the restaurant is substituted for Mrs. Stutzman, the restaurant owner would assert a religious belief as reason to deny service. Mr. Ferguson only identifies his Catholic religion but does not identify the existence of a religious belief that could be asserted by the restaurant which would support their resistance to serving sandwiches.

H(1).By not identifying a constitutionally protected religious belief on the part of the restaurant Mr. Ferguson infers that the restaurant owner's denial of service would be based on the personal preference, prejudice or bias held by the owner of the restaurant. In the analogy, Mr. Ferguson equates personal preference, prejudice or bias with a constitutionally protected bona fide religious belief.

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[5] Tri-City Guest Opinion by Mr. Robert Ferguson, December 10, 2018. Appendix a.

H(2).Mr. Ferguson's opinion or belief that personal prejudice equates with constitutionally protected bona fide religious belief eliminated the AG's need to consider the constitutional protections Mrs. Stutzman. The AG's opinion is that constitutional protections have no place for consideration, public accommodation or not, in any matter involving resistance to the acts or actions desired or preferred by individuals in accord with their sexual-orientation.

H(3).The AG's opinion is that when any man or woman, based on their personal prejudices, deny public accommodation on the basis of sexual orientation, that denial, without constitutional analysis, is prohibited by criminal statute RCW 9A.36.078 and hence is criminal.

I.The Trial Court concluded that these statutes and forbidden beliefs allowed the Trial Court to disregard the 4th prong of *Blake, supra.* Any person with a belief opposing the sexual preferences of a person statutorily protected because of sexual orientation is a criminal. This, as a conclusion, is understood to be the understanding of the Trial Court and the reason for citing and reliance on RCW 9A.36.078.

I(1).The religious doctrine, identified as doctrine of the Southern Baptist Convention and held by Mrs. Stutzman, is disparaged by the Order

of the Trial Court and in the Washington State Attorney General's brief to the Washington State Supreme Court.

I(2).The issue for the Washington State Supreme Court, in light of the vacation of its decision, is focused on hostility to religion by the Trial Court, the AG and, indeed, the State Supreme Court. The hostility portrayed by the Trial Court and by the AG in equating Mrs. Stutzman's religious beliefs to the issues stated in RCW 9A.36.078 was obvious yet the Court failed to recognize the contemptuous characterization of her religious beliefs. The Court failed to exert the constitutional analysis required and to find the Trial Court in error.

I(3).The hostility of Trial Court Order characterizes the beliefs and doctrines of the Southern Baptist Convention as incompatible with society outside of the private confines of the Church or of a Church building. The Trial Court and AG believe that the legislative enactment of RCW 9A.36.078 has relegated those Church, Mosque, Synagogue, nondenominal, and others with their unenlightened beliefs to their buildings. The Trial Court and AG believe that discrimination in and beyond public accommodation has been eliminated. Those people with such beliefs are criminal when they exit their buildings and go out into the general society and say that marriage is constrained to that of a man and a

woman. They are criminal even though they do not act to prevent same-sex marriage or other preferences pertaining to sexual orientation.

I(4).The Washington State Supreme Court recognizes that the Trial Court and the AG have, by their understanding of the criminal statutes relative to religious belief, castigated the unenlightened religious in the society. The Legislature and Executive have protected society from beliefs that are criminal and bigoted and which violate Washington State Criminal Statute RCW 9A.36.078. The Attorney General so advised the Washington State Supreme Court at footnote 5 page 20.

I(5).The clarity with which the understanding held by the Trial Court and the AG is presented is proper. Society needs transparency from those who make rulings and decisions which affect the citizens.

I(6).This is a case where the State values Personal Preference over protected freedoms. The Trial Court, the Attorney General and the Supreme Court found the WLAD and RCW 9A.36.078 to eliminate the application of *Blake, supra,* the Federal Trade Commission guidance and the underlying United States Supreme Court case.

I(7).In *Arlene's* the Attorney General reasoned that the case was never about a constitutionally based reason for refusal. Those persons whose personal preference acts or actions are based on their sexual

orientation have sought to eliminate the ability of any negative response or comment or judgment regarding their personal preferences. The goal of seeking to eliminate any rejection may be realized through statutes which eliminates and criminalizes any rejection, negative reaction, judgment, response of disapproval etc. By the thoughts of the Trial Court and the AG, this has been brought about by the Legislative and Executive in the WLAD/Criminal Statute and as applied by the Courts. This legislation, declaring opposition or resistance or judgment of or to personal preferences to be "unfair per se" would supersede a constitutionally protected right and remove the guidance of the Federal Trade Commission and overturn a decision by the United States Supreme Court.

I(8).Reliance on that "unfair per se" analysis was the path chosen by the Attorney General. The Attorney General omitted the 4th prong of *Blake* and of FTC requiring a protected class to be: shielded from a trade practice unless they could not reasonably avoid the practice and have to suffer substantial harm in order to find protection from the trade practice.

I(9).The plaintiffs were not denied marriage, there was no interference with the marriage plans, the Defendants had many sources for flowers, the injury was the magnitude of a cup of coffee. The plaintiffs could have easily avoided the issues raised.

IV. ARGUMENT

J. The Constitutional Freedoms realized by citizens distinguish the United States and the States within from many nations on earth. Our Courts must be seen to seek to and insure that the citizens realize and are served by these rights and freedoms.

"No Issue is More Fundamental to American Liberty Than Freedom of Religion...Our Nation's Founders Cherished Religious Independence...: Our Founders Were Wise Enough to Know if They Imposed Their Religious Beliefs Onto Others, One Day, Religious Beliefs of Others Could be Imposed Upon Them. Freedom From Government Interference, an Essential Component of the Protection of Religious Liberty, can be Guaranteed Only by Imposing Absolute Neutrality in Religious Matters Upon the State." Justice Chambers dissenting in ***State ex rel. Gallwey v. Grimm*, 48 P.3d 274,146 Wn.2d 445, 487 (Wash. 2002)**

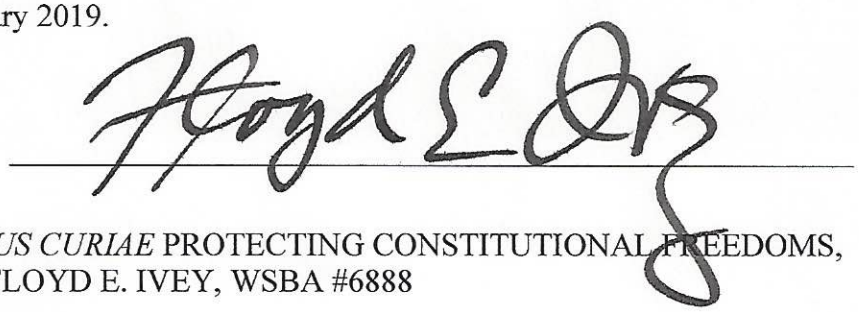
K. (a) The laws and the Constitution can…protect gay persons… in the exercise of their civil rights, but religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression. *Obergefell v. Hodges*, ___ U.S. ___, **135 S.Ct. 2584**, 2604, 2607-08, 192 L.Ed.2d 609 (2015) See *Obergefell v. Hodges,* 576 U.S. __, __, **135 S.Ct. 2584**, 2594, 192 L.Ed.2d 609. While it is unexceptional that Colorado law can protect gay persons … the law must be applied in a manner that is neutral toward religion.

K(1).The required neutral application has not been realized in *Arlene's*. The point is addressed in *Masterpiece Cake, supra,* as follows:

> There (b) …the Commission's treatment…**showed elements of… impermissible hostility toward the sincere religious beliefs motivating his objection**. … some of the **commissioners… endorsed the view that religious beliefs cannot legitimately be carried into the public sphere or commercial domain, disparaged Phillips' faith as despicable and characterized it as merely rhetorical,… The comments thus cast doubt on the fairness and impartiality** … (c) For these reasons, the Commission's treatment of Phillips' case violated the State's duty…Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n, 138 S.Ct. 1719, __ U.S. __, 201 L.Ed.2d 35, 86 U.S.L.W. 4335, 27 (2018) (emphasis added)

K(2).In Washington State the Trial Court and the Attorney General held that the belief that marriage is limited to a man and a woman is not protected religious belief but was resistance to same-sex marriage and was bigotry, bias and criminal. The suggestion is hostile to religious belief, passes judgment on and presupposes the illegitimacy of religious beliefs.

V.CONCLUSION This case should be returned to the Benton County Superior Court for retrial. Respectfully Submitted this 26th Day of February 2019.



AMICUS CURIAE PROTECTING CONSTITUTIONAL FREEDOMS, INC. FLOYD E. IVEY, WSBA #6888

APPENDIX

December 10, 2018
1C
Tri City Herald

GUEST OPINION

Civil rights must be protected

BY BOB FERGUSON

As a person of faith, it is important to me that our state enforce our anti-discrimination laws fairly and with respect for the sincerely held religious beliefs of all Washingtonians.

That is what my office has done in our civil rights case involving Arlene's Flowers and its owner, Barronelle Stutzman. Last year, the Washington Supreme Court unanimously agreed that Arlene's violated Washington's law against discrimination by refusing to serve gay and lesbian customers for their weddings in the same way the business served heterosexual customers.

Before this case began, my office wrote a letter asking that Mrs. Stutzman "not discriminate against consumers based on their sexual orientation in the future." The letter made clear that if she agreed to comply with the law going forward, she would not have to admit wrongdoing or pay any penalties. She simply had to follow the law.

She declined.

After we won our case, my office asked the court for $1 for all our costs, plus a $2,000 penalty. The court ordered Arlene's Flowers to pay the State a $1,000 penalty plus the $1 we requested. The state is seeking nothing further.

Because they keep losing with their legal arguments, Arlene's lawyers are now pushing a false narrative that the case is just like the Masterpiece Cakeshop case recently decided by the U.S. Supreme Court. Not true.

The U.S. Supreme Court ruled for the bakery owner, because the Colorado Civil Rights Commission demonstrated "impermissible hostility" toward the owner. There is no such hostility in Washington's handling of the Arlene's Flowers case.

Mrs. Stutzman's attorneys cite an incident at a Seattle coffee shop as proof that I am treating her unfairly. The owner asked a group of anti-abortion activists to leave his business because of offensive leaflets they distributed. But the owner never said he was refusing to serve Christian customers, and he even said publicly that he would serve the same activists again if they returned.

By contrast, Arlene's Flowers refused to ever serve gay and lesbian customers for their weddings.

As the United States Supreme Court has long recognized, religious freedom is not the freedom to discriminate against others in the name of

FROM PAGE 1C

FERGUS

religion. All of us should be able to eat in a restaurant, rent an apartment, or buy flowers regardless of how, or whether, we choose to worship. If I go to a restaurant with my young twins to celebrate their First Communion, I should not have to worry about whether the restaurant will refuse to serve me because we are Catholic.

Our state law not only protects our right to be served regardless of our religion, but also our race, our gender, whether we have a disability, our status as a veteran, or whether we are gay or lesbian. Arlene's Flowers refused to serve Mr. Freed and Mr. Ingersoll because they are gay. As Attorney General, I will not stand by and allow that to happen.

Bob Ferguson has been the Washington State Attorney General since 2013.

a.

MOTION TO SUBMIT *AMICUS CURIAE* BRIEF OF PROTECTING CONSTITUTIONAL FREEDOMS INC.

AMICUS CURIAE Moves per Appellate Rule 10.6 to submit *AMICUS CURIAE* BRIEF OF PROTECTING CONSTITUTIONAL FREEDOMS INC.

This Motion is filed contemporarily with the proposed *AMICUS CURIAE BRIEF.*

In accordance with Rule 10.6(b) the following statement is made: (1) The applicants interest and the person or group applicant represents regards the relentless challenge to rights under the First and Second Amendments of the United States Constitution and of like provisions in the constitutions of the several states. The particular case presently addressed is a matter from Richland Washington near where counsel resides. (2) The matter involves Religious Beliefs and rights known to counsel and as seen by counsel to be fraught with confusion and error as reported in the press and media. Counsel has considered the issues of *Arlene's* since early 2015 and has read and researched the Briefs and Memorandum Decision and finds the parties to have failed to have addressed significant state and Federal cases and statutes regarding the disposal of the issues of the case. (3) Specific issues to which the amicus curiae brief will address arise from the perceived replacement of the Rights of Belief and Exercise with either a John Stuart Mill philosophy or

with the personal preferences of the plaintiffs, the AG and the Trial and Supreme court. (4)Applicants first reason for believing that additional argument is necessary arises from the absence, in this case, of critical examination and analysis of the distinction of Religious Doctrine contrasted with personal preferences and prejudices. The parties, including the AG, the Trial Court and Supreme Court are perceived, from the assertions in the Briefs, Memorandum Decision and Supreme Court Decision, to value personal preference and prejudice over constitutionally protected Religious Belief. Current cultural whims are highly valued over protected rights and freedoms. Seen in the AG's briefs and Attorney General Robert Ferguson's Tri-City Herald Guest Opinion are attempts to analogize the Religious Doctrine and Belief relied upon by the Defendant Mrs. Stutzman with constructs having no relation to easily tested Religious Doctrine. Counsel asks the Court to allow the Consideration of the briefing submitted by *Amicus Curiae.*

Counsel's second reason for this request depends from the scandalous assertion that citizens with Religious Beliefs which oppose acts and actions preferred relative to sexual orientation are bigots and that their attitudes and actions are denigrated in society and are criminal. This issue is found in material submitted by the AG and is found in the Memorandum Decision and is asserted by the Individual Plaintiffs.

Respectfully submitted this 26th Day of February 2019

Floyd E. Ivey, WSBA #6888 PROTECTING CONSTITUTIONAL FREEDOMS INC.

IVEY LAW OFFICES

February 28, 2019 - 2:57 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	91615-2
Appellate Court Case Title:	Robert Ingersoll, et al. v. Arlene's Flowers, Inc., et al.
Superior Court Case Number:	13-2-00953-3

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- csipos@perkinscoie.com
- cstoll@nclrights.org
- danhuntington@richter-wimberley.com
- daniel@fahzlaw.com
- daviddewhirst@gmail.com
- dlaycock@virginia.edu
- dperez@perkinscoie.com
- dshih@susmangodfrey.com
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- echiang@aclu-wa.org
- feldman@pwrfl-law.com
- gahrend@ahrendlaw.com
- green@au.org
- hank@budgeandheipt.com

- hbalson@pilg.org
- iruiz@kellerrohrback.com
- ishapiro@cato.org
- jake.ewart@hcmp.com
- jcampbell@ADFlegal.org
- jconnelly@connelly-law.com
- jeastman@chapman.edu
- jessew@mhb.com
- jessica.ellsworth@hoganlovells.com
- jhelsdon@thehelsdonlawfirm.com
- jneedlel@wolfenet.com
- jpizer@lambdalegal.org
- jtedesco@ADFlegal.org
- judyg@atg.wa.gov
- jweber@cato.org
- kah@stokeslaw.com
- kaitlyn.golden@hoganlovells.com
- katskee@au.org
- kcolby@clsnet.org
- kim.gunning@columbialegal.org
- kkemper@elmlaw.com
- krista.stokes@hcmp.com
- kwaggoner@adflegal.org
- laura.szarmach@hoganlovells.com
- lawoffice@tomolmstead.com
- leccles@susmangodfrey.com
- lnowlin@aclu-wa.org
- map@pattersonbuchanan.com
- mark.aaron.goldfeder@emory.edu
- mark@holadylaw.com
- marshall@mcaseylawfirm.com
- mcpartland.bryce@mcpartlandlaw.com
- mdeutchman@adl.org
- mpr@stokeslaw.com
- mrienzi@becketfund.org
- nicole.schiavo@hoganlovells.com
- noahp@atg.wa.gov
- noemiv@mhb.com
- pleadings@aclu-wa.org
- pmr@pattersonbuchanan.com
- rtucker@adflegal.org
- rzotti@maronmarvel.com
- scanet@ahrendlaw.com
- sfreeman@adl.org
- shendricks@klinedinstlaw.com
- smarnin@adl.org
- sminter@nclrights.org
- solson@klinedinstlaw.com
- tcberg@stthomas.edu
- toddb@atg.wa.gov
- valeriemcomie@gmail.com

Comments:

Filing on 2/27 had Brief and Motion in one file. Filing on 2/28 has Brief in file and separately has Motion in a separate file. Filing Brief first since filing system not accepting file of 2 files with Brief and Motion separate.

Sender Name: Floyd Ivey - Email: feivey@3-cities.com
Address:
7233 W DESCHUTES AVE STE C
KENNEWICK, WA, 99336-6707
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