

No. 17-108

IN THE
Supreme Court of the United States

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

v.

STATE OF WASHINGTON,
Respondent.

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

v.

ROBERT INGERSOLL AND CURT FREED,
Respondents.

*On Petition for a Writ of Certiorari to the
Supreme Court of Washington*

SUPPLEMENTAL BRIEF OF PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

Petitioner Arlene's Flowers, Inc. is a for-profit Washington corporation wholly owned by Barronelle Stutzman. It does not have any parent companies, and no entity or other person has any ownership interest in it.

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ARGUMENT**I. The Court Should at a Minimum Grant, Vacate, and Remand this Case in Light of *Masterpiece Cakeshop*.**

Given the Court’s recent ruling in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111, the Court should at a minimum grant, vacate, and remand this case. In addition to presenting a question under the Free Speech Clause of the First Amendment to the United States Constitution, the *Arlene’s Flowers* case raises a claim under the Free Exercise Clause. See Cert. Pet. i (“Whether the compelled creation and sale of custom floral arrangements to celebrate a wedding and attendance of that wedding against one’s religious beliefs violates the Free Exercise Clause.”). The Court’s free exercise analysis in *Masterpiece Cakeshop* directly supports the free exercise claim of the petitioners here.

In *Masterpiece Cakeshop*, the Court held that the state of Colorado violated the free exercise rights of cake artist Jack Phillips and his business when it punished them for declining—based on their sincere religious beliefs—to create a custom wedding cake celebrating a same-sex marriage. Colorado’s “consideration of Phillips’ case,” the Court said, “was neither tolerant nor respectful of [his] religious beliefs.” Slip Op. 17. Two primary factors led to that conclusion. First, state officials “disparag[ed]” Phillips’ religious beliefs and “endorsed the view that religious beliefs cannot legitimately be carried into the public sphere or commercial domain.” *Id.* at 12–14. Second, state officials treated cake artists who

refused to create religious messages “convey[ing] disapproval of same-sex marriage” differently than cake artists like Phillips, who declined requests for cakes celebrating same-sex marriage. *Id.* at 14–16.

At a minimum, the Court should grant, vacate, and remand *Arlene’s Flowers*. That would allow the state courts to consider the evidence of government hostility toward the faith of Barronelle Stutzman, owner of Arlene’s Flowers. Barronelle is a floral artist who served her customer and friend, respondent Robert Ingersoll, for nearly 10 years. Cert. Pet. 1. Among other things, she created custom floral arrangements for the birthdays and anniversaries of Robert and his same-sex partner. *Id.* When Robert approached Barronelle and asked her to design the arrangements for his wedding, Barronelle took his hands, told him how much she cared for him, explained that she could not help celebrate his wedding “because of her relationship with Jesus Christ,” and referred him to three other floral artists who she knew would do a good job. *Id.* at 10. Without receiving a complaint from Robert, Washington state officials filed a lawsuit against Barronelle not just in her professional capacity but also in her personal capacity. *Id.* at 11-12. And in ruling against Barronelle, the state trial court—at the urging of Washington’s attorney general—compared Barronelle to a racist “owner of a 7-Eleven store” who had “a policy” of refusing “to serve *any* black[]” customers. Pet. App. 107a–109a & 108a n.16 (emphasis added). The state, in short, has treated Barronelle with neither tolerance nor respect.

A remand would also enable the state courts to evaluate relevant developments since the petition was filed in this case that bear on the question of anti-religious hostility. Late last year, for example, the owner of Bedlam Coffee in Seattle profanely berated and discriminated against Christian customers. See *Gay business owner in Seattle accused of discriminating against Christian customers*, Talk Radio 570 KVI, Oct. 12, 2017, <http://kvi.com/news/local/gay-business-owner-in-seattle-accused-of-discriminating-against-christian-customers>. Yet the state's treatment of that situation stands in marked contrast to its swift and unprecedented efforts to punish Barronelle in her personal capacity, which threatens to drive her out of business and bankrupt her and her family. See Cert. Pet. 2, 11–13.

CONCLUSION

For the foregoing reasons, the Court should at a minimum grant, vacate, and remand this case in light of *Masterpiece Cakeshop*.

Respectfully submitted,

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