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.

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

SUPPLEMENTAL BRIEF OF RESPONDENT

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Petitioners' supplemental brief packs several irrelevant and misleading claims into its few pages. The State of Washington files this reply to ensure that the Court has accurate information as it considers this petition.

Petitioners ask that the Court grant, vacate, and remand this case based on *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111 (U.S. June 4, 2018). They offer examples that they claim show the same sort of "evidence of government hostility toward the faith of Barronelle Stutzman, owner of Arlene's Flowers," that was present in *Masterpiece*. Pet'rs' Suppl. Br. at 2. None of their examples can bear the slightest scrutiny.

First, Petitioners claim that "the state trial court—at the urging of Washington's attorney general—compared Barronelle to a racist 'owner of a 7-Eleven store[.]'" Pet'rs' Suppl. Br. at 2 (citing Pet. App. 107a-09a & 108a n.16). This claim insults the careful trial court judge in this case and the judicial role generally.

On the cited pages, the trial court described a prior opinion from the Washington Court of Appeals, where the fact pattern involved a racist owner of a 7-Eleven store. *See* Pet App. 107a-109a (citing *Lewis v. Doll*, 765 P.2d 1341 (Wash. Ct. App. 1989)). The trial court cited this opinion to explain the controlling legal standard, not to attack Petitioners.

A court citing a prior opinion that involved discriminatory behavior is not evidence of hostility towards a business owner's religious beliefs. Indeed, this Court's opinion in *Masterpiece* explained the controlling legal principles in part by citing *Newman v. Piggy Park Enterprises, Inc.*, 390 U.S. 400 (1968)

(per curiam), which involved a racist business owner refusing service to African-American customers. *Masterpiece*, No. 16-111, slip op. at 9. The Court cited footnote 5 of *Newman*, which described as "patently frivolous" the "defendants' contention that the [Civil Rights] Act was invalid because it . . . constitutes an interference with the 'free exercise of the Defendant's religion." *Piggy Park*, 390 U.S. at 402 n.5. Just as this Court's citation to past discrimination cases shows no evidence of hostility towards religion, neither does the citation of the Washington court.

Second, Petitioners claim that the State's enforcement action "threatens to drive [Ms. Stutzman] out of business and bankrupt her and her family." Pet'rs' Suppl. Br. at 3. But in this case, the State sought only a $2,000 penalty and $1 in attorney fees, and the trial court imposed a penalty of only $1,000 plus the $1 in fees. Pet. App. 62a. It is also worth noting that before the State commenced court proceedings at all, the Attorney General's Office sent Ms. Stutzman a private letter offering to resolve the matter with no cost to her, no admission of wrongdoing, and no further proceedings, if she would simply agree to comply with Washington law. Pet. App. 7a, 273a-75a. She refused. *Id.* at 7a.

Finally, Petitioners cite a story from a talk-radio station as evidence that they have been treated differently than non-religious business owners who refuse service to customers. Petrs' Supp. Br. at 3. But even if that story is accurate—and there is evidence

that it is not[1]—it is entirely different from the disparate treatment at issue in *Masterpiece*.

In *Masterpiece*, William Jack filed with the Colorado Civil Rights Division three formal complaints against bakeries for refusing him service allegedly based on his religious beliefs. *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 282 n.8 (Colo. Ct. App. 2015), *rev'd sub nom. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, No. 16-111 (U.S. June 4, 2018). He filed these complaints while administrative enforcement proceedings against Masterpiece were still ongoing. *Masterpiece*, No. 16-111, slip op. at 11. The Colorado Civil Rights Division formally rejected all three complaints in written orders, finding no illegality. *Id.* at 11-12; *see also* Br. of Amici Curiae of William Jack et al., No. 16-111, http://www.scotusblog.com/wp-content/uploads/2017/09/16-111_tsac_william_jack_et_al.pdf.

By contrast, even if the talk-radio story Petitioners cite is accurate, it includes no indication that anyone filed a complaint about the incident with the State of Washington. Nevertheless, the Chair of the Washington Human Rights Commission publicly announced that she would send a letter to the business owner explaining Washington law.[2] Unlike Petitioners here, the business owner has said publicly

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[1] *See* MyNorthwest.com, *Bedlam Coffee owner: I didn't kick them out for being Christian* (Oct. 11, 2017), http://mynorthwest.com/780768/seattle-bedlam-coffee-ben-borgman/? (business owner quoted saying that he declined patrons because of offensive fliers they were distributing, not because they were Christian).

[2] *See* Dori Monson Show, *Seattle café can expect an education in discrimination from the state* (Oct. 11, 2017), http://mynorthwest.com/779684/seattle-cafe-richland-florist-beliefs/.

that he will no longer refuse service to the customers he initially turned away.[3] And unlike in *Masterpiece*, Petitioners offer no evidence that any state official concluded that the business owner's original refusal was lawful.

In short, very little in Petitioners' supplemental brief is accurate, and nothing in it should affect this Court's disposition of this petition.

RESPECTFULLY SUBMITTED.

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[3] MyNorthwest.com, *Bedlam Coffee owner: I didn't kick them out for being Christian* (Oct. 11, 2017), http://mynorthwest.com/780768/seattle-bedlam-coffee-ben-borgman/? ("Borgman said that members of the anti-abortion group have been back into Bedlam Coffee since the incident. He said that he will serve them.").