

No. 19-333

**In the
Supreme Court of the United States**

ARLENE'S FLOWERS, INC., DBA ARLENE'S
FLOWERS AND GIFTS, *et al.*,

Petitioners,

v.

STATE OF WASHINGTON, *et al.*,

Respondents.

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

**BRIEF OF AMICI CURIAE
THE ETHICS AND RELIGIOUS LIBERTY
COMMISSION OF THE SOUTHERN BAPTIST
CONVENTION, THE ISLAM AND RELIGIOUS
FREEDOM ACTION TEAM OF THE
RELIGIOUS FREEDOM INSTITUTE, AND THE
JEWISH COALITION FOR RELIGIOUS
LIBERTY IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

Amici are various organizations dedicated to promoting religious freedom. The Ethics and Religious Liberty Commission (“ERLC”) is the moral concerns and public policy entity of the Southern Baptist Convention, the nation’s largest Protestant denomination, with over 46,000 churches and 15.2 million members. The ERLC is charged by the Convention with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. The Islam and Religious Freedom Action Team of the Religious Freedom Institute amplifies Muslim voices on religious freedom, seeks a deeper understanding of the support for religious freedom inside the teachings of Islam, and protects the religious freedom of Muslims. The Jewish Coalition for Religious Liberty is an incorporated group of lawyers, rabbis, and communal professionals who practice Judaism and are committed to defending religious liberty.

Although this case involves Christian religious beliefs, the decision below is of great concern to all faith groups, including especially members of minority religions, who depend upon the Religion Clauses to

¹ Pursuant to SUP. CT. R. 37.2(a), *Amici* certify that counsel of record for all parties received timely notice of the intent to file this brief, and that all parties have given written or blanket consent to the filing of this brief. Pursuant to SUP. CT. R. 37.6, *Amici* certify that no counsel for any party authored this brief in whole or in part, no party or party’s counsel made a monetary contribution to fund its preparation or submission, and no person other than amici or their counsel made such a monetary contribution.

protect their rights of conscience. *Amici* therefore urge the Court to grant certiorari and vacate the injunction that coerces Petitioner to attend and participate in religious ceremonies.

INTRODUCTION

In 1779, Thomas Jefferson staked out a bold position on the relationship between church and state: Because “Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint, . . . no man [should] be compelled to frequent . . . any religious worship, place, or ministry whatsoever.” Act for Establishing Religious Freedom art. I & II (1785). When the People enshrined the First Amendment into their fundamental charter, they made this principle the law of the land—barring the state from enacting any “establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend. I.

The freedom of conscience secured by these Religion Clauses was a significant, and deliberate, break with the past. For in earlier times, Governments (including the American States) had often compelled their citizenry to attend worship regularly. In direct contrast to these earlier intrusions upon liberty of conscience, “[i]t is beyond dispute” that the First Amendment takes these types of laws off the table, “guarantee[ing] that government may not coerce anyone to . . . participate in religion or its exercise.” *Lee v. Weisman*,

505 U.S. 577, 587 (1992); *see also id.* at 640–42 (Scalia, J., dissenting) (“no quarrel” with that proposition).

Yet the Washington courts in this case imposed a permanent injunction flatly contrary to this bedrock principle. That injunction requires Petitioner—owner and operator of a floral shop that specializes in creating custom floral arrangements for weddings—to offer her services “on the same terms” to opposite-sex and same-sex couples, without “any disparate treatment.” Pet.App.140a. Because one of the services Petitioner offers is the “full wedding support” package—which entails attending the wedding, “participat[ing] in rituals that occur” there, and “do[ing] whatever it takes to make the entire ceremony an enjoyable and successful event,” Pet.App.383a–84a—the effect of this injunction is to require Petitioner to attend and participate in same-sex weddings.

That violates Petitioner’s core rights of conscience. Throughout history, marriage has been recognized as an event of special religious significance. Indeed, all three major Western religions view the wedding ceremony as an inherently spiritual event—an opportunity for believers to worship God and celebrate an institution that, according to these beliefs, He instituted and ordained. For many religious believers, attending and participating in these ceremonies is thus a matter of deep spiritual significance—and forcing them to attend and participate in marriage ceremonies they object to as a matter of conscience violates their most deeply held beliefs. In Petitioner’s case, as she explains, she believes that participating

in same-sex weddings “would go against God’s definition of marriage,” Pet.App.373a, would be “dishonoring to God,” and would make her “accountable to the Lord,” Pet.App.387a. Forcing Petitioner to attend wedding ceremonies she finds deeply objectionable as a matter of conscience would thus “coerce [her] to support or participate in” religious ceremonies, in violation of our deepest Constitutional commitments. *Lee*, 505 U.S. at 587.

Washington State can no more compel dissenting citizens to attend and participate in weddings they find objectionable as a matter of conscience than it can fine them for missing Mass on Sunday. This Court should grant the writ. SUP. CT. R. 10(c).

SUMMARY OF ARGUMENT

I. Perhaps the most central guarantee of the First Amendment’s Religion Clauses is that the State cannot compel citizens to attend and participate in religious services they find objectionable as a matter of conscience. Compulsory religious attendance was the signal feature of the religious establishments the First Amendment was designed to forbid. And the freedom *not* to engage in religious observances has long been part of the unquestioned bedrock of this Court’s religious liberty jurisprudence. As the Court explained (on this point, without dissent) in *Lee v. Weisman*, “[i]t is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” 505 U.S. at 587.

II. The injunction imposed by the Washington courts below directly violates this settled rule. All of the major Western religions view the wedding ceremony as an inherently religious event. Weddings generally are led by spiritual leaders and involve explicit acts of worship such as public prayer, benedictions, scripture readings, and the singing of hymns. But the injunction at issue in this case would compel Petitioner, by force of law, to attend and participate in these religious ceremonies—even when she objects to doing so, as a matter of conscience, because she sincerely believes her involvement “would go against God’s definition of marriage.” Pet.App.373a. That result violates both Religion Clauses, and this Court cannot allow it to stand.

ARGUMENT

I. THE FIRST AMENDMENT’S RELIGION CLAUSES BAR THE GOVERNMENT FROM COMPELLING PARTICIPATION IN RELIGIOUS EVENTS.

The Religion Clauses of the First Amendment establish the twin commands that “Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof.” U.S. CONST. amend. I; *see also* U.S. CONST. amend. XIV. The Establishment and Free Exercise Clauses not only share the Bill of Rights’ first sentence; they share a “common purpose”: “to secure religious liberty.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (quotation marks omitted). When the State acts to *require* an individual, by force of law, to participate in a

religious ceremony that is contrary to her beliefs, it has violated both Clauses in a single stroke. For the Establishment Clause does not brook the “compulsion by law of the acceptance of any creed or the practice of any form of worship.” *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). And the Free Exercise Clause likewise forbids the Government from requiring individuals to participate in religious ceremonies they find objectionable as a matter of conscience. See *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018) (“[I]t can be assumed that a member of the clergy who objects to gay marriage on moral and religious grounds could not be compelled to perform the ceremony without denial of his or her right to the free exercise of religion.”).²

The history of the Religion Clauses demonstrates that the freedom *not* to attend religious ceremonies was the very paradigm of the liberty of conscience those provisions were designed to secure. At the time of the Founding, English law had since 1559 required “all and every person” to “resort to their parish church or chapel . . . upon every Sunday” to “abide orderly and soberly during the time of the common prayer, preachings, or other service of God” under pain of a fine of

² As the Court’s statement in *Masterpiece Cakeshop* reflects, the Free Exercise Clause encompasses a historically-rooted prohibition against laws that coerce individuals to engage in religious worship or practices that is distinct from its constraints on laws that regulate physical acts associated with the “exercise of religion,” see *Employment Division v. Smith*, 494 U.S. 872 (1990).

“twelve pence.” 1 Eliz. 1, c.2 (1559). “Established religion came to these shores with the earliest colonists,” Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 WM. & MARY L. REV. 2105, 2115 (2003), and while the strength of these establishments waned over time during the pre-Revolutionary and Revolutionary periods, even “[a]t the founding, at least six States had established religions.” *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 50 (2004) (Thomas, J., concurring). The men who wrote and adopted the First Amendment at the end of the eighteenth century were exceedingly familiar with established churches, and they were well aware that the hallmark of the type of practice they meant the Religion Clauses to bar was forced attendance at, and participation in, religious services.

Virginia law, for instance, until 1776 had required “any person or persons of the age of twenty one years or more” to “resort to their parrish church or chappel once in two months to hear devine service upon the sabbath day,” on pain of forfeiting “five shillings or fifty pounds of tobacco” (though dissenters from the established Anglican church were permitted to attend other authorized Protestant sects). 3 THE STATUTES AT LARGE, BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA 170–71 (W.W. Hening ed., 1823). The requirement was robustly enforced; “[i]n a study of grand jury presentments in Virginia between 1720 and 1750, missing church was the most common indicted offense in eleven of the twenty-two counties; it

was the second most common offense in seven of the others.” McConnell, *supra*, at 2145.

Other States enforced similar laws making church attendance compulsory. Massachusetts’s 1780 Constitution (drafted principally by John Adams) expressly authorized the legislature “to enjoin upon all the subjects an attendance upon the instructions of [Protestant teachers of piety], at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.” MASS. CONST. art. III (1780). And Connecticut imposed a “penalty for non-attendance upon Church” until 1816. SANFORD H. COBB, *THE RISE OF RELIGIOUS LIBERTY IN AMERICA* 513 (1902).

The drafting history of the First Amendment leaves no doubt that the Framers had such laws compelling church attendance front and center in their minds when they enacted the Federal Constitution’s religious liberty guarantee. This Court has often looked to Virginia’s disestablishment of religion as especially instructive evidence of the First Amendment’s meaning, “because that colony took the lead in defining religious rights.” *Marsh v. Chambers*, 463 U.S. 783, 788 n.5 (1983). One of the key documents in Virginia’s disestablishment was the Act Establishing Religious Freedom—written by Jefferson in 1779 and finally adopted in 1785—which made clear that the foundation-stone of religious liberty was the principle “[t]hat no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever.” Act for Establishing Religious Freedom art. II

(1785), *available at* <https://bit.ly/2pnuv9M>. Indeed, in introducing his draft of the proposed Religion Clauses before the First Congress, James Madison explained that “he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience.” 1 ANNALS OF CONGRESS 758 (Joseph Gales ed., 1834).

This Court has long understood that the freedom *not* to participate in mandatory religious observance is the bedrock of liberty of conscience. One of the earliest principles to emerge as the Court’s religious liberty jurisprudence began to take modern form in the 1960s was the rule that the Government cannot require schoolchildren to participate in “religious activity” such as compulsory prayer. *Engel v. Vitale*, 370 U.S. 421, 424 (1962). Such “require[d] religious exercises,” this Court insisted, were “in direct violation” of the Establishment and Free Exercise Clauses. *School Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 224 (1963). And while the fractured opinions in *Lee v. Weisman* reflect a variety of approaches to the Religion Clauses, one of the few points of common ground in that case was that “[i]t is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” 505 U.S. 577, 587 (1992); *see also id.* at 604 (Blackmun, J., concurring) (First Amendment bars “Government pressure to participate in a religious activity”); *id.* at 609 (Souter, J.,

concurring) (Government cannot “coerce religious observance”); *id.* at 640–41 (Scalia, J., dissenting) (“The coercion that was a hallmark of historical establishments of religion was coercion of religious orthodoxy and of financial support *by force of law and threat of penalty*. Typically, attendance at the state church was required . . .”).

Determining the proper scope of the Religion Clauses is often a difficult endeavor. But under the text and original meaning of those provisions, and the longstanding precedent interpreting them, there is at least one easy rule: the Government cannot compel individuals to attend or participate in religious observances to which they object as a matter of conscience.

II. THE WASHINGTON COURT’S INJUNCTION VIOLATES THIS LIMIT BY REQUIRING PETITIONER TO ATTEND AND PARTICIPATE IN RELIGIOUS CEREMONIES.

The injunction Washington sought and obtained in this case flagrantly violates this simple, bedrock rule. All three of the major Western religions—including Petitioner’s own Christian faith—view the marriage ceremony as an inherently sacred event, suffused with religious significance. Washington’s injunction would force Petitioner to attend and participate in these inescapably religious ceremonies—specifically including same-sex wedding ceremonies, to which Petitioner objects as a matter of deep religious commitment. That result cannot stand. Washington can no more require its citizens to attend and

participate in wedding ceremonies than it could fine dissenters for failing to attend Church on Sunday.

A. All of the major Western religions, including Petitioner’s faith, view weddings as sacred events with inherent religious significance.

1. Judaism.

The traditional Jewish wedding, as currently practiced in the Western world, combines two separate stages or ceremonies: *Kiddushin*, or the formal betrothal, and *nissuin*, or the nuptials. Rabbi Maurice Lamm, *The Jewish Marriage Ceremony*, CHABAD.ORG, <https://bit.ly/2nV13aw>. “The Betrothal portion of the ceremony consists of a preliminary benediction, the marriage proposal, and the giving of the ring.” Rabbi Maurice Lamm, *The Jewish Betrothal (Kiddushin)*, CHABAD.ORG, <https://bit.ly/2nZhna6>. Although they vary across branches of Judaism, the customs and practices surrounding *Kiddushin* are rooted in the Bible. See Genesis 24:58, Deuteronomy 24:1. Once the betrothal is complete, the ceremony concludes with the nuptial ceremony, in which “the couple stands under the *chuppah* [a special canopy], [and] the officiant recites the seven marriage blessings.” Rabbi Maurice Lamm, *The Jewish Nuptials (Nissuin)*, CHABAD.ORG, <https://bit.ly/2n15JLv>. Both elements of the wedding ceremony are suffused with religious significance.

Jews believe that marriage itself was instituted by God, Genesis 2:24, and is a divine blessing that both provides companionship for the husband and

wife and ensures for the procreation of future generations, Genesis 1:28, 2:18. Marriage is viewed as a covenant, and it is patterned after the paradigmatic covenant, in the Jewish tradition, “the covenant of G-d and His people, Israel.” Rabbi Lamm, *supra*, *The Jewish Nuptials (Nissuin)*. Moreover, the wedding day itself has special religious significance, since it “is considered a personal Yom Kippur for the chatan (Hebrew for groom) and kallah (bride), for on this day all their past mistakes are forgiven as they merge into a new, complete soul.” Rabbi Shlomo Shulman, *Guide to the Jewish Wedding*, AISH.COM (June 30, 2001), <https://bit.ly/2MDeYvM>.

The religious significance of the wedding ceremony in the Jewish tradition is underscored by the many religious rules and limits that govern the wedding and the dates on which it may be scheduled under Jewish law. Rabbi Maurice Lamm, *Choosing the Date for the Jewish Wedding*, CHABAD.ORG, <https://bit.ly/2nLy2OF>. Moreover, the central declaration that the groom makes to the bride is only one sentence long, declaring that the betrothal is being conducted “according to the law of Moses and of Israel.” JOSEPH H. HERTZ, THE AUTHORIZED DAILY PRAYER BOOK 1011 (1965). Although not every branch of Judaism follows it, “an ancient tradition advises bride and groom to fast on the day of their wedding”—in part, again, because the event is viewed as “a day of forgiveness” for the bride and groom, making the event a time “of spiritual inventory and of repentance, akin to Yom Kippur.” Rabbi Maurice Lamm, *Fasting*

on the Jewish Wedding Day, CHABAD.ORG, <https://bit.ly/2psBzBO>. And “[i]t is customary for the chatan and kallah not to see each other for one week preceding the wedding.” Rabbi Shulman, *supra*, *Guide to the Jewish Wedding*.

Punctuating the inherently religious nature of marriage in orthodox Judaism, intermarriage between a Jew and a member of any other religion is strictly forbidden. Deuteronomy 7:3.

The wedding itself “is not simply a beautiful ceremony—it is an intricate web of laws and customs that the Torah has ordained and society has developed for the protection of the family and social morality.” Rabbi Maruice Lamm, *Designing the Jewish Wedding: The Rabbi*, CHABAD.ORG, <https://bit.ly/2mXpPpU>. Accordingly, the wedding generally must be overseen by a Rabbi—who “has no part in effecting the marriage itself,” but who is critical to ensuring “that the marriage process is executed according to the laws of Moses and Israel.” *Id.* And the ceremony includes multiple elements of religious worship. Specific prayers are recited. Rabbi Maurice Lamm, *The Prayers on the Jewish Wedding Day*, CHABAD.ORG, <https://bit.ly/2oyOtxE>. The officiating rabbi reads a betrothal blessing invoking “the L-rd our G-d, King of the universe” who “has sanctified His people Israel.” Rabbi Maurice Lamm, *Jewish Betrothal Blessings*, CHABAD.ORG, <https://bit.ly/2oB9Myy>. Rabbis, members of the couple’s family, and/or the couple’s friends recite seven benedictions meditating on “our faith in God as Creator of the world, Bestower of joy and love,

and the ultimate Redeemer of our people.” Rabbi Shulman, *supra*, *Guide to the Jewish Wedding*.

The wedding thus occupies a place of deep religious significance, according to traditional Judaism. The ceremony is a spiritual event “full of meaningful rituals, symbolizing the beauty of the relationship of husband and wife, as well as their obligations to each other and to the Jewish people.” Rabbi Shulman, *supra*, *Guide to the Jewish Wedding*.

2. Christianity.

While many of its specific understandings and practices differ from Judaism, the traditional Christian understanding of the wedding unites with the Jewish faith in viewing the event as an inherently religious ceremony. Like Jews, most Christians view marriage as a relationship instituted by God at the time of the creation of the world. Genesis 2:24. Christ reaffirmed the divine origin of the institution, teaching “what God has joined together, let not man separate.” Matthew 19:6. Jesus performed his first miracle at a wedding in Cana of Galilee. John 2:1–11. And for many Christians, marriage takes on a special religious significance because of Christ’s repeated statements comparing Himself to a Bridegroom, *see* Matthew 9:15, 25:1–13; *see also* John 3:28–29, and St. Paul’s comparison of the relationship between husband and wife as a symbol of the relationship between Christ and the Church. Ephesians 5:22–33; *see also* Revelation 21:2; Pet.App.385a (noting that marriage has special significance for Petitioner because “the

Bible compares marriage to the relationship between Jesus and His Church”).

Like Judaism, Christianity places certain restrictions on weddings that reinforce their religious significance. Many Christian denominations either will not perform a wedding between unbelievers, or between a believer and someone who is not a member of the faith, or require special permission for such a marriage to occur. See 2 Corinthians 6:14–18; CODE OF CANON LAW Can. 1124, available at <https://bit.ly/2ptmqjI>; Dr. Russell Moore, *Should a Minister Officiate at the Weddings of Unbelievers?* (Sept. 11, 2008), <https://bit.ly/2pCuyOJ>. Many church bodies will also decline to conduct a wedding between persons they believe are engaged in an open, public sin such as cohabitation before marriage. Rev. Brian Croft, *When Should a Pastor Say ‘No’ to a Wedding?*, THE GOSPEL COALITION (Feb. 19, 2016), <https://bit.ly/2oanFnp>.

The traditional Christian marriage ceremony is itself an inherently religious event. Indeed, Roman Catholics consider marriage to be a sacrament. CATECHISM OF THE CATHOLIC CHURCH 400 (2d ed. 1994). A Christian wedding ordinarily incorporates all of the features of a worship service: readings from the Bible, prayers led by the minister, the singing of Christian hymns, and the delivery of a homily or sermon. *Planning a Catholic Wedding*, FOR YOUR MARRIAGE, <https://bit.ly/2OdN0aR>; *A Service of Christian Marriage*, DISCIPLESHIP MINISTRIES: THE UNITED METHODIST CHURCH, <https://bit.ly/2nedUUZ>; *Marriage*, THE

CHURCH OF ENGLAND, <https://bit.ly/2o0I5zs>. The wedding may also include the celebration of Holy Communion. CATECHISM OF THE CATHOLIC CHURCH, *supra*, at 405.

The traditional Christian wedding thus is ordinarily conducted in a house of worship and officiated by a religious minister. *Cf.* Pet.22 (noting that Respondents Ingersoll and Feed's marriage was led by a minister). But even when a wedding is conducted solely by civil authorities, and is designed to be devoid of outward religious content, the event still retains intense religious significance for many Christians. Whatever the ceremonial trappings, it remains, in many Christian church bodies, an institution established and ordained by God, a symbol of the relationship between Christ and the Church, and a sacred covenant binding in the eyes of God. *See A Christian View of Civil Marriage*, FOCUS ON THE FAMILY, <https://bit.ly/2IgJHMc>; CATECHISM OF THE CATHOLIC CHURCH, *supra*, at 400.

3. Islam.

As in the Christian and Judaic traditions, in Islam a wedding is an act of worship with deep religious significance. Due to the wide geographic compass of the Muslim world, there are a variety of differing cultural traditions associated with Islamic weddings; a Muslim wedding in Indonesia may feature many traditional customs not present in an Egyptian wedding. GEORGE MONGER, MARRIAGE CUSTOMS OF THE WORLD 160 (2004). Yet there remains a core of shared

marriage traditions and practices, and part of that core is the uniform belief that a wedding is a religious event.

Much like the other two Abrahamic faiths, Islam views marriage as a divinely-instituted blessing; according to the Quran, “[a]nd of [God’s] signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy.” Quran 30:21. In the Islamic faith, marriage is viewed as “a sacred social contract between a man and a woman,” Saulat Pervez, *Family: The Building Blocks of Society*, WHYISLAM.ORG, <https://bit.ly/2LKT7Sf>, and because of the many blessings it brings, it is affirmatively encouraged by the Muslim faith, Ayatollah Ibrahim Amini, *The Purpose of Marriage in Islam*, ISLAMIC INSIGHTS, <https://bit.ly/2MdzCkl>. Chief among these blessings, according to Islamic belief, is the role of marriage in strengthening the spiritual life of both husband and wife. *Id.* Indeed, the Prophet Muhammad taught that when choosing a spouse, the primary consideration should be the potential partner’s “*deen*” or faith and piety. Tariq Nisar Ahmed, *Fiqh of Love*, MUSLIM MATTERS (May 11, 2009), <https://bit.ly/2oOvgYW>; Suzana Nabil Saad, *How Does a Muslim Get Married?*, ABOUTISLAM.NET (Jan. 1, 2017), <https://bit.ly/2ADNgIf>.

As with Judaism and Christianity, the fundamentally sacred nature of marriage in the Islamic faith is underscored by the religious restrictions placed on potential marital partners. The Quran

places specific limits on the ability of either male or female Muslims to marry outside the faith. *See* Quran 2:221, 5:5, 60:10.

Given the deep religious significance of marriage in the Islamic tradition, there can be no surprise that the wedding ceremony itself is viewed as a religious event. Although, again, there is much variance in cultural detail, the shared core of the wedding ceremony—or *nikah*—is steeped in religious significance. The *nikah* is considered a sacred ceremony; it generally takes place in a mosque, *Nikah (Marriage) & Walima (Reception) in Islam*, CENTRAL-MOSQUE.COM, <https://bit.ly/2w9s3Dy>, and it is officiated by an Imam or other scholar of Islamic law, Ekrem Buğra Ekinci, *Marriage ceremonies in Islam*, DAILY SABAH (Oct. 19, 2017), <https://bit.ly/2ICSx7p>; MONGER, *supra*, at 160. The ceremony begins with a sermon by the officiant “invit[ing] the bride and the groom, as well as the participating guests in the assembly to a life of piety, mutual love, kindness, and social responsibility,” Saad, *supra*, *How Does a Muslim Get Married?*, and it concludes with prayer, or “*dua*,” such as “May Allah bless you and bless it for you and may He join you with goodness!” *Nikah (Marriage) & Walima (Reception) in Islam*, *supra*; *see also* Saad, *supra*, *How Does a Muslim Get Married?*

The *nikah* ceremony is traditionally followed by a celebratory banquet, or *walima*. *Id.* At a traditional Muslim wedding, the male and female guests attending the *walima* will be seated separately, with a partition between them, in compliance with the Quran’s

command against improper and immodest mixing of the sexes. Saqib Saab, *Weddings: To Separate Or Not To Separate*, MUSLIM MATTERS (May 22, 2008), <https://bit.ly/2OjHeob>; *Nikah (Marriage) & Walima (Reception) in Islam*, *supra*.

As in the other Abrahamic religious traditions, the wedding is thus an event of deep spiritual significance in the Muslim faith, “[a] sacred ceremony,” Ekinici, *supra*, *Marriage ceremonies in Islam*, and fundamentally “an act of worship,” Shaahima Fahim, *Must Wedding Bells Go Ka-Ching?*, MUSLIM MATTERS (Nov. 18, 2013), <https://bit.ly/2ANxB93>.

B. The injunction compels Petitioner to participate in same-sex weddings she finds objectionable as a matter of conscience.

The permanent injunction entered and affirmed by the courts below provides as follows:

[Petitioner and her employees] are permanently enjoined and restrained from . . . discriminating against any person because of their sexual orientation. The terms of this permanent injunction include a prohibition against any disparate treatment in the offering or sale of goods, merchandise, or services to any person because of their sexual orientation, including but not limited to the offering or sale of goods, merchandise, or services to same-sex couples. All goods, merchandise, and services offered or sold by

[Petitioner] shall be offered and sold on the same terms to all customers without regard to sexual orientation . . . , including but not limited to goods, merchandise and services for weddings & commitment ceremonies.

Pet.App.140a.

By its plain meaning and effect, this injunction requires Petitioner to participate in wedding ceremonies she finds objectionable as a matter of religious faith. One of the principal “services for weddings” that Petitioner “offers or sells” is what she describes as “full wedding support.” When an engaged couple purchases this package, Petitioner explains,

Arlene’s floral designers offer to help before, during, and after the wedding ceremony to ensure that all flowers are beautiful throughout the ceremony and reception. Often this might require touching up an arrangements, changing out flowers if needed, attending the ceremony, and assisting with the clean-up and removal of floral arrangements afterwards.

Pet.App.383–84.

Designing, creating, and installing the floral arrangements for a wedding is a critical part of the marriage ceremony, and the floral arrangements carry religious significance in many faiths. As Petitioner testified below, her floral “creations adorn the ceremony and often define the style and colors of the wedding.” Pet.App.382a. In the Christian tradition, for example,

a couple may choose white flowers, as a symbol of purity; or the color of the flowers may be designed to match the liturgical colors of the current season of the Church year. See *Marriage Guidelines*, ST. MARY OF THE ASSUMPTION CATHOLIC CHURCH, <https://bit.ly/34XDoHf>; Rev. Douglas Escue, *The Colors of the Liturgical Seasons*, LUTHERAN CHURCH MISSOURI SYNOD, <https://bit.ly/2OhYxGg>. In some Catholic weddings, it is customary for the couple to present a bouquet of flowers before a statue of the Virgin Mary, as a way of venerating the special role the mother of Christ has within that faith tradition. *Planning Your Catholic Wedding*, CATHOLIC WEDDING HELP, <https://bit.ly/2McDZvY>. In Jewish weddings, the florist is often called upon to decorate the *chuppah*, or bridal canopy, which is the “legal instrument” that “formally permits the couple’s new status of marriage of be actualized.” Maurice Lamm, *The Bridal Canopy (Chuppah)*, CHABAD.ORG, <https://bit.ly/30QU1kE>; see, e.g., Lauren Dubell-Beadle, *Your Chuppah—Everything You Need To Know*, SMASHING THE GLASS (Apr. 17, 2018), <https://bit.ly/2nlSDbQ>. Moreover, Judaism has long seen floral and plant displays as bearing religious significance. Rabbis have debated whether particular holiday displays are praiseworthy or prohibited in synagogues. *Customs of Shavuot*, ORTHODOX UNION (June 30, 2006), <https://bit.ly/2pXHzCI>.

Even when the couple chooses not to order floral arrangements with independent religious significance, the work they ask the florist to perform may implicate the florist’s religious beliefs. In Judaism, for

example, merely deriving economic benefit from a product or service may transgress Jewish law: just as an Orthodox Jewish merchant may not sell a cheeseburger to any customer due to the mitzvah against deriving any benefit from a mix of dairy and meat, *Why Not Milk & Meat?*, AISH.COM, <http://bit.ly/35fCDcA>, a Jewish wedding vendor may not be permitted to provide services for a wedding that occurs on the Sabbath or select holy days, even if her attendance is not required, Menachem Posner, *What is Shabbat?*, CHABBAD.ORG, <https://bit.ly/2IjlTrp>. And attendance at the ceremony, without more, may involve the florist in religious practice. In the Christian faith, for example, congregants are often called upon to make a collective promise to uphold the couple in their marriage. EVANGELICAL LUTHERAN WORSHIP 286; BOOK OF COMMON PRAYER 425.

Moreover, as Petitioner explains,

When I attend wedding ceremonies for Arlene's, I also participate in rituals that occur at the wedding. For example, I have frequently stood for the bride, clapped in appreciation of the married couple, and prayed along with the officiant as the officiant leads the wedding attendees. . . . When providing full wedding support, my employees and I are at the disposal of the Bride and we want to help any way that we can. I have greeted guests as they arrived to the ceremony, helped with entertaining children as the wedding party prepared for the ceremony,

styled hair for the wedding party, and even assisted with cleaning the wedding party's attire."

Pet.App.383–84.

By requiring Petitioner to offer her wedding services on the "same terms to all customers without regard to sexual orientation," Pet.App.140a, Washington's injunction thus requires her to attend and participate in same-sex wedding ceremonies. To be sure, Respondents are not forcing Petitioner to *officiate* at those ceremonies, to lead the prayers, or to sing in the choir. But the protections of the Religion Clauses have never been confined to ministers or other officiants. Freedom of religion includes the freedom to practice, not just to preach, the religion of one's choosing.

The court below resisted these conclusions, contending that Petitioner "does not claim" that attendance at and participation in the actual wedding event "are services that she is providing for a fee," as opposed to "voluntary," and her participation is thus not "covered by [the] injunction." Pet.App.12a. That is incorrect. The record clearly shows that Petitioner's attendance at, and close involvement in, the wedding ceremony is an integral part of one of the "services" she "offers and sells," Pet.App.140a: the "full wedding support" package. Pet.App.383. And even if there were any doubt about that, this argument wholly ignores the fact that the injunction entered below not only requires that Petitioner offer and sell her "services" to same-sex couples, it further requires her to

do so “on the same terms” and without “any disparate treatment.” Pet.App.140a. Were Petitioner to attend and “do whatever it takes” when providing floral services for opposite-sex couples, Pet.App.384a, but *decline* to attend and support same-sex couples in the same way, there can be no doubt—none at all—that Respondents would haul her into court for violating the terms of the injunction. And Respondents would plainly not be satisfied by any protestation by Petitioner that her disparate participation in opposite-sex and same-sex weddings was “not before the Court” because she was merely “voluntarily involv[ing] herself” in some weddings but not others. Pet.App.12a.

The Washington courts also sought to dismiss the patent violation of religious freedom entailed by their injunction in another way: by pointing to a supposed contradiction in Petitioner’s (concededly sincere) religious beliefs. While Petitioner “believes that participating . . . in a same-sex wedding . . . is tantamount to endorsing marriage equality for same-sex couples” in violation of her faith, the court below noted that she “acknowledged that selling flowers for an atheistic or Muslim wedding would not be tantamount to endorsing those systems of belief.” Pet.App.8a. There is no tension between those two commitments. As Petitioner explained, her religious faith is violated by participating in same-sex weddings not because it entails any endorsement of the *religious beliefs* of the couple, but because it is a tenet of her faith that “God defines marriage as a spiritual union between one man and one woman,” and that faith does not allow

her to “go against God’s definition of marriage or assist others in doing so.” Pet.App.373a. In a similar vein, an Orthodox Jewish florist might provide services for a Muslim or Christian wedding while maintaining that it would be prohibited for her to provide services for a wedding ceremony in which a Jew was converting to a different religion, since Jewish law enjoins celebrating a Jew’s departure from the covenantal relationship between God and the Jewish people. Leviticus 20:26; Exodus 20:2. And in any event, even if the courts below did perceive a contradiction in Petitioner’s belief system, the Constitution makes it utterly inappropriate for them to “tell [Petitioner] that [her] beliefs are flawed.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014). As the court below was at pains to emphasize, there is no doubt that Petitioner’s religious objection to participating in same-sex weddings is sincere. Pet.App.20a. Under the First Amendment, that must be the end of the matter.

CONCLUSION

For the above reasons, this Court should grant the writ and reverse the judgment of the Washington Supreme Court.

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Respectfully submitted,

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