No. 19-333

IN THE

Supreme Court of the United States

ARLENE'S FLOWERS, INC., DOING BUSINESS AS ARLENE'S FLOWERS AND GIFTS, AND BARRONELLE STUTZMAN,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

ARLENE'S FLOWERS, INC., DOING BUSINESS AS 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

BRIEF OF *AMICI CURIAE* UNITED STATES SENATORS AND REPRESENTATIVES SUPPORTING PETITIONERS

J. MICHAEL CONNOLLY
Counsel of Record
STEVEN BEGAKIS
CONSOVOY MCCARTHY PLLC
ANTONIN SCALIA LAW SCHOOL
FREE SPEECH CLINIC
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 243-9423
mike@consovoymccarthy.com

October 15, 2019 *Counsel for Amici Curiae*

291958

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Page

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are members of the U.S. Senate and House of Representatives (listed in the Appendix) who are committed to protecting the free-speech rights guaranteed by the First Amendment. Free speech is critical to our democracy. It creates an open "marketplace of ideas" in which individuals can freely and respectfully debate the political, economic, and social issues of the day. It furthers the search for truth by allowing all ideas to compete free of government censorship or compulsion. And it protects personal autonomy by prohibiting the government from forcing individuals to endorse ideas that they find objectionable.

Amici believe that the court below disregarded these longstanding principles when it allowed the State of Washington to compel Petitioner Barronelle Stutzman to create customized artistic works against her will. *Amici* therefore urge this Court to grant the petition.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The First Amendment protects the artistic expression at issue in this case. Petitioner Barronelle Stutzman creates customized bride and bridesmaid bouquets,

---

1. Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or their counsel have made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received timely notice of the intent of *amici curiae* to file this brief. The parties have consented to the filing of this brief.

arches, boutonnieres, pew markers, and centerpieces and then "weaves them into a larger artistic whole to express celebration for the couple's marriage." Pet. 9. If the First Amendment (rightly) protects music, dance, theater, paintings, drawings, engravings, video games, and countless other forms of artistic expression, it surely protects Ms. Stutzman's customized floral art. And just as this Court has held that the government may not compel a parade organizer to accept participants or compel a non-union member to subsidize a union's speech, it cannot compel the artistic expression at issue here.

Importantly, Ms. Stutzman does not challenge the State's interest in protecting its citizens from discrimination on the basis of sexual orientation. Indeed, Ms. Stutzman regularly serves and hires LGBT individuals. Pet. 10. Ms. Stutzman's petition instead focuses on her *customized* wedding pieces—artistic expression that is wholly different from the vast majority of commercial products and services sold by public businesses and individuals throughout the country. This Court thus can rule for Ms. Stutzman without calling into question anti-discrimination laws.

As this Court has long recognized, "[a]t the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994). Government compulsion of artistic expression, such as the floral art in this case, "contravenes this essential right." *Id.* Because the Washington Supreme Court disregarded this principle, the Court should grant the petition.

ARGUMENT

I. The Washington Supreme Court's Decision Directly Conflicts with This Court's First Amendment Precedent.

A. Ms. Stutzman's Floral Arrangements Are Artistic Expression.

The record here is not disputed: Ms. Stutzman "approaches [floral] wedding arrangements as an artist." Pet. 8. Her custom wedding arrangements are individualized pieces designed for each particular wedding. Pet. 9-10. She creates bride and bridesmaid bouquets, arches, boutonnieres, pew markers, and centerpieces. Pet. 9. She then weaves these pieces together to form a cohesive artistic whole. *Id.* Ms. Stutzman utilizes the traditional connotations of each flower, combined with her special creative vision and talent, to blend complex themes of individuality, atmosphere, and celebration into each custom creation. *Id.* She works with the couple to select the best composition of flowers, colors, location, and position to convey the message of the couple's wedding day. *Id.* Her artistic involvement often culminates in her attendance at each ceremony, where she personally arranges each floral display to best complement the ceremony's venue. Pet. 9-10. Throughout the process, she exercises a high degree of artistic editorial judgment over her work. Pet. 8-10.

Ms. Stutzman is not unique in her use of floral arrangements as artistic expression. Throughout our history, Americans have used flowers to communicate and express ideas and deeply felt emotions. As the Senate recently unanimously recognized, the "people of the United States have a long history of using flowers and

greens grown in the United States to bring beauty to important events and express affection for loved ones." *See* S. Res. 208, 116th Cong. (July 8, 2019). As early as 1918, florists encouraged their customers to "Say It With Flowers." *See 11:FTD (1917) – Say It With Flowers*, Creative Review, http://bit.ly/2m6lHTD. This slogan was derived from an even older phrase: "Flowers are words, [w]hich even a babe can understand." *How the Slogan "Say It With Flowers" Started* at 6, Scarsdale Inquirer Vol. 4, No. 7 (Jan. 6, 1923), http://bit.ly/2kxzd2w.

These customs continue today. As one florist in Minnesota notes, flowers "convey so many emotions—love, sympathy, celebration, forgiveness and more. We are the professionals in the art of expression!" *Floral & Arrangements*, BlossomTown, https://bit.ly/31cj7uf. According to the florist, each flower has its own meaning: daisies symbolize "innocence and purity"; orange lilies symbolize "passion"; tulips are "a declaration of love"; and red roses, above all, "convey deep emotions," such as love, devotion, and desire. *What do Flowers Mean? Find Flower Language*, BlossomTown, https://bit.ly/2B5wIcm (citing *Flower Meanings: The Language of Flowers*, Old Farmer's Almanac (Sept 24, 2019)). The florist promises to design "the perfect arrangement" that will "help[] people say all the right things without saying a word." *Id.*

Flowers also express civic ideas. For example, Americans exchange and wear red poppies on Memorial Day and Veteran's Day as a symbolic reminder of the sacrifice of fallen soldiers. *See American Legion Auxiliary Poppy Program*, American Legion Auxiliary, http://bit.ly/2kXkjT9; *Hundreds of Thousands of Poppies Return to the National Mall to Honor Fallen Servicemembers*, USAA, https://bit.ly/31fIo70 (describing the memorial

Poppy Wall of Honor). The United States also has formally recognized the rose as the National Floral Emblem because of the symbolism and ideals the flower portrays—life, love, beauty, devotion, and eternity. *See* 36 U.S.C. § 303 (1998); Presidential Proclamation 5574 (Nov. 20, 1986), https://bit.ly/2IR3d29 ("For the love of man and woman, for the love of mankind and God, for the love of country, Americans who would speak the language of the heart do so with a rose."). And every State in the nation has designated an official state flower, chosen to serve as an expression of each state's particular identity. *See* Jenny Krane, *All 50 Official State Flowers*, Better Homes & Gardens, https://bit.ly/2VHlnZs. Last year, after the death of Hawaiian Senator Daniel Akaka, a traditional Hawaiian maile lei[2] was placed on the Senate lectern "to signify his devotion and commitment to the people of Hawaii." Cong. Rec. S1997 (Apr. 9, 2018).

Nowhere is the artistic expression of flowers more on display than at weddings. Wedding flowers are not simply a mechanical or geometrical placement of flowers requiring little artistic skill. They are elaborate endeavors requiring great subtlety, taste, and technical expertise. One florist explains that wedding arrangements are "an art form" that involves pairing flowers "with the right textural elements and colors" to create a "curated and artfully designed arrangement[]." *Flor de Casa Designs*, TheKnot.com, https://bit.ly/2mXybNW. Another florist describes flowers as the "main ingredient of any wedding or event" that "allow the most room for personal expression." *Weddings+Events*, The Enchanted Florist, https://bit.

2. A maile lei is a traditional Hawaiian wreath of flowers that is often given "to show friendship, love, or to celebrate or honor someone." *What is a Lei & Hawaiian Symbolism*, FlowerLeis, https://bit.ly/32hyNxK.

ly/2ltQCJN. Indeed, the nation's capital is no stranger to stunning artistic arrangements through flowers. *See, e.g.*, Caroline Cunningham, *17 Times the Flowers at DC Weddings Totally Knocked Our Socks Off*, Washingtonian (May 12, 2016), https://bit.ly/1P4m2hP (providing pictures of artistically elaborate flower backdrops, walls, arches, chuppahs, frames, mandaps, tent toppers, chandeliers, mantles, trees, bouquets, garlands, and centerpieces).

Ms. Stutzman's custom floral arrangements speak for themselves. They are artistic expression. That is no doubt why the State conceded that Ms. Stutzman's custom floral arrangements are a "form of expression." *See* Oral Argument Video at 40:49–40:53, https://bit.ly/2SP3aaj ("Q: Is this speech? A: I believe she is engaging in a form of expression."). Only the Washington Supreme Court remains unconvinced.

B. The First Amendment Protects Artistic Works Like Ms. Stutzman's.

The First Amendment, through the Fourteenth Amendment, prohibits States from "abridging the freedom of speech." The First Amendment protects the right to speak and, just as important, the right *not* to speak. *See Janus v. Am. Fed'n. of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2463 (2018). Indeed, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics … or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

The First Amendment protects more than "oral utterance and the printed word." *Kaplan v. California*, 413 U.S. 115, 119-20 (1973). It protects expression through a medium other than words. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995). That is because human beings can communicate equally as effectively, and sometimes more so, through non-verbal methods that operate as a kind of "short cut from mind to mind." *Barnette*, 319 U.S. at 632. A painting, for example, "may express a clear social position, as with Picasso's condemnation of the horrors of war in *Guernica*, or may express the artist's vision of movement and color, as with 'the unquestionably shielded painting of Jackson Pollock.'" *White v. City of Sparks*, 500 F.3d 953, 956 (9th Cir. 2007) (quoting *Hurley*, 515 U.S. at 569); *see Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2074-76 (2019) ("For nearly a century, the Bladensburg Cross has expressed the community's grief at the loss of the young men who perished, its thanks for their sacrifice, and its dedication to the ideals for which they fought.").

This Court thus has recognized that the First Amendment protects numerous forms of expression. This includes, among others, dancing,[3] nude dancing,[4] drawings,[5] engravings,[6] abstract art,[7] radio and television broadcasts,[8]

3. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 933 (1975).

4. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 565 (1991).

5. *Kaplan*, 413 U.S. at 119.

6. *Id.*

7. *Hurley*, 515 U.S. at 569.

8. *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65 (1981).

movies,[9] pornography,[10] theatrical productions,[11] live musical entertainment,[12] music without words,[13] atonal music,[14] and unintelligible verse.[15]

Other federal courts, too, have recognized similar forms of artistic expression worthy of First Amendment protection. This includes, among others, wedding videography,[16] tattoos and tattooing,[17] the sale of original artwork,[18] custom-painted clothing,[19] a person's image and likeness,[20] and stained-glass windows.[21]

---

9. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952).

10. *Jenkins v. Georgia*, 418 U.S. 153, 161 (1974).

11. *Schacht v. United States*, 398 U.S. 58, 62-63 (1970).

12. *S.E. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557-58 (1975).

13. *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989).

14. *Hurley*, 515 U.S. at 569.

15. *Id.*

16. *Telescope Media Group v. Lucero*, 936 F.3d 740, 747 (8th Cir. 2019).

17. *Buehrle v. City of Key West*, 813 F.3d 973, 975 (11th Cir. 2015); *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1055 (9th Cir. 2010).

18. *White v. City of Sparks*, 500 F.3d 953, 955 (9th Cir. 2007); *Bery v. City of N.Y.*, 97 F.3d 689, 694-96 (2d Cir. 1996).

19. *Mastrovincenzo v. City of N.Y.*, 435 F.3d 78, 92-97 (2d Cir. 2006).

20. *ETW Corp. v. Jireh Publ'g, Inc.*, 332 F.3d 915, 924-25 (6th Cir. 2003).

21. *Piarowski v. Ill. Cmty. Coll. Dist. 515*, 759 F.2d 625, 628-29 (7th Cir. 1985).

If such artistic expression warrants First Amendment protection, then there is no question that the customized floral arrangements that Ms. Stutzman creates are equally protected. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1743 (2018) (Thomas, J., concurring) ("The use of [a person's] artistic talents to create a well-recognized symbol that celebrates the beginning of a marriage clearly communicates a message—certainly more so than nude dancing or flying a plain red flag."). Ms. Stutzman's wedding flowers "convey a 'celebratory' message or atmosphere" and "celebrate the two becoming one." Pet. 9. They are "artistic expression akin to other visual art." Pet. 27.

In finding otherwise, the Washington Supreme Court gave two justifications. Neither is persuasive. First, the Washington Supreme Court held that Ms. Stutzman's floral arrangements were not "art" but instead commercial conduct—"selling goods and services for weddings in the commercial marketplace," which did "not implicate First Amendment protection at all." Pet. App. 41. But it is well-established that expression does not lose First Amendment protection "merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak." *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 801 (1988); *see Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976) (it is "settled" and "beyond serious dispute" that speech "is protected even though it is carried in a form that is 'sold' for profit"). Moreover, this case does *not* involve ordinary commercial goods and services, such as individual flowers or pre-made bouquets, which Ms. Stutzman sells to everyone who walks through her door. Pet. App. 13. Indeed, Ms. Stutzman will sell premade arrangements (those already created and offered for sale) and unarranged flowers for use in same-sex weddings. *See*

id. This case instead involves *customized* floral art for a specific and special occasion—art that is imbued with expression. *Supra* 3-6.

Second, the Washington Supreme Court held that even if Ms. Stutzman *intends* to communicate a message through her floral art, her actions are not "inherently" expressive because they do not "actually communicate[] something to the public at large." Pet. App. 42a. But that is not the law. Art may be deemed "expressive" and thus protected by the First Amendment even if it does not have a "particularized message." *Hurley*, 515 U.S. at 569. Otherwise, the First Amendment "would never reach the unquestionably shielded painting of Jackson Pollock, music of Arnold Schöenberg, or Jabberwocky verse of Lewis Carroll." *Id.*

In any event, Ms. Stutzman's customized floral arrangements *do* "actually communicate[] something to the public at large." Pet. App. 42a. Floral wedding arrangements have no strictly utilitarian value. Their *sole purpose* is to express something. Florists "create bouquets and centerpieces with flowers whose meanings have some significance to them." Nancy Mattia, *What Your Wedding Flowers Mean*, Brides.com (Aug. 4, 2015), https://bit.ly/2ExCC5I. "While flowers with a love connection, like roses and carnations, are popular, there are many other meaningful traits like new beginnings (daffodil), faith (iris), and perseverance (hydrangea)" that couples and florists consider in designing and crafting wedding arrangements. *Id.*

Because "[t]he basic principles of freedom of speech" do not vary whenever "a new and different medium

of communication appears," the First Amendment's protections must apply with equal force to one of the oldest forms of nonverbal communication—the speech of flower arrangements. *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 790 (2011); *see* Mattia, *supra* ("The 'language' of flowers is actually a thing and has been for centuries. During Victorian times, for example, flowers were used to express emotions when words and gestures failed."). This is no doubt why, again, Respondent conceded below that Ms. Stutzman's custom arrangements are speech. *See supra* 6. That concession, and the clarity of the law on this point, should have ended the matter.

C. The First Amendment Prohibits the State of Washington from Compelling Ms. Stutzman's Speech.

Once Ms. Stutzman's floral art is recognized as expression protected by the First Amendment, this case becomes straightforward. "[F]reedom of speech includes both the right to speak freely and the right to refrain from speaking at all." *Janus*, 138 S. Ct. at 2463 (citation omitted). "The right to eschew association for expressive purposes is likewise protected." *Id.* "[N]o official, high or petty, can prescribe what shall be orthodox … *or force citizens to confess by word or act their faith therein*." *Barnette*, 319 U.S. at 642 (emphasis added). "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command." *Janus*, 138 S. Ct. at 2463.

Laws that "[m]andat[e] speech that a speaker would not otherwise make necessarily alters the content of the speech" and are therefore considered "content-based

regulation[s] of speech." *Riley*, 487 U.S. at 795. As such, they are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Nat'l Inst. of Family & Life Advocates ("NIFLA") v. Becerra*, 138 S. Ct. 2361, 2371 (2018). "This stringent standard reflects the fundamental principle that governments have no power to restrict [or compel] expression because of its message, its ideas, its subject matter, or its content." *Id.* (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)).

Hurley is a paradigmatic example of this principle. There, the Court held that Massachusetts could not force the organizer of a St. Patrick's Day parade to include a group celebrating gay, lesbian, and bisexual Irish Americans. 515 U.S. at 561. The Court recognized that the parade was "a form of expression," and that enforcing the State's public accommodation law (which prohibited discrimination on account of sexual orientation) against the organizer would require him to "alter the [parade's] expressive content." *Id.* at 568. Specifically, it would force the organizer to "bear witness to the fact that some Irish are gay, lesbian, or bisexual," would "suggest ... that people of their sexual orientation have as much claim to unqualified social acceptance as heterosexuals," and would dictate what "merits celebration." *Id.* at 574. Even if excluding a group with a pro-LGBT message was "misguided, or even hurtful," the parade organizer could not be forced into expressing "thoughts and statements acceptable to some groups or, indeed, all people." *Id.* at 579; *see also Boy Scouts of Am. v. Dale*, 530 U.S. 640, 661 (2000) (a state may not "compel [a private] organization to accept members where such acceptance would derogate from the organization's expressive message").

This case is no different. Because it compels expression protected by the First Amendment, the State of Washington bears the burden of demonstrating that its public accommodation law (the Washington Law Against Discrimination, or "WLAD"), as applied to Ms. Stutzman, advances a compelling government interest by the least restrictive means. WLAD fails both requirements.

First, the State cannot show a government interest that is sufficient to justify compelling Ms. Stutzman's speech. The State's identified interest in this case is to "prevent discrimination in public accommodations." Pet. App. 55a. Laws such as these typically "are well within the State's … power to enact when a legislature has reason to believe that a given group is the target of discrimination." *Hurley*, 515 U.S. at 572. That is because public-accommodations laws do not "target speech" but instead prohibit "the *act* of discriminating against individuals in the provision of publicly available goods, privileges, and services." *Id.* at 572-73 (emphasis added).

But when particular applications of these laws have "the effect of declaring … speech itself to be the public accommodation," the First Amendment applies with full force. *Id.* at 573. "Even antidiscrimination laws, a critically important as they are, must yield to the Constitution. And as compelling as the interest in preventing discriminatory conduct may be, speech is treated differently under the First Amendment." *Telescope Media Grp.*, 936 F.3d at 755. "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 U.S. at 579.

Of course, the State may regulate non-expressive conduct to ensure equal access to publicly available goods and services for all citizens. *Id.* at 571-72. But that is not this case. Ms. Stutzman's customized wedding arrangements are not "fungible products, like a hamburger or a pair of shoes"; every arrangement is "different and unique." *Brush & Nib v. City of Phoenix*, --- P.3d ---, 2019 WL 4400328, at *16 (Ariz. Sept. 16, 2019); *cf. Masterpiece Cakeshop*, 138 S. Ct. at 1723 (stating that if a wedding cake baker "refused to design a special cake with words or images celebrating the marriage ... that might be different from a refusal to sell any cake at all" and that "these details might make a difference"). Courts can protect free speech rights without undermining antidiscrimination laws. *See Telescope Media Grp.*, 936 F.3d at 758 ("[O]ur holding leaves intact other applications of the [antidiscrimination law] that do not regulate speech based on its content or otherwise compel an individual to speak."); *Brush & Nib*, 2019 WL 4400328, at *22 ("Nothing in our holding today allows a business to deny access to goods or services to customers based on their sexual orientation or other protected status.").

Second, WLAD is not the least restrictive means of pursuing the State's interest in Ms. Stutzman's case. "Because First Amendment freedoms need breathing space to survive, ... [b]road prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Given the important First Amendment issues at stake, the State was obligated to apply its regulation so as not to infringe on the rights of individuals like Ms. Stutzman. Its failure to do so violates the First Amendment.

II. The Court Should Grant the Petition to Make Clear That Individuals Like Ms. Stutzman Can Fully Exercise Their First Amendment Rights.

There is no doubt that this Petition is important—to Ms. Stutzman and to the countless others facing similar dilemmas. "Whenever the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines" our democracy and the search for truth. *Janus*, 138 S. Ct. at 2464. Laws compelling speech "are at least as threatening" as restrictions on speech, as they inflict "additional damage" by coercing individuals into "betraying their convictions." *Id.* Indeed, free speech protections "underwrite[] the freedom to experiment and to *create* in the realm of thought and speech." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 372 (2009) (quoting *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 341 (2003) (Kennedy, J., concurring) (emphasis added)).

This Court thus has not hesitated to protect the rights of individuals to engage in speech, even disfavored and hateful speech. *See, e.g.*, *Snyder v. Phelps*, 562 U.S. 443 (2011); *Virginia v. Black*, 538 U.S. 343 (2003); *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123 (1992); *Nat'l Socialist Party v. Skokie*, 432 U.S. 43 (1977); *Brandenburg v. Ohio*, 395 U.S. 444 (1969). After all, the First Amendment is typically not needed for popular speech; it is needed *only because* the majority finds an individual's views to be offensive and wrong. *FCC v. Pacifica Found.*, 438 U.S. 726, 745 (1978) ("[I]f it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection.").

In recent years, the scope and applicability of general public accommodations laws have undoubtedly "expanded to cover more places." *Dale*, 530 U.S. at 656. But "[a]s the definition of 'public accommodation' has expanded … the potential for conflict between state public accommodations laws and the First Amendment rights of organizations has increased." *Id.* at 657. This case epitomizes these concerns, but it is not an outlier. *Compare Arlene's Flowers*, 441 P.3d 1203 (floral arrangements are not protected artistic speech), *and Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015) (decorated cakes are not protected artistic speech), *rev'd sub nom. Masterpiece Cakeshop*, 138 S. Ct. 1719, *with Telescope Media*, 936 F.3d at 747 (videography is protected artistic speech), *and Brush & Nib*, 2019 WL 4400328 (hand-painted stationery is protected artistic speech).

These cases affect more than the parties. Under the Washington Supreme Court's reasoning, few limits would remain on government power to compel speech. A government could compel a Democratic-affiliated musician to write a campaign song for a Republican presidential nominee or an African-American clothing designer to design t-shirts for the Ku Klux Klan. *See also Telescope Media Grp.*, 936 F.3d at 756 (listing additional examples). These and countless other possibilities do not reflect—and profoundly undermine—our longstanding First Amendment traditions. This Court's guidance is needed.

CONCLUSION

Amici curiae respectfully request that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

J. Michael Connolly
Counsel of Record
Steven Begakis
Consovoy McCarthy PLLC
Antonin Scalia Law School
Free Speech Clinic
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 243-9423
mike@consovoymccarthy.com

October 15, 2019 *Counsel for Amici Curiae*

APPENDIX

APPENDIX — LIST OF *AMICI CURIAE*

U.S. Senate

Marsha Blackburn (TN)

Mike Braun (IN)

Kevin Cramer (ND)

Ted Cruz (TX)

Josh Hawley (MO)

James M. Inhofe (OK)

John Kennedy (LA)

James Lankford (OK)

James E. Risch (ID)

Marco Rubio (FL)

Tim Scott (SC)

Thom Tillis (NC)

Roger F. Wicker (MS)

U.S. House of Representatives

Vicky Hartzler (MO)

Jody Hice (GA)

Robert B. Aderholt (AL)

Rick W. Allen (GA)

Brian Babin, D.D.S (TX)

Andy Biggs (AZ)

Warren Davidson (OH)

Jeff Duncan (SC)

Bill Flores (TX)

Bob Gibbs (OH)

Louie Gohmert (TX)

Glenn Grothman (WI)

Michael Guest (MS)

Andy Harris, M.D. (MD)

Appendix A

Mike Johnson (LA)	John R. Moolenaar (MI)
Jim Jordan (OH)	Alex X. Mooney (WV)
Mike Kelly (PA)	Ralph Norman (SC)
Steve King (IA)	Pete Olson (TX)
Doug LaMalfa (CA)	Scott Perry (FL)
Doug Lamborn (CO)	Glen "GT" Thompson (PA)
Thomas Massie (KY)	William Timmons (SC)
Mark Meadows (NC)	Randy K. Weber (TX)