No. 17-108

In the Supreme Court of the United States

ARLENE'S FLOWERS, INC.,
D/B/A ARLENE'S FLOWERS AND GIFTS, ET AL.,
Petitioners,

v.

WASHINGTON, ET AL.
Respondents.

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

BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Court should grant the petition and hear this appeal in tandem with *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission,* No. 16-111.

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INTEREST OF THE *AMICUS*[1]

The Becket Fund for Religious Liberty is a nonprofit law firm that protects the free expression of all religious faiths. Becket has appeared before this Court as counsel in numerous religious liberty cases, including *Hosanna-Tabor Evangelical Lutheran Church & School* v. *EEOC*, 565 U.S. 171 (2012), *Burwell* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), *Holt* v. *Hobbs*, 135 S. Ct. 853 (2015), and *Zubik* v. *Burwell*, 136 S. Ct. 1557 (2016).

Becket has appeared as counsel or amicus in many cases in which the government has singled out a particular religious group or practice for disfavor. See, *e.g.*, *Holt*, 135 S. Ct. 853 (counsel for Muslim petitioner seeking to grow a short religious beard where prison system allowed beards for non-religious reasons); *Singh* v. *Carter*, 168 F. Supp. 3d 216 (D.D.C. 2016) (counsel for Sikh plaintiffs successfully challenging refusal to let Sikhs serve in the military while observing religious requirement to wear beard and turban); *Merced* v. *Kasson*, 577 F.3d 578 (5th Cir. 2009) (counsel for Santería priest challenging municipal ban on religious animal sacrifice that allowed killings for secular reasons); Petition for Writ of Certiorari, *Stormans, Inc.* v. *Wiesman*, No. 15-862 (U.S. Jan. 4, 2016) (counsel for Christian pharmacists challenging state law prohibiting conscientious refusals to provide certain drugs but allowing refusals for business and other

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[1] No party's counsel authored any part of this brief. No person other than *Amicus* contributed money intended to fund the preparation or submission of this brief. All parties were notified in advance of the filing of this brief in accordance with Rule 37.2(a) and all parties have consented to the filing of this brief.

secular reasons); *Moussazadeh* v. *Tex. Dep't of Criminal Justice*, 709 F.3d 487 (5th Cir. 2013) (counsel for observant Jewish prisoner seeking kosher diet). Becket believes both this appeal and the *Masterpiece* appeal implicate the Free Exercise, Free Speech, and Due Process rights of the petitioners.

Becket is concerned that hearing the *Masterpiece* case alone without also hearing this appeal will provide less guidance to lower courts and religious wedding vendors than will be needed in the short to medium term. Becket therefore files this brief to urge the Court to grant the petition now, set this appeal for briefing and argument this Term, and hear it in tandem with *Masterpiece*.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Judicial prudence normally counsels this Court to identify the best vehicle for deciding an issue and then hear that case alone, while holding other similar cases pending the outcome of the chosen vehicle. But sometimes prudence dictates that the Court grant and hear in tandem more than one appeal concerning the same category of cases. This is in order to ensure that the resulting decisions fairly address the entirety of the questions vexing the lower courts in parallel litigation across many jurisdictions.

This is just such an appeal. There is currently a wave of religious wedding vendor litigation around the country. Although the *Masterpiece* appeal covers some of the recurring questions surrounding religious wedding vendors and same-sex marriage, it does not include significant factual and legal aspects that are present in a large number of these kinds of cases.

Granting this appeal and hearing it alongside *Masterpiece* during this Term will allow the Court to address those other aspects as well.

By contrast, should the Court elect to hear *Masterpiece* alone this Term, it could well be confronted with another religious wedding vendor appeal in October Term 2018 or October Term 2019. The best way to avoid this problem and properly address the different factual scenarios falling within the natural perimeter of nationwide religious wedding vendor litigation is to grant this appeal now and hear the case in tandem with *Masterpiece*.

ARGUMENT

The Court should grant and hear this appeal in tandem with *Masterpiece*.

Judicial prudence counsels granting the petition now and hearing this appeal in tandem with *Masterpiece*.

A. The Court has often reviewed in tandem cases that present similar but not identical fact patterns concerning the same legal questions, particularly in cases involving religion.

When "different cases presenting substantially the same issue come before the Court at the same time," sometimes "the Court will grant review simultaneously in both cases" and consolidate the cases for argument. Eugene Gressman et al., *Supreme Court Practice*, at 763 (9th ed. 2007). A "quite different situation is presented when the Court grants review of two similar cases coming before it at the same time[.]" *Id.* at 764. In that situation, the Court may "set[ ] the

cases down for argument together, one immediately after the other, or 'in tandem.'" *Ibid.* In tandem cases "are kept quite separate for briefing and oral argument purposes." *Ibid.*

Thus, the Court has not hesitated to hear together appeals that present related-but-different factual and legal permutations, either as consolidated cases or in tandem. See, *e.g.*, *Ernst & Young LLP* v. *Morris*, 137 S. Ct. 809 (cert. granted Jan. 13, 2017) (Mem.) (three arbitration cases consolidated); *Kiobel* v. *Royal Dutch Petroleum Co.*, 565 U.S. 961 (2011) (Mem.) (ordering extraterritorial application of U.S. law case argued in tandem with *Mohamad* v. *Rajoub*, 565 U.S. 962 (2011) (Mem.)); *J. McIntyre Mach., Ltd.* v. *Nicastro*, 561 U.S. 1058 (2010) (Mem.) (ordering personal jurisdiction case argued in tandem with *Goodyear Luxembourg Tires, S.A.* v. *Brown*, 561 U.S. 1058 (2010) (Mem.)).

And the Court has frequently heard appeals in tandem where certiorari was granted on different dates. See, *e.g.*, *United States* v. *White Mountain Apache Tribe*, 535 U.S. 1016 (cert. granted Apr. 22, 2002) (Mem.) and *United States* v. *Navajo Nation*, 535 U.S. 1111 (cert. granted June 3, 2002) (Mem.) ("This case is set for oral argument in tandem with No. 01-1067, *United States* v. *White Mountain Apache Tribe*."); *Nat'l Treasury Emps. Union* v. *Von Raab*, 485 U.S. 903 (cert. granted Feb. 29, 1988) (Mem.) and *Burnley* v. *Ry. Labor Execs.' Ass'n*, 486 U.S. 1042 (cert. granted June 6, 1988) (Mem.) ("The case is set for oral argument in tandem with No. 86-1879, *National Treasury Employees Union* v. *Von Raab*."); *Metro. Life Ins. Co.* v. *Taylor*, 475 U.S. 1009 (cert. granted for two petitions, Feb. 24, 1986) (Mem.) and *Pilot Life Ins. Co.* v. *Dedeaux*, 478 U.S. 1004 (cert. granted June 30, 1986) (Mem.) ("The

case is set for oral argument in tandem with No. 85-686, *Metropolitan Life Insurance Company* v. *Taylor*, and No. 85-688, *General Motors Corporation* v. *Taylor*.").

History also discloses that religion cases in particular have often been heard and resolved together. *Zubik* v. *Burwell* and *Hobby Lobby Stores, Inc.* v. *Burwell* may be the clearest examples. There, federal regulation affected religious organizations nationwide, the organizations brought suit, and their cases were consolidated in this Court. *Zubik* v. *Burwell*, 136 S. Ct. 1557 (2016) (consolidating seven cases); *Burwell* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (consolidating two cases). In those cases, as in cases involving religious wedding vendors, the religious parties had similar but not identical religious objections to the same regulation. In the *Zubik* cases, the plaintiffs were covered by the range of potential group health plans affected by the regulations: third-party insured, self-insured, and church plans. The Court addressed the full spectrum of the conflict by granting all seven petitions for certiorari and hearing them together.

Cases have also been heard together when religious groups are defendants in litigation that recurs nationwide, as in this case. See *Advocate Health Care Network* v. *Stapleton*, 137 S. Ct. 1652 (2017) (consolidating three cases). Even in often fact-intensive Establishment Clause cases, the Court has found it appropriate to grant and decide more than one case resolving the same issue with different facts in one Term. See *Van Orden* v. *Perry*, 545 U.S. 677 (2005); *McCreary County* v. *ACLU of Ky.*, 545 U.S. 844 (2005). This practice goes back to many of the most important

religious liberty cases in American jurisprudence. See *McGowan* v. *Maryland*, 362 U.S. 959 (1960) (Mem.); *Gallagher* v. *Crown Kosher Super Market of Mass., Inc.*, 362 U.S. 960 (1960) (Mem.); *Two Guys from Harrison-Allentown, Inc.* v. *McGinley*, 362 U.S. 960 (1960) (Mem.); *Braunfeld* v. *Gibbons*, 362 U.S. 987 (1960) (Mem.) (Court set four religious liberty cases concerning Orthodox Jews and Sunday closing laws to be heard in tandem). Linking cases involving religious beliefs helps to provide guidance in a wider variety of settings in a way that granting, vacating, and remanding similar cases cannot always do. The Court has thus recognized that hearing multiple cases together can be helpful, ensuring that the Court considers the entire issue at the same time, rather than hearing it over the course of several succeeding Terms. This principle applies to the religious wedding vendor litigation now before the Court.

B. This appeal presents important recurring fact patterns regarding religious wedding vendors that are implicated by but not as squarely presented in *Masterpiece*.

Not long after *Goodridge* v. *Department of Public Health*, 798 N.E.2d 941 (Mass. 2003) was decided, conflicts involving religious wedding vendors and same-sex wedding ceremonies began erupting around the country. See, *e.g.*, *Elane Photography, LLC* v. *Willock*, No. CV-2008-06632, 2009 WL 8747805 (N.M. Dist. Ct. Dec. 11, 2009) (describing conflict beginning in September 2006). The conflicts in these cases have arisen in diverse factual scenarios, ranging from wedding photographers to religious wedding venue rentals to florists and cake bakers. See, *e.g.*, *Amy Lynn Photography Studio, LLC* v. *City of Madison,* No. 17 CV 555

(Wis. Cir. Ct. filed Mar. 7, 2017) (wedding photographer); *Odgaard* v. *Iowa Civil Rights Comm'n*, No. CVCV046451 (Iowa Dist. Ct. Apr. 3, 2014) (wedding event operators); *Melissa Elaine Klein, dba Sweetcakes by Melissa*, Nos. 44-14 & 45-14, 2015 WL 4868796 (Or. Bureau of Labor & Indus. July 2, 2015) (wedding cake bakers).

These cases all share the same basic conflict—an individual or family who is a wedding vendor and who has religious objections to participation in a same-sex wedding celebration. But the cases differ in many of their salient facts. This Court will be able to most effectively address this national issue by granting certiorari in this appeal and hearing it together with *Masterpiece*, because it includes a number of recurring issues not as squarely presented in *Masterpiece*.

1. ***Personal participation***. Unlike in *Masterpiece*, the wedding services requested would have required Petitioner Barronelle Stutzman to attend a wedding ceremony in person and to participate in the wedding ceremony. Stutzman regularly provides full wedding support to large weddings and long-time clients, which involves attending the ceremony and reception to ensure the flowers remain pristine and to assist with clean-up and removal. Pet. App. 316-18a; 351-56a. That in-person service is what Stutzman believed the individual Respondents would expect. Pet. App. 319-20a. Indeed, Respondents testified that when they approached Stutzman, they were planning for a wedding that would have been a "hundred plus" celebration as well as a "dinner or reception." Pet. App. 3a.

Stutzman could not attend and participate in a same-sex wedding ceremony without seriously violating her religious beliefs. Pet. App. 319-21a. Yet the trial court issued a permanent injunction requiring Stutzman not only to design and create custom floral arrangements, but also to provide full-wedding support for all same-sex weddings, since she offered that service as part of her normal business. Pet. App. 61-62a; 66a.

This Court's decision in *Obergefell* v. *Hodges* emphasizes the "transcendent importance of marriage," and the "centrality of marriage to the human condition." 135 S. Ct. 2584, 2593-94 (2015). Based on that reasoning, this Court held that government could not take away "the right to personal choice regarding marriage," which was "inherent in the concept of individual autonomy." *Id.* at 2599. Indeed, the *Obergefell* decision emphasizes that "decisions concerning marriage are among the most intimate that an individual can make." *Id.* Because the services Stutzman provides would require her to *personally* attend a same-sex wedding, this appeal raises the question of whether that "abiding connection between marriage and liberty" also applies to protect an individual's deeply "personal choice" *not* to participate in a wedding ceremony. *Id.* at 2589, 2599.

The question of whether a government can compel participation in a highly symbolic and historically religious ceremony by one who objects in good conscience also raises significant concerns under the Religion Clauses of the First Amendment. This Court has said that "[t]he First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the

State." *Lee* v. *Weisman*, 505 U.S. 577, 589 (1992). Thus, "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Id.* at 587. Similarly, in *West Virginia State Board of Education* v. *Barnette*, this Court upheld the religious objection of Jehovah's Witnesses to being forced to participate in a public school ceremony involving the Pledge of Allegiance to the American flag. 319 U.S. 624 (1943). The Court noted that "[a]ll of the eloquence" used to "extol the ceremony of flag saluting as a free expression of patriotism turns sour when used to describe the brutal compulsion which requires a sensitive and conscientious child to stultify himself in public." *Id.* at 635 n.15 (citation omitted).

Courts have therefore long observed that "[t]he right of an individual not to be forced to participate in a religious ceremony [is] clearly established." *Doe* v. *Phillips*, 81 F.3d 1204, 1211 (2d Cir. 1996) (government could not compel swearing on a Bible). See also *Torcaso* v. *Watkins*, 367 U.S. 488, 493 (1961) ("No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance."); *Zorach* v. *Clauson*, 343 U.S. 306, 314 (1952) (government "may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction."); *Anderson* v. *Laird*, 466 F.2d 283, 291 (D.C. Cir. 1972) ("The Government's contention that there is a difference between compelling attendance at church and compelling worship or belief is completely without merit.").

The fact that the government compulsion in this case presents itself in the form of enforcement of a

public accommodation law does not change the analysis. See *Employment Division* v. *Smith,* 494 U.S. 872, 882 (1990) (citing *Roberts* v. *United States Jaycees*, 468 U.S. 609, 622 (1984)) (noting that "it is easy to envision a case in which a challenge" dealing with public accommodation laws "would likewise be reinforced by Free Exercise Clause concerns").[2]

There are many other religious wedding vendor cases that will involve the provision of in-person services, such as wedding photographer and wedding planner cases, yet hearing *Masterpiece* alone may leave those wedding vendors without guidance from the Court.

2. ***Personal livelihood***. In this appeal, and unlike *Masterpiece*, Respondent State of Washington is seeking to hold Stutzman liable for damages in her personal capacity. Specifically, the trial court issued final judgments requiring not only the corporate body—Arlene's Flowers, Inc.—but also Stutzman personally to pay an undetermined amount of actual damages, attorneys' fees, and costs. After approximately four years of litigation, these amounts will likely total hundreds of thousands of dollars. Pet. App. 62a; 67a. The outcome of this case will determine the fate of Stutzman's family business and likely everything she owns. Pet. App. 54-56a.

This appeal also raises the legal question of whether the government can constitutionally force someone to choose between her livelihood and her

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[2] *Smith* cites *Roberts*, a public accommodation case, for this point.

faith, particularly here where the State has gone a step further than in *Masterpiece* and punitively held Stutzman personally liable for crippling financial penalties. This Court long ago recognized that the "enforce[ment]" of a regulation violated the due process clause if it had a "tendency, if not the specific purpose" of "driv[ing] out of business" a specific class of business owners. *Yick Wo* v. *Hopkins*, 6 S. Ct. 1064, 1068 (1886). This appeal presents the question of whether the enforcement of anti-discrimination laws in a way that results in driving certain religious wedding vendors out of business violates the Due Process Clause.[3]

Additionally, this Court has recognized that an individual's constitutional free exercise rights can be burdened by financial penalties or burdensome laws affecting one's business. See *United States* v. *Lee*, 455 U.S. 252, 254, 257 (1982) (holding that a law forcing an Amish carpenter to participate in the social security system "interferes with [his] free exercise rights"); *Braunfeld* v. *Brown*, 366 U.S. 599, 601 (1961) (entertaining a challenge to a Sunday closing law by Orthodox Jewish "merchants * * * engage[d] in the retail sale of clothing and home furnishings"). This appeal presents the question of whether the Free Exercise Clause, either alone or taken together with other rights such as the Due Process Clause, countenances

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[3] See also Charles A. Reich, *The Individual Sector*, 100 Yale L.J. 1409, 1409 (1991) ("As the Supreme Court recognized long ago, individuals must be able to control 'the means of living, or any material right essential to the enjoyment of life.'"); John Dewey, Individualism Old and New 54-55 (1962) ("Fear of loss of work * * * create[s] an anxiety and eat[s] into self-respect in a way that impairs personal dignity.").

an individual being forced to close her business and face devastating personal financial liability for running her business consistent with her faith.

3. ***Preexisting personal relationship***. In *Masterpiece*, the shop owners had not met the would-be customer before the transaction at issue, whereas in this appeal Stutzman had a nine-year history of providing amicable service to Ingersoll. Pet. App. 384a; 404-05a. Indeed, Ingersoll testified to his "warm and friendly relationship" with Stutzman. Pet. App. 416a. When Ingersoll came to Arlene's Flowers to speak with Stutzman about providing flower-arranging services for his wedding, Stutzman spoke to him in private, took his hand, expressed her personal regard for him, but explained that she could not design the flowers for his wedding because of her Protestant Christian religious beliefs. Pet. App. 321a; 429a. Ingersoll later testified that Stutzman was "considerate" in addressing him and took no "joy or satisfaction" in making this decision but was merely "sincere in her beliefs." Pet. App. 322a; 420-21a.

Stutzman also has a history of hiring LGBT individuals to work at Arlene's Flowers and treating them with respect. One of Stutzman's LGBT employees described her as "one of the nicest women [he] ever met." Pet. App. 347-50a. This appeal thus presents a fact scenario where there is a long preexisting relationship with LGBT customers but a conscientious objection to participating in a specific event—their wedding.

4. ***Absence of evidence of comparable secular exemptions***. There is also a difference between this appeal and *Masterpiece* that goes to the selective enforcement of public accommodation laws.

The Court has emphasized that the Free Exercise Clause prohibits lawmakers from "devis[ing] mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 547 (1993). One such method of targeting is if the law's "prohibitions substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect." *Stormans, Inc.* v. *Wiesman*, 794 F.3d 1064, 1079 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2433 (2016). This inquiry is designed to prevent the government from making "a value judgment in favor of secular motivations, but not religious motivations." *Fraternal Order of Police Newark Lodge No. 12* v. *City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999).

In *Masterpiece*, the state enforced just such a double standard by allowing some bakers to refuse to create cakes with certain messages, but not allowing other bakers to do so. For example, the Commission noted that an African-American baker could refuse to bake a cake celebrating a white supremacist message for a member of the Aryan Nation, and an Islamic baker could refuse to make a cake denigrating the Koran for the Westboro Baptist Church. App. to Pet. for Cert. at 78a, *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Comm'n*, No. 16-111 (U.S. July 22, 2016). In this same vein, the Commission allowed three secular bakeries to turn down custom religious cakes disapproving of same-sex marriage, *Masterpiece* Pet. App. 297-331a, even though the anti-discrimination law in Colorado encompasses "all aspects of religious beliefs, observances, or practices * * * [including] the beliefs or teachings of a particular religion," 3 C.C.R.

708-1:10.2(H). The Commission justified this outcome by providing an exemption to Colorado's civil rights laws when the denial of service is "based on the explicit message that the [customer] wished to include on the cakes." *Masterpiece* Pet. App. 305a.

Such selective enforcement runs afoul of *Lukumi*'s prohibition that "in circumstances in which individualized exemptions from a general requirement are available, the government 'may not refuse to extend that system to cases of 'religious hardship' without compelling reason.'" 508 U.S. at 537 (quoting *Smith*, 494 U.S. at 884). However, while intentional discrimination is sufficient to trigger strict scrutiny under the Free Exercise Clause, it is not necessary. See *Shrum* v. *City of Coweta*, 449 F.3d 1132, 1145 (10th Cir. 2006) (McConnell, J.).

The evidence of targeted discriminatory enforcement in *Masterpiece* is different from the evidence in this appeal. By granting this appeal and hearing it in tandem with *Masterpiece*, the Court will have before it both the overt selective enforcement variant of wedding vendor conflict at issue in *Masterpiece*, but also the more common variant of wedding vendor conflict where evidence of overt selective enforcement is not present as an issue in the appeal.

5. ***In-depth record.*** This appeal contains a fulsome record, including expert testimony about the artistic and expressive nature of floral arrangements. Tacoma floral design expert Jennifer Robbins, for example, testified that floral designers like Ms. Stutzman "approach their work as an art form." Pet. App. 332a. The record also shows that Stutzman "brings intention, passion, and creativity to the arrangements

she creates as a floral design artist," and she tailors her designs to the preferences and personalities of the couple she is providing wedding arrangements for. Pet. App. 331-32a, 333a-34a. Ingersoll and Freed themselves testified to Stutzman's artistic skill by praising her "exceptional creativity," Pet. App. 429-30a, "creative and thoughtful" designs, and "amazing work," Pet. App. 411-12a.

Regarding wedding services specifically, the record shows that wedding floral arrangements require floral design artists to become even more personally involved in the creative process and final design than ordinary arrangements. The florist must create a "mood" and theme that carries through all parts of the wedding, from boutonnieres to pew markers to centerpieces to bouquets. Pet. App. 333a. Thus, "any custom design wedding arrangement created by [Stutzman] necessarily requires her to become emotionally and creatively invested in that arrangement and ceremony and the final creation reflects Mrs. Stutzman's style and expression." Pet. App. 334a. The extensive testimony and evidence only presented in this appeal will aid this Court in its analysis of these important issues.

In addition, this record demonstrates that the services offered by Stutzman answer no purpose other than the beauty and artistry presented by floral arranging. Unlike the cake in *Masterpiece*, one does not eat wedding flower arrangements. That is likely why the State in this appeal candidly acknowledged below that Stutzman's custom floral designs are "a form of expression." Pet. App. 292a. However, it is core First Amendment doctrine that the government is powerless to compel a certain type of expression, even to avoid offense or emotional harm. *Barnette*, 319 U.S. at

642 (government cannot "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion" and cannot "force citizens to confess by word or act their faith therein"). This appeal thus provides an ample record that can serve as a foundation for addressing the freedom of expression issues that appear with regularity in the religious wedding vendor cases.

C. Hearing this case and *Masterpiece* in tandem will save Court resources and provide needed guidance to lower courts and religious wedding vendors of all sorts.

Both *Masterpiece* and this appeal provide examples of a conflict between one religious view of marriage and the rise of same-sex marriage, recognized nationally in this Court's decision in *Obergefell* v. *Hodges*. Many religious traditions view marriage as a sacred union, and that view is not altered by the civil definition of marriage. *Amicus* has previously pointed out the conflicts that inevitably arise when religious beliefs conflict with the civil definition of marriage. See Brief of *Amicus Curiae* General Conference of Seventh-day Adventists, *Obergefell* v. *Hodges*, 135 S. Ct. 2584 (2015); *Same Sex Marriage and Religious Liberty*, (Douglas Laycock, Anthony R. Picarello Jr., & Robin Fretwell Wilson, eds., 2008). As long as religious organizations and religious authorities hold the theologically-based belief that same-sex marriage cannot be sanctioned, there will be conflicts that this Court may be asked to decide. This case, taken together with *Masterpiece*, presents a discrete category of those conflicts—religious wedding vendors—in a manner that allows this Court to provide guidance to lower courts

and religious wedding vendors in the varying factual and legal scenarios outlined in Sections A and B above.

Hearing and considering the appeals together will support judicial economy as well. Litigation in this area is likely to increase over time, just as it has in other areas of civil rights litigation. See, *e.g.,* Vivian Berger et al., *Summary Judgment Benchmarks for Settling Employment Discrimination Lawsuits*, 23 Hofstra Lab. & Emp. L.J. 45, 45 (2005) (employment discrimination lawsuits grew 2000% over the 30-year period after enactment). Clear guidance from the Court for potential litigants in conflicts like this one reduces the likelihood of a future split among the lower courts on the issues outlined in parts A and B above. It also makes it less likely that the Court will decide *Masterpiece* in a way that allows for future confusion among the lower courts, thus reducing the likelihood that this Court will need to hear another religious wedding vendor case next Term or in the succeeding Term.

CONCLUSION

The petition should be granted and the appeal heard in tandem with *Masterpiece*.

Respectfully submitted.

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