No. 16-111

IN THE
Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD.; AND JACK C. PHILLIPS,

Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION; CHARLIE CRAIG; AND DAVID MULLINS,

Respondents.

On Writ of Certiorari
to the Court of Appeals of Colorado

BRIEF OF THE NATIONAL WOMEN'S LAW CENTER AND OTHER GROUPS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

The National Women's Law Center is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities. Since its founding in 1972, the Center has focused on issues of key importance to women and girls, including economic security, employment, education, and health, with special attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination. The Center has participated as counsel or *Amicus Curiae* in a range of cases before this Court to secure the equal treatment of women and other protected classes under the law.

This brief is also submitted on behalf of 39 additional organizations listed in the Appendix to this brief. Other *Amici Curiae* are organizations committed to obtaining economic security and equality for women. *Amici* have a particular interest in this case because the arguments advanced by Masterpiece Cakeshop, Ltd. are similar to the types of arguments that historically were asserted to justify discrimination against women in the public marketplace. *Amici* respectfully submit that their perspectives and experiences in addressing such issues in the gender discrimination context may assist the Court in resolving this case.[1]

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[1] No counsel for a party authored this brief in whole or in part, and no person other than *Amici Curiae* and their counsel made a monetary contribution to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

Public accommodations laws are straightforward: a commercial business that chooses to open its doors to the public must sell goods and services to customers in protected classes on the same basis as other customers. By prohibiting discrimination in public places, public accommodations laws are fundamental to guaranteeing equal access to the marketplace to women, people of color, gay and lesbian persons, and other protected groups.

This case arises because a bakery refused to sell a cake to a gay couple in violation of Colorado's public accommodations law. In July 2012, David Mullins and Charlie Craig, along with Craig's mother, Deborah Munn, went shopping for a wedding cake. They visited Masterpiece Cakeshop, Ltd. (the "Company"), a bakery in Colorado that sells baked goods to the public. J.A. 38. Upon learning that the cake was intended for a wedding reception for Mullins and Craig, the owner of the Company, Jack Phillips, refused the couple service due to his religious objection to same-sex marriage. J.A. 39. Had Mullins and Craig been a man and a woman, instead of two men, the Company would have sold them a cake. J.A. 39. The Company urges the Court to exempt it from compliance with the Colorado public accommodations law on First Amendment grounds.

The benefits of public accommodations laws are at risk of unraveling if courts create constitutional exemptions for commercial businesses that raise religious objections to serving members of protected

groups. A commercial business's refusal to serve a customer in a protected group—here, the Company's refusal to serve a gay couple for religious reasons—is squarely the type of discrimination that public accommodations laws were intended to prohibit.

The enforcement of public accommodations laws for all protected groups against First Amendment challenges is critical. Here, *Amici* focus on women and the importance of enforcing public accommodations laws to ensure the full participation of women in the marketplace. If the Court creates an exemption from the public accommodations law to permit the Company to refuse service to a gay couple on First Amendment grounds, the implications of such a precedent for undermining the protections of these laws for women are far-reaching.

I. The Colorado law—and similar public accommodations laws in forty-four other states and the District of Columbia—have proven fundamental to combatting the profound economic and dignitary harms associated with women's unequal access to publicly available goods and services. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984). For much of this nation's history, women were treated as inferior citizens under law. Women's secondary status often was rooted in genuinely held religious beliefs about sex-based hierarchy and women's role within the family. As our society changed, and awareness of and concern with sex discrimination grew, states broadened public accommodations laws, originally passed to prohibit racial discrimination, to prohibit discrimination against women in the public market-

place. More recently, many of these laws, including the Colorado law at issue here, were further broadened to explicitly prohibit discrimination against lesbian, gay, and transgender persons.

II. This Court and other courts have repeatedly upheld the application of public accommodations laws prohibiting sex discrimination and other forms of discrimination against a variety of First Amendment challenges. This Court has reasoned that when individuals voluntarily enter into commercial activity, they accept certain limits on their constitutionally protected conduct that have been put into place to further important government interests. *See Jaycees*, 468 U.S. at 634 (O'Connor, J., concurring) ("The Constitution does not guarantee a right to choose employees, customers, suppliers, or those with whom one engages in simple commercial transactions, without restraint from the State."). One such important—indeed compelling—government interest is "equal access to publicly available goods and services" for women and other protected groups. *Id.* at 628.

This Court has upheld public accommodations laws against First Amendment-based objections in the context of discrimination against women, emphasizing the grave harms caused when women are excluded from full access to public places. *See id.* at 624. Just as this Court has upheld the enforcement of public accommodations laws in the face of First Amendment objections in the context of discrimination against women, so too should this Court uphold such laws in the context of discrimination against

lesbian and gay persons—a class of persons that this Court has recognized as deserving of equal citizenship. *See United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013).

The federal government, in an *Amicus* brief filed by the Department of Justice, takes the remarkable position that while First Amendment rights do not justify racial discrimination in violation of public accommodations laws, they may justify sexual orientation discrimination in violation of such laws. *See* United States Amicus Br. 31–33. This position has profoundly negative ramifications for the protection of women under antidiscrimination laws, and does not withstand scrutiny. There is no constitutional basis for creating First Amendment exemptions to discrimination for some groups protected under public accommodations laws, but not for other protected groups.

III. The Company's justifications for discrimination not only lack constitutional merit in the context of the facts presented here—they also would undermine the uniform enforcement of public accommodations laws by inviting exceptions that would adversely affect women. First, the Company urges this Court to accept the proposition that providing goods or services conveys the business's endorsement of the customer. Second, the Company advances the proposition that the creative efforts used in the production and provision of goods or services exempt commercial businesses from public accommodations laws. These propositions are wholly

misplaced and, if accepted by the Court, would threaten the strides women have made under law.

ARGUMENT

I. Public Accommodations Laws Are Fundamental To The Full Participation Of Women In A Free And Equal Society.

Forty-five states across the nation and the District of Columbia have enacted public accommodations laws that prohibit discrimination in the provision of publicly available goods and services, and each of these laws includes a prohibition of discrimination on the basis of sex. *See* Nat'l Conference of State Legislatures, State Public Accommodations Laws, http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodations-laws ("NCSL Chart"). Public accommodations laws serve the "profoundly important goal of ensuring nondiscriminatory access" to the public marketplace. *Jaycees*, 468 U.S. at 632 (O'Connor, J., concurring).

Courts have repeatedly concluded that religious beliefs or other First Amendment-based objections are not a legitimate basis for businesses to disobey public accommodations laws. And for good reason. Public accommodations laws protect against the profound economic and dignitary harms that accompany the denial of equal access to goods and services in the public marketplace. As Congress explained in banning racial discrimination in public places in 1964: "Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frus-

tration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250, 292 (1964) (quoting S. Rep. No. 88-872, at 16 (1964)). As this Court has recognized, "[t]hat stigmatizing injury, and the denial of equal opportunities that accompanies it, is surely felt as strongly by persons suffering discrimination on the basis of their sex as by those treated differently because of their race." *Jaycees*, 468 U.S. at 625.

Public accommodations laws guarantee equal access to public spaces for groups that historically have been subject to discrimination, including people of color, women, and lesbian and gay persons. The Court's application of public accommodations laws has been critically important in the context of discrimination against women. Laws prohibiting discrimination on the basis of sexual orientation should be similarly enforced.

A. Women Have Long Been The Subject Of Discrimination In The Public Marketplace.

For many years, women in this country faced discrimination in public places and the public marketplace. As this Court has recognized, our country's "long and unfortunate history of sex discrimination" "was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage." *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973). These attitudes were so

firmly rooted in our national consciousness that a distinguished member of this Court wrote:

> Man is, or should be, women's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. . . . The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. ***This is the law of the Creator.***

Id. at 684–85 (quoting *Bradwell v. Illinois*, 16 Wall. 130, 141 (1873) (Bradley, J., concurring)) (emphasis added).

As a result of these types of engrained attitudes about women's unsuitability for participation in the public sphere, women historically experienced exclusion from a range of economic activity, including commercial businesses and other public places. Women were barred from a variety of places that welcomed men, including stores, restaurants, hotels, and athletic facilities. *See Discrimination in Access to Pub. Places: A Survey of State and Fed. Accommodations Laws*, 7 N.Y.U. REV. L. & SOC. CHANGE, 215, 238 (1978) ("NYU Survey") (cited in *Jaycees*, 468 U.S. at 624). Hotels, bars, and restaurants ostensibly held open to the public for commercial business re-

fused to serve women. *See, e.g.*, *DeCrow v. Hotel Syracuse Corp.*, 288 F. Supp. 530, 531 (N.D.N.Y. 1968) (hotel refused to serve unescorted women); *Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593, 595 (S.D.N.Y. 1970) (New York City tavern refused to serve women for 114 years).

The same attitudes limited women's economic and employment opportunities in this country. For example, many women were unable to obtain equal access to credit, including mortgage financing. Indeed, married women lacked an independent economic identity separated from their husbands. *See Markham v. Colonial Mortg. Serv. Co.*, 605 F.2d 566, 569 (D.C. Cir. 1979) (noting the purpose of the Equal Credit Opportunity Act was to "eradicate credit discrimination waged against women, especially married women whom creditors traditionally refused to consider apart from their husbands as individually worth of credit."). *See also Obergefell v. Hodges*, 135 S. Ct. 2584, 2595 (2015) ("a married man and woman were treated by the State as a single, male-dominated legal entity"). The Court relied on beliefs about a women's proper role in society to uphold employment laws that discriminated against women. In *Goesaert v. Cleary*, for instance, the Court upheld a statute prohibiting women from bartending unless they were a wife or a daughter of the bar owner on the ground that states were not precluded "from drawing a sharp line between the sexes." 335 U.S. 464, 466 (1948). In doing so, the Court relied upon stereotypes of men as women's protectors and defenders, nothing that "oversight . . . by a barmaid's husband or father minimizes hazards that may con-

front a barmaid." *Id.* Similarly, in *Muller v. Oregon*, the Court upheld legislation limiting women's work hours because "woman has always been dependent upon man . . . [and] in the struggle for subsistence, . . . is not an equal competitor with her brother." 208 U.S. 412, 421–22 (1908).

Over a century after this Court's decision in *Bradwell*, women have continued to face discrimination in the public sphere, grounded in religious beliefs about the appropriate role of women and the appropriate structure of families. In *EEOC v. Fremont Christian School*, for example, a religious school provided health insurance only to the "head of household," defined to be married men and single persons, due to its religious belief that a woman cannot be the "head of household." 781 F.2d 1362 (9th Cir. 1986). Religious beliefs about the morality of a woman's decisions about her private life—such as her decision whether to have children or marry—also have frequently motivated discrimination against women. *See, e.g.*, *Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 623 (1986) (a religious school did not renew a pregnant employee's contract because the school believed mothers should stay home with young children); *Ganzy v. Allen Christian Sch.*, 995 F. Supp. 340, 345 (E.D.N.Y 1998) (an unmarried teacher at a religious school was fired because, as explained by the school, her pregnancy was "clear evidence that she had engaged in coitus while unmarried").

B. State Public Accommodations Laws Have Removed Barriers To Equal Participation For Women And Other Protected Groups.

Congress and state legislatures addressed historical assumptions of inferiority underpinning the exclusion of women and other groups from the public sphere by passing a range of critical antidiscrimination protections. Specifically, legislatures across the country have broadened the scope of public accommodations laws to prohibit discrimination against various groups, including people of color, women, and lesbian and gay persons. *See Jaycees*, 468 U.S. at 624 (many states have "progressively broadened the scope of . . . public accommodations law . . . both with respect to the number and type of covered facilities and with respect to the groups against whom discrimination is forbidden"); *see generally* NYU Survey at 238–72.

Historically, public accommodations laws originated to eradicate racial discrimination in public places after the Civil War. In 1865, Massachusetts passed the first public accommodations law, prohibiting racial discrimination in places providing certain essential goods and services. *See* Act Forbidding Unjust Discrimination on Account of Color or Race, 1865 Mass. Acts, ch. 277 § I (May 16, 1865) (cited in *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 571 (1995)). Many Southern states passed similar laws in the nineteenth century

as they worked to transform attitudes towards race and rebuild the South. *See* NYU Survey at 238.

As the nature of the American economy changed, and awareness of and concern about sex discrimination grew, public accommodations laws were broadened to prohibit discrimination against women. *See Jaycees*, 468 U.S. at 624–25. Today, all states with public accommodations laws prohibit discrimination on the basis not only of race, but also sex. *See* NCSL Chart. Twenty-one states and the District of Columbia have broadened their public accommodations laws to bar discrimination on the basis of sexual orientation. *See id.*

The Colorado law at issue illustrates the degree to which public accommodations laws have evolved to include additional protected groups that were not previously included. In 1895, Colorado enacted the Colorado Anti-Discrimination Act's predecessor, the Public Accommodations Act. Act of April 9, 1895, ch. 61, 1895 Colo. Sess. Laws 139. This law guaranteed that "full and equal enjoyment" of "inns, restaurants, eating houses, barbershops, public conveyances on land or water, theaters, and all other places of public accommodations and amusement," *id.*, and in 1917 explicitly prohibited discrimination because of "race, sect, creed, denomination or nationality," Act of March 30, 1917, ch. 55, 1917 Colo. Sess. Laws 163–64. In 1969, Colorado amended its public accommodations law to prohibit discrimination on the basis of sex, Act of June 7, 1969, ch. 74, 1969 Colo. Sess. Laws 412, and in 2008, Colorado amended the

law to prohibit sexual orientation discrimination. *See* 2008 Colo. Legis. Serv. Ch. 341 (S.B. 08-200).[2]

The prevalence and broadened scope of public accommodations laws reflect a recognition of changes in our society about "the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women." *Jaycees*, 468 U.S. at 626.

C. Public Accommodations Laws Provide Critical Protection For Economic And Dignitary Interests Of Women.

The Colorado Anti-Discrimination Act and other laws prohibiting discrimination in places of public accommodations are fundamental to women's equal participation in American life. These laws protect "against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society." *Romer v. Evans*, 517 U.S. 620, 631 (1996). They grew from and reflect the recognition that sex-based discrimination is an assertion of inferiority that "denigrates the dignity of the excluded" and "reinvokes a history of exclusion."

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[2] The Colorado Anti-Discrimination Act defines "sexual orientation" to mean "an individual's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another individual's perception thereof." Colo. Rev. Stat. § 24-34-301(7).

J.E.B. v. Alabama ex rel. T. B., 511 U.S. 127, 142 (1994). The statutes represent a rejection of "outdated misconceptions concerning the role of females in the home rather than in the 'marketplace and world of ideas.'" *Id.* at 135 (citations omitted).

Public accommodations laws prevent the economic harms that come with denying women equal access to goods or services in the public marketplace. When a woman's opportunity to engage in these transactions is cut off by a commercial business's refusal to serve her equally because of her sex, she must incur the time and expense associated with that transaction. She experiences a standalone harm associated with the denial of that service. *Jaycees*, 468 U.S. at 625. She also incurs the broader injury of unequal opportunity and is thus deprived of the same access to goods, services, and other advantages available to other members of society. *See id.* at 628.

Public accommodations laws also protect critical dignity interests. Laws prohibiting discrimination in public places prevent the "'deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'" *Heart of Atlanta,* 379 U.S. at 250 (quoting S. Rep. No. 88-872, at 16–17 (1964)); *Jaycees*, 468 U.S. at 626 (sex discrimination "deprives persons of their individual dignity"). Public accommodations laws are intended to remedy not just the denial of equal access to the marketplace, but also "'the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public.'" *Daniel v. Paul,* 395 U.S. 298, 307–08 (1969) (citing H.R. Rep. No. 914, at

18 (1963)). Denying a woman equal access to a public establishment on the basis of her sex results in stigmatic harm, as the woman suffering the discrimination is treated as a lesser member of society than her male peers. *See Jaycees*, 468 U.S. at 625. Public accommodations laws thus serve to eliminate patterns of stigma that are perpetuated when certain classes of persons are treated as inferior members of society. *See id.*

In addition to preventing the individual harm associated with unequal access, public accommodations laws prevent aggregate societal loss associated with unequal access. Discrimination in public places "denies society the benefits of wide participation in political, economic, and cultural life." *Jaycees*, 468 U.S. at 625. It imposes "an artificial restriction on the market" that interferes with the flow of goods and services, "caus[es] wide unrest," and "has a depressant effect on general business conditions in . . . communities." *Katzenbach v. McClung*, 379 U.S. 294, 300 (1964).

In these ways, public accommodations laws guarantee women's rights to full participation in the public sphere, in coordination with other key protections. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and state antidiscrimination laws, for example, have afforded women invaluable workplace protections. The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, has prohibited discrimination against a woman on the basis of sex or marital status when she seeks credit to fund a home, car, or education. Title IX of the Education Amend-

ments Act of 1972, 20 U.S.C. § 1681 *et seq*. has prohibited discrimination in federally funded education. The development and enforcement of such antidiscrimination laws thus have increased women's participation in, and contributions to, the economy and served to address the many forms of dignitary harm faced by women.[3]

II. The First Amendment Does Not Exempt Commercial Businesses From Compliance With Public Accommodations Laws.

The First Amendment protects core rights, including freedom of speech, freedom of association, and free exercise of religion. Notwithstanding the values encompassed in the First Amendment, this Court has upheld public accommodations laws against First Amendment challenges by business owners, affirming that compliance with these laws does not constitute a violation of First Amendment rights. *See Jaycees*, 468 U.S. at 623–24; *Board of Di-*

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[3] *See* Gender Pay Inequality: Consequences for Women, Families and the Economy, Joint Econ. Comm., U.S. Cong. at iii (April 2016), https://www.jec.senate.gov/public/_cache/files/0779dc2f-4a4e-4386-b847-9ae919735acc/gender-pay-inequality--us-congress-joint-economic-committee.pdf ("the U.S. economy is $2.0 trillion bigger today than it would have been if women had not increased their participation and hours [in the work-force] since 1970"); Rick Geddes, *Human Capital Accumulation and the Expansion of Women's Economic. Rights*, 55 J. L. & ECON. 839 (2012) (finding that as women's economic rights expanded, human capital investments in girls and young women increased).

rectors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987).

The Court's commitment to public accommodations laws is illustrated in the landmark case *Newman v. Piggie Park Enterprises, Inc.,* 256 F. Supp. 941, 945 (D.S.C. 1966), *aff'd in relevant part and rev'd in part on other grounds,* 377 F.2d 433 (4th Cir. 1967), *aff'd and modified on other grounds,* 390 U.S. 400 (1968). In *Piggie Park*, the district court rejected a restaurant owner's argument that his religious beliefs against integration of races excused him from compliance with the public accommodations law. The district court explained:

> The free exercise of one's beliefs, however, as distinguished from the absolute right to a belief, is subject to regulation when religious acts require accommodation[s] to society . . . Undoubtedly [the restaurant owner] has a constitutional right to espouse the religious beliefs of his own choosing, however, he does not have the absolute right to exercise and practice such beliefs in utter disregard of the clear constitutional rights of other citizens.

256 F. Supp. at 945. The court "refuse[d] to lend credence" to the restaurant owner's position that he has a constitutional right to refuse to serve African-Americans because providing such service would violate his First Amendment right to the free exercise of religion. *Id.* This Court affirmed. *See* 390 U.S. 400.

Like in *Piggie Park*, this Court has upheld public accommodations laws against First Amendment

challenges in the context of sex discrimination. This Court should abide by that precedent here, and require the Company to comply with Colorado's democratically enacted public accommodations law.

A. This Court And Other Courts Have Repeatedly Upheld Laws Prohibiting Discrimination Against Women Over First Amendment Challenges.

As public accommodations laws broadened to include gender discrimination, courts began rejecting outdated attitudes underlying discrimination against women. In the lodestar case *Jaycees,* the Court upheld a Minnesota public accommodations law prohibiting discrimination on the basis of sex over a membership organization's objections that application of this law violated its First Amendment right of free association. 468 U.S. at 614–17. In this free association challenge, the Court balanced the organization's objections against the state's compelling interest in preventing the "unique evils" associated with discrimination in the public marketplace. *Id.* at 628. The Court concluded that the state's "compelling interest in eradicating discrimination against its female citizens justifies the impact that application of the statute" had on the organization's First Amendment freedoms. *Id.* at 623.

In *Jaycees*, the Court emphasized that the public accommodations law "reflects the State's strong historical commitment to eliminating discrimination and assuring its citizens equal access to publicly

available goods and services." *Id.* at 624. The Court observed that Minnesota, like many other states, "adopted a functional definition of public accommodations that reaches various forms of public, quasi-commercial conduct." *Id.* at 625. The breadth of places covered by the public accommodations law included the nonprofit organization at issue, which had a "public, quasi-commercial" nature. *Id.*

The Court's emphasis on the government's interest in applying public accommodations laws to businesses is even more compelling in this case, where a commercial business—not a quasi-commercial nonprofit organization—has refused service to a member of the public. *See id.* Indeed, in a concurrence, Justice O'Connor expanded on the special importance of public accommodations laws to the commercial marketplace. The Constitution, the Justice explained, does not protect a business owners' discriminatory practices:

> The Constitution does not guarantee a right to choose employees, customers, suppliers, or those with whom one engages in simple commercial transactions, without restraint from the State. A shopkeeper has no constitutional right to deal only with persons of one sex. . . . An association must choose its market. Once it enters the marketplace of commerce in any substantial degree it loses the complete control over its membership that it would otherwise enjoy if it confined its affairs to the marketplace of ideas.

Id. at 634, 636. The Justice underscored that the government has a "profoundly important goal of ensuring nondiscriminatory access to commercial opportunities in our society." *Id.* at 632.

The Court has similarly rejected First Amendment justifications for noncompliance with laws prohibiting sex discrimination in the employment context. In *Pittsburgh Press Co. v. Pittsburgh Committee on Human Relations*, for example, a newspaper violated a municipal nondiscrimination ordinance by advertising employment opportunities based on sex—i.e. "Jobs—Male Interest" and "Jobs—Female Interest." 413 U.S. 376, 392 (1973). The Court held that there is no First Amendment free speech right to engage in illegal activity—in this case, employment discrimination based on sex. *See id.* at 389. Similarly, the Court rejected a law firm's argument that the First Amendment entitled it to restrict partnership to men. *See Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984). The Court found the law firm's First Amendment argument unpersuasive, noting "[i]nvidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections." *Id.* (internal quotations and citation omitted).

The Court reiterated these principles when a local Rotary club seeking to exclude women from its membership challenged a California public accommodations law guaranteeing all persons equal access to business establishments. *Duarte*, 481 U.S. at

539–41 & 541 n.2 (1987). The Court acknowledged that the public accommodations law "does work some slight infringement on Rotary members' right of expressive association." *Id.* at 549. Nevertheless, "that infringement is justified because it serves the State's compelling interest in eliminating discrimination against women." *Id.*

A number of state courts also have rejected First Amendment challenges to laws prohibiting discrimination against women in places of public accommodation. In *In re McClure v. Sports & Health Club*, for example, owners of a sports club routinely hired and fired female employees based on a biblical interpretation that disapproved of single women working without their fathers' permission and married women working without their husbands' permission. 370 N.W. 2d 844, 847 (Minn. 1985). Although the club's owners asserted that their practices were lawful exercises of their First Amendment rights to free speech, freedom of association, and free exercise, the Minnesota Supreme Court concluded that the club's employment policies regarding women violated the employment discrimination and public accommodations sections of Minnesota's antidiscrimination statute. *See id.*

In enforcing the antidiscrimination protections, the Minnesota Supreme Court acknowledged that the business owners had "deeply held and sincere religious beliefs," and that Minnesota's antidiscrimination statute conflicted with those beliefs. *Id.* at 852. Nevertheless, the court determined that the business owners' beliefs could not exempt

them from the state antidiscrimination law. *See id.* at 853. "The government," the court reasoned, "has a responsibility to afford its citizens equal access to all accommodations open to the general public." *Id.* Other state courts, relying on this Court's precedents, have reached the same conclusion. *See Warfield v. Peninsula Golf & Country Club*, 10 Cal. 4th 594 (Cal. 1995) (application of public accommodations law to a male-only private golf club did not violate members' First Amendment rights); *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274, 280 (Alaska 1994) (state antidiscrimination statute applied to landlord who refused to rent to an unmarried woman cohabitating with a man over the landlord's free exercise objection to premarital cohabitation).

This Court and other lower courts have demonstrated a deep commitment to laws that protect against discrimination on the basis of sex. In repeatedly holding that the First Amendment does not provide a shield for discrimination against women, courts have advanced the profoundly important goal of equal participation for all in public life.

B. This Court Should Uphold Public Accommodations Laws For Lesbian And Gay Persons, As It Does For Other Protected Groups.

Just as this Court has upheld public accommodations laws over First Amendment challenges in the context of race and gender, its precedents support

upholding laws prohibiting discrimination against lesbian and gay persons in the public marketplace—a class of persons for whom this Court has recognized the importance of equal citizenship under law. *See Windsor*, 133 S. Ct. at 2696.

In recent years, this Court has recognized the critical importance of equal respect under the law for gay and lesbian individuals. In *Lawrence v. Texas*, this Court held that a law making same-sex intimacy a crime "demeans the lives" and "control[s]. . . [the] destiny" of lesbian and gay persons. 539 U.S. 558, 575, 578 (2003). This Court stressed that criminalizing same-sex intimacy "is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres." *Id.* at 575.

This Court also has recognized the importance of equal dignity under the law for same-sex couples in the context of marriage. In *Windsor*, the Court recognized that a federal statute denying equal rights to same-sex couples effectuated not just a denial of the economic benefits tied to marriage but also a "differentiation [that] demeans the couple, whose moral and sexual choices the Constitution protects and whose relationship the State has sought to dignify." 133 S. Ct. at 2694. Denying respect to these marriages deprives couples of equality by withholding "a relationship deemed by the State worthy of dignity in the community equal with all other marriages." *Id.* at 2692–93. Moreover, treating same-sex couples unequally under law "humiliates tens of thousands of children now being raised by same-sex couples." *Id.* at 2694.

In *Obergefell*, this Court held that denying same-sex couples the right to marry, "[e]specially against a long history of disapproval of their relationships," imposed a disability on lesbian and gay persons that "serve[d] to disrespect and subordinate them." 135 S. Ct. at 2604. The Court recognized that while "[t]he limitation of marriage to opposite-sex couples may long have seemed natural and just," society now recognizes that "laws excluding same-sex couples from the marriage right impose stigma and injury of the kind prohibited by our basic charter." *Id.* at 2602.

State legislatures, too, have recognized the harms caused by stigmatizing gay and lesbian persons and have broadened public accommodation laws to prohibit discrimination based on sexual orientation. These laws repeatedly have been upheld by state courts over First Amendment challenges. For example, a medical group and its physicians claimed a free speech and a free exercise right to deny fertility treatment to lesbian patients. *See North Coast Women's Care Med. Grp., Inc. v. San Diego Cty. Superior Court*, 189 P.3d 959, 964 (2008). Though the Supreme Court of California acknowledged that compliance with the law "pose[d] an incidental conflict with the [physicians'] religious beliefs," it ultimately rejected the physicians' First Amendment arguments and enforced a California public accommodations statute prohibiting commercial businesses

from discriminating on the basis of sexual orientation. *Id.* at 966–97.[4]

State v. Arlene's Flowers, Inc. is another example. There, a flower shop owner refused to sell flowers to a gay man for his wedding on the grounds that doing so would violate her religious beliefs. 187 Wash. 2d 804, 814–15 (2017). The shop owner argued that applying the state's bar on discrimination on the basis of sexual orientation in public accommodations violated her free speech, free association, and free exercise rights under the First Amendment. *Id.* at 814.

The Supreme Court of Washington rejected the owner's First Amendment claims, reasoning that "[i]ndividuals who engage in commerce necessarily accept some limitations on their conduct." *Id.* at 829. The court held that the "commercial sale of floral arrangements" did not convey a particularized message that would be understood by those who viewed it. *Id.* at 832. Accordingly, the public accommodations law did not violate the owner's free speech protections.

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[4] In rejecting the physicians' free exercise challenge, the court in *North Coast* concluded that the state public accommodations law was a valid and neutral law of general applicability. 189 P.3d at 966–97. In denying their free speech challenge, the court reasoned that "simple obedience to a law that does not require one to convey a verbal or symbolic message cannot reasonably be seen as a statement of support for the law or its purpose." *Id.* at 967 (internal quotations omitted).

Id. at 832–38. The court also rejected the owner's free exercise argument, reasoning that the public accommodations statute was a "neutral, generally applicable law" that "is rationally related to the government's legitimate interest in ensuring equal access to public accommodations." *Id.* at 843.

The Supreme Court of New Mexico similarly held that a photography company that refused to photograph a wedding for a same-sex couple could not defend its actions on free speech or free exercise grounds. *See Elane Photography, LLC v. Willock*, 309 P.3d 53 (N.M. 2013), *cert. denied*, 134 S. Ct. 1787 (2014). The court rejected the photographer's claim that it did not violate the public accommodations law "because it will photograph a gay person (for example, in single-person portraits) so long as the photographs do not reflect the client's sexual preferences." *Id.* at 72–73. "If a restaurant offers a full menu to male customers," the court explained, "it may not refuse to serve entrees to women, even if it will serve them appetizers." *Id.* at 62. The public accommodations law does "not permit businesses to offer a 'limited menu' of goods or services to customers on the basis of a status that fits within one of the protected categories," and the photography company's willingness to offer some services to a woman marrying another woman "does not cure its refusal to provide other services that it offered to the general public." *Id.* *See also Gifford v. McCarthy*, 137 A.D.3d 30, 38–43 (N.Y. 2016) (the refusal of operators of a wedding facility to host a wedding for a same-sex couple violated the state's public accommo-

dations law and was not excused on free speech or free exercise grounds).

In this same vein, the Colorado Court of Appeals concluded in this case that the application of the Colorado Anti-Discrimination Act did not infringe the Company's freedom of speech or free exercise of religion. Pet. App. 1a–53a. In line with the decisions of other courts, the Colorado Court of Appeals emphasized that the Company was not being required to convey any message of support for marriage between same-sex couples, and that the public accommodations statute was a neutral law of general applicability and satisfied rational basis review. The court emphasized that the law "prevents the economic and social balkanization prevalent when businesses decide to serve only their own 'kind.'" Pet. App. 50a.

For the same reasons that this Court has rejected challenges to public accommodation laws in the context of race and sex discrimination, it should also reject the Company's challenge here.

C. There Is No Constitutional Basis For Permitting Discrimination In Violation of Public Accommodations Laws Against Some Protected Groups But Not Others.

In its *Amicus* brief, the federal government makes the remarkable assertion that, although it is permissible under the First Amendment to prohibit racial discrimination in the public marketplace,

"[t]he same cannot be said" for discrimination based on sexual orientation. United States Amicus Br. 31–33. According to the federal government, "racial bias is a familiar and recurring evil that poses unique historical, constitutional, and institutional concerns," but, in contrast, "the Court has recognized that opposition to same-sex marriage 'long has been held—and continues to be held—in good faith by reasonable and sincere people.'" *Id.* at 32 (quoting *Obergefell*, 135 S. Ct. at 2594). This argument does not withstand scrutiny.

The federal government's reliance on *Obergefell* in support of this position is utterly misplaced. In citing *Obergefell,* the federal government relies on the Court's summary of the argument made by state government officials opposing marriage between same-sex couples—not the Court's legal reasoning or conclusions. *See* United States Amicus Br. 32. In fact, the Court in *Obergefell* made clear that although until the mid-twentieth century "many persons did not deem homosexuals to have dignity in their own distinct identity," in more recent years, "same-sex couples began to lead more open and public lives and to establish families." 135 S. Ct. at 2596. According to the Court, this shift prompted an extensive societal discussion of the rights of lesbian and gay persons and a change in public attitudes toward greater acceptance of this group. *Id.* The Court concluded that while limiting marriage "to opposite-sex couples may long have seemed natural and just," that limitation's inconsistency with the fundamental right to marry is now manifest. *Id.* at 2602.

Although this Court has subjected different forms of discrimination to different levels of scrutiny in considering challenges to duly enacted laws and other governmental action under the equal protection clause, it has never concluded that some groups protected by democratically-enacted antidiscrimination laws are worthier of freedom from discrimination than others. In the context of discrimination against women, this Court has specifically recognized that a state has a "compelling interest in eradicating discrimination against its female citizens," and indeed that this is an interest "of the highest order." *Jaycees*, 468 U.S. at 623, 624. The Court in *Jaycees* expressly relied upon precedents addressing racial discrimination to hold in the context of sex discrimination too that "acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages cause unique evils that government has a compelling interest to prevent." *Id.* at 628. The Court should affirm that the government also has a compelling interest in eliminating discriminatory exclusion of gay and lesbian people from civic life. *See Windsor*, 133 S. Ct. at 2696.[5]

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[5] The Court's recognition that eradication of sex discrimination is a compelling state interest is particularly relevant in determining the treatment of laws prohibiting discrimination on the basis of sexual orientation. Sexual orientation discrimination is a form of sex discrimination. *See Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339, 345 (7th Cir. 2017) (holding that a person who alleges that she experienced employment discrimi-
(...continued)

The important principle that commercial businesses have no constitutional right to discriminate applies equally to the context of all groups protected by public accommodation laws. *See Jaycees*, 468 U.S. at 628. When followers of a particular religion "enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory scheme which are binding on others in that activity." *United States v. Lee*, 455 U.S. 252, 261 (1982); *see also Hishon*, 467 U.S. at 78.

The Court has been particularly skeptical of religious-based justifications for noncompliance with valid laws where such noncompliance harms third parties. Indeed, this Court has never held that an individual's religious beliefs excuse him from compli-

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nation on basis of her sexual orientation has put forth case of sex discrimination for Title VII purposes). Sex is the but-for cause of the discrimination experienced by Mullins and Craig. Discrimination based on sexual orientation and discrimination based on sex typically share a foundation in gender stereotypes or gender-based expectations. *See, e.g.*, *Doe ex rel. Doe v. City of Belleville, Ill.*, 119 F.3d 563, 593 n.27 (7th Cir. 1997) ("There is, of course, a considerable overlap in the origins of sex discrimination and homophobia, and so it is not surprising that sexist and homophobic epithets often go hand in hand."), *vacated and remanded on other grounds*, 523 U.S. 1001 (1998); *Henderson v. Labor Finders of Va., Inc.*, No. 3:12-CV-600, 2013 WL 1352158, at *5 (E.D. Va. Apr. 2, 2013) ("[A]s a result of the well-documented relationship between perceptions of sexual orientation and gender norms, gender-loaded language can easily be used to refer to perceived sexual orientation and vice versa.").

ance with an otherwise valid law where an exemption would hurt third parties or the general public. *See Catholic Charities of Sacramento, Inc. v. Super. Ct.*, 32 Cal. 4th 527, 565 (2004) ("We are unaware of any decision in which . . . the United States Supreme Court[] has exempted a religious objector from the operation of a neutral, generally applicable law despite the recognition that the requested exemption would detrimentally affect the rights of third parties."). *See also Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 n.37 (2014) (holding that in applying the Religious Freedom Restoration Act, "'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries'" (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)); *id.* at 2760 (allowing certain closely-held for-profit companies to avoid complying with the Affordable Care Act's contraceptive coverage requirement because there were less restrictive means available where the effect "on the women employed by *Hobby Lobby* and the other companies involved in these cases would be precisely zero").

This Court's past precedents make clear that there is no basis for allowing business to evade statutory protections for some protected groups but not others. The Court's rejection of First Amendment justifications for noncompliance with public accommodations laws should be applied to *all* protected groups, particularly where, as here, the religious objector voluntarily engages in commercial activity and given the harm to the rejected class of customer. The Court has repeatedly made clear that public accommodations laws prevent the unique harms associated

with discrimination on the public marketplace. *See, e.g.*, *Duarte*, 481 U.S. at 549. Were courts to "carve out a patchwork of exceptions for ostensibly justified discrimination, that purpose would be fatally undermined." *Arlene's Flowers*, 187 Wash. 2d at 851–52.

III. This Court's Acceptance Of The Company's First Amendment Arguments Would Undermine Laws Prohibiting Discrimination Against Women And Other Protected Classes.

The Company advances a number of First Amendment defenses to discrimination on the basis of sexual orientation which, if accepted, would undermine antidiscrimination laws aimed at guaranteeing equal opportunity for full participation in our society for women and other protected classes.

A. Accepting The False Premise That Providing Goods Or Services Conveys Endorsement Of The Customer Would Undermine Antidiscrimination Laws.

Critical to the Company's argument is the notion that by selling a gay couple a wedding cake, the owner of the Company is "endorsing" their marriage. *See* Pet. Br. at 19–20, 23–25. A viewer of the cake, the Company says, would understand that the cake "celebrates and expresses support for the couple's marriage." *Id.* at 24; *see also* United States Amicus Br. 3, 23–25, 29 (asserting that selling a wedding cake would personally endorse the ceremony).

The Company's argument is meritless. Commercial businesses do not—and cannot conceivably—endorse each and every customer they serve. Nor do commercial businesses endorse the customer's subsequent use of the good or service once it is sold. To hold otherwise would not only contravene this Court's First Amendment jurisprudence, but also would have the potential to vitiate antidiscrimination laws.

To implicate First Amendment protections, *some* message must be attributed to the putative speaker. *See Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 65 (2006). In *Rumsfeld*, law schools sought to avoid the Solomon Amendment, which required schools to provide access to military representatives for recruiting purposes as a condition for federal funding. *See id.* at 52. The schools asserted that the law forced them to express a message of which they disapproved—the military's "Don't Ask, Don't Tell" policy. *Id.* at 64–65.

The Court disagreed, emphasizing that nothing about compliance with the nondiscrimination mandate in recruiting "suggests that law schools agree with any speech by recruiters." *Id.* at 65. The Court relied on *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 88 (1980), where it rejected a shopping center owner's argument that a law requiring him to permit certain expressive activities on his property on a nondiscriminatory basis constituted compelled speech. *See id.* The law did not implicate First Amendment protections, the Court concluded, be-

cause the owner remained free to disassociate himself from those views, and he was "not . . . being compelled to affirm [a] belief in any governmentally prescribed position or view." *Id.* *See also Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 655 (1994) (cable viewers likely would not assume that broadcasts carried on a cable system convey ideas or messages endorsed by the cable operators).

The same is true here. The Colorado Anti-Discrimination Act, like many other such laws, simply requires commercial businesses open to the public to serve people of all sexual orientations. Colo. Rev. Stat. § 24-34-601(2). The law does not require commercial businesses to host or speak another speaker's message. The commercial context here differs from the setting of *Hurley* because there, the state was applying an antidiscrimination law to a parade, a purely expressive event. *See* 515 U.S. at 566, 568. Unlike the parade organizer, the Company is not attributed with an unwanted message at a subsequent event.

Nothing about compliance with an antidiscrimination mandate in the provision of goods and services in the public marketplace suggests that a business *agrees* with its customers, or how the customers utilize those products. Just as "high school students can appreciate the difference between speech a school sponsors and speech the school permits because legally required to do so, pursuant to an equal access policy," *Rumsfeld*, 547 U.S. at 65, the public understands that commercial businesses are legally required to render services for wedding recep-

tions, or any other services or product, on a nondiscriminatory basis.

Like the shopping center owner complying with a nondiscrimination mandate, no reasonable observer would understand the Company's provision of wedding cakes to same-sex couples on an equal basis as heterosexual couples to be an endorsement of same-sex marriage. *See PruneYard*, 447 U.S. at 88. There are myriad conclusions that a reasonable observer might draw from the Company's compliance with a nondiscrimination requirement in selling wedding cakes to both gay and straight customers. A bakery might sell to both gay and straight customers (i) because it is required by law to sell goods and services to all persons regardless of sexual orientation, (ii) because its goal is to increase revenue by reaching as many customers as possible, or (iii) simply because it did not question a customer about his sexual orientation. But it would be farfetched to conclude that the Company was endorsing gay marriage simply by selling a wedding cake on a nondiscriminatory basis as required by law.

Accepting the flawed premise that providing goods or services conveys endorsement of the customer not only would harm gay and lesbian persons seeking goods and services, it would undermine anti-discrimination laws that are critical to the equal citizenship status of women. If carried to its logical conclusion, a restaurant owner who has a religious objection to women working outside of the home could refuse to serve a woman at a business lunch. A retail boutique owner who has a religious objection to

pregnancies outside of marriage could refuse to sell clothes to a pregnant woman without a wedding ring. A hotel owner who opposes interracial marriage on religious grounds could refuse to rent a honeymoon suite to an interracial couple. It would be dangerous to the free flow of goods and services—and the recognition of all person's equal rights under law—if commercial businesses could selectively refuse to serve certain customers based on their identity.

B. Allowing Commercial Businesses To Discriminate Based On Creative Efforts Would Compromise Fundamental Anti-discrimination Laws.

The Company argues that the creative efforts that go into its cakes render them expressive, and therefore shielded by the First Amendment. Pet. Br. 18–23. "Much like an artist sketching on canvas or a sculptor using clay," the Company argues, Phillips "meticulously crafts each wedding cake through hours of sketching, sculpting, and hand-painting," *id.* at 1, and the cake therefore "announces through Phillips's voice that a marriage has occurred and should be celebrated." *Id.* at 2.

The Company's position is untenable. The Colorado legislature has enacted a law prohibiting commercial businesses from refusing to provide goods or services because of a customer's sexual orientation. Colo. Rev. Stat. § 24-34-601(2). Allowing creative efforts that go into goods or services to be a basis to exempt commercial businesses from public

accommodations law would authorize discrimination not only on the basis of sexual orientation, but also sex, race, and other protected characteristics. Furthermore, it would threaten to reinstate a system of race and sex-based discrimination that the Court has decidedly left in the past.

By the Company's logic, any business that involves creative expression can claim the right to discriminate under the First Amendment. Pet. Br. 1–2, 18–23. The federal government lends the Company its support, and offers hollow assurances that this standard will result in a "narrow set of applications." United States Amicus Br. at 21. The Company and the federal government, however, underestimate the creativity inherent in numerous professions—from food preparation to clothing design to advertising—and the expansive implications if this Court were to confer on the Company a right to discriminate.

Contrary to the Company and the federal government's assertions, the possibilities for discrimination extend far beyond wedding cakes for same-sex couples. As with the Company's arguments regarding the perceived endorsement of particular ideas, its arguments regarding creative expression could be deployed in a wide range of contexts. Under the Company's logic, a print shop could deny custom business cards to women when the shop owner's religion disapproves of women working outside the home. Likewise, nothing would prevent a florist who opposes particular medical procedures based on religious beliefs from refusing to sell flowers to women

undergoing fertility or miscarriage related medical procedures. Similarly, a jewelry designer could refuse to provide a ring to a mixed-faith couple for their wedding.

Antidiscrimination laws are enacted to prevent the precise type of discrimination that occurred in this case. And, contrary to the Company's claims, such laws are not attacks on artistic judgments. The Colorado Anti-Discrimination Act was not intended to implicate any of the Company's artistic judgments, or the judgments of others like it. *See* Colo. Rev. Stat. § 24-34-601(2). All the law requires is that if a business chooses, in its own artistic judgment, to create certain products and offer them to the public, it may not refuse to provide those same products to certain customers based on their race, sex, sexual orientation or other protected characteristics. The Company's claim that creative efforts should exempt commercial businesses from antidiscrimination laws should be rejected.

The hypotheticals above, along with the stark facts here of the Company's refusal to provide a wedding cake to a gay couple due to their sexual orientation, recall the days of segregated lunch counters and an era of the exclusion of women from the public sphere. This Court has explicitly rejected such discrimination in cases such as *Piggie Park* and *Jaycees*. This Court should not allow decades of its jurisprudence to be eroded simply because baking a wedding cake, like the production of many other goods and services, involves some creativity, as many other commercial services could also claim.

CONCLUSION

For the reasons set forth above, the Company's First Amendment justifications for discrimination on the basis of sexual orientation should be rejected, and the judgment of the Colorado Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

INTERESTS OF *AMICI CURIAE* JOINING THE NATIONAL WOMEN'S LAW CENTER

American Sexual Health Association

The American Sexual Health Association is a nonprofit organization that promotes the sexual health of individuals, families, and communities by advocating sound policies and practices and educating the public, professionals, and policy makers in order to foster healthy sexual behaviors and relationships and prevent adverse health outcomes. We work to ensure that sexual and reproductive health and rights are universally recognized, and comprehensive sexual health information and services are accessible and available to all, free from coercion, violence, and discrimination.

California Women Lawyers

California Women Lawyers ("CWL") is a nonprofit organization chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, to eliminate all inequities based on sex, and to provide an organization for collective action and expression germane to the aforesaid purposes. CWL has also participated as *Amicus Curiae* in a wide range of cases to secure the equal treatment of women and other classes of persons under the law.

Center for Reproductive Rights

The Center for Reproductive Rights is a global advocacy organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to respect, protect, and fulfill. In the U.S., the Center's work focuses on ensuring that all people have access to a full range of high-quality reproductive health care. Since its founding in 1992, the Center has been actively involved in nearly all major litigation in the U.S. concerning reproductive rights, in both state and federal courts. As a rights-based organization, the Center has a vital interest in ensuring that individuals and businesses abide by anti- discrimination laws when serving the public.

Center on Reproductive Rights and Justice at UC Berkeley

The Center on Reproductive Rights and Justice at UC Berkeley School of Law seeks to realize reproductive rights and advance reproductive justice by bolstering law and policy advocacy efforts, furthering scholarship, and influencing academic and public discourse. Our work is guided by the belief that all people deserve the social, economic, political, and legal conditions necessary to make genuine decisions about reproduction.

Colorado Women's Bar Association

The Colorado Women's Bar Association (CWBA) is an organization of over 1200 Colorado attorneys, judges, legal professionals, and law students founded in 1978 and dedicated to promoting women in the le-

gal profession and the interests of women generally. The CWBA has an interest in this case because its members, their clients, and other women in Colorado continue to experience discrimination based on sex and other protected statuses.

Courage Campaign

Courage Campaign is a nonprofit that organizes the people of California to demand courage from our leaders. We focus on economic justice, human rights, and corporate/political accountability. As part of our human rights work, we have long advocated for the civil rights of LGBTQ community, including a major role in the legal fight against CA's Proposition 8 passed in 2008.

Hadassah, The Women's Zionist Organization of America, Inc.

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, is the largest Jewish and women's membership organization in the United States, with over 330,000 Members, Associates and supporters nationwide. While traditionally known for its role in developing and supporting health care and other initiatives in Israel, Hadassah has a proud history of protecting the rights of women and the Jewish community in the United States. Hadassah vigorously condemns discrimination of any kind and, as a pillar of the Jewish community, understands the dangers of bigotry. Hadassah strongly supports the constitutional guarantees of religious liberty and equal protection, and rejects discrimination on the basis of sexual orientation.

If/When/How: Lawyering for Reproductive Justice

If/When/How trains, networks, and mobilizes law students and legal professionals to work within and beyond the legal system to champion reproductive justice. We believe reproductive justice will exist when all people have the ability to decide if, when, and how to create and sustain families with dignity, free from discrimination, coercion, or violence. To allow a business to discriminate against people based on their sexual orientation in the name of religion and free speech has far reaching, negative implications for the rights of women and other marginalized groups.

International Action Network for Gender Equity and Law

The International Action Network for Gender Equity and Law ("IANGEL") is a non-profit organization dedicated to advancing gender equity and protecting the human and civil rights of women and girls, through peaceful legal means. IANGEL advances its mission by connecting the lawyers and legal associations willing to donate their skills and energy to organizations working to promote the cause of gender equality locally, nationally, and globally, and by advocating for laws, policies, and practices that prevent all forms of gender discrimination.

Lawyers Club of San Diego

Lawyers Club of San Diego is a 1,300+ member legal association established in 1972 with the mis-

sion "to advance the status of women in the law and society." In addition to presenting educational programs and engaging in advocacy, Lawyers Club participates in litigation as an *Amicus Curiae* where the issues concern the advancement of the status of women in the law and society. As Northwestern law professor Andrew Koppleman wrote in 1994: "The effort to end discrimination against gays should be understood as a necessary part of the larger effort to end the inequality of the sexes." Accordingly, Lawyers Club joins the amicus brief authored by the National Women's Law Center on the grounds that permitting discrimination based on sexual orientation would negatively impact gender and racial equality efforts.

League of Women Voters of the United States

The League of Women Voters of the United States (the League) is a non-partisan community-based organization that encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. Founded in 1920, as an outgrowth of the struggle to win votes for women, the League is organized in over 700 communities and in every state, with more than 150,000 members and supporters nationwide. The League of Women Voters was founded on the belief that our democracy is enhanced by a diversity of voices. The League has long standing positions, agreed to by our members, that support equal rights for all and oppose discrimination based on race, color, gender, religion, national origin, age, sexual orientation, or disability.

Legal Momentum

Legal Momentum, founded in l970, is a non-profit legal organization dedicated to the rights of all women and men. Legal Momentum has consistently supported the right of lesbians and gay men to marry and to otherwise live and work free of government-enforced gender stereotypes, and free from discrimination on the basis of sexual orientation. Legal Momentum has developed numerous resources and appeared before this Court in many cases concerning the right to be free from sex discrimination and gender stereotypes, including appearing as counsel in *Nguyen v. INS*, 533 U.S. 53 (2001), and *Miller v. Albright*, 523 U.S. 420 (1998), and as *Amicus Curiae* in *U.S. v. Virginia*, 518 U.S. 515 (1996), and *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982).

Legal Voice

Legal Voice, founded in 1978 as the Northwest Women's Law Center, is a Seattle-based non-profit public interest organization dedicated to protecting the rights of women and girls through litigation, legislative advocacy, and the provision of legal information and education. Legal Voice's work includes decades of advocacy to enact and enforce antidiscrimination laws and to eradicate gender-based discrimination in every area where it is present. Legal Voice has participated as counsel and as amicus curiae in cases throughout the Northwest and the country.

Maine Women's Lobby

The Maine Women's Lobby works to ensure that women can live lives free of discrimination. We strongly support marriage equality, and we believe that for it to have meaning, it must include equal access to goods and services.

Ms. Foundation for Women

The Ms. Foundation's mission is to build women's collective power to realize a nation of justice for all. Since 1973, the MFW has been investing in building the power of women in the U.S. so that women and girls can live equally and participate fully in our democracy. MFW supports efforts to fight against discrimination on the basis of sexual orientation and gender identity.

NARAL Pro-Choice America

NARAL Pro-Choice America is a national advocacy organization, dedicated since 1969 to supporting and protecting, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices through education, organizing, and influencing public policy. NARAL Pro-Choice America works to guarantee every woman the right to make personal decisions regarding the full range of reproductive choices, including freedom from gender discrimination under the guise of religious freedom.

National Asian Pacific American Women's Forum

The National Asian Pacific American Women's Forum (NAPAWF) is the only national, multi-issue Asian American and Pacific Islander (AAPI) organization for women, transgender, and gender non-conforming people in the country. NAPAWF's mission is to build a movement to advance social justice and human rights for AAPI communities. We advocate for gender and racial justice for AAPI immigrants, who are particularly vulnerable to harm within the immigration and justice systems because of discrimination, economic status, limited education and resources, and high rates of limited English proficiency.

National Employment Law Project

The National Employment Law Project ("NELP") is a non-profit legal organization with over 45 years of experience advocating for the labor and civil rights of low-wage workers and the unemployed. NELP seeks to eradicate discrimination in employment and more broadly in society. NELP has litigated and participated as *Amicus Curiae* in numerous cases in federal circuit and state courts and the U.S. Supreme Court addressing the importance of anti- discrimination protections.

National Institute for Reproductive Health

The National Institute for Reproductive Health is a non-profit advocacy organization working across the country to increase access to reproductive health care by changing public policy, galvanizing public

support, and normalizing women's decisions to have abortions and use contraception. In order to support the vision of a society in which each person has the freedom to control their reproductive and sexual lives, the National Institute for Reproductive Health seeks to preserve women's right to comprehensive reproductive health care and has filed or participated in numerous amicus briefs in cases that affect this right.

National Organization for Women Foundation

The National Organization for Women Foundation ("NOW Foundation") is a 501(c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal opportunity, among other objectives, and works to assure that women and LGBTQIA persons are treated fairly and equally under the law. As an education and litigation organization, NOW Foundation is also dedicated to eradicating sex-based discrimination—including discrimination against LGBTQIA persons.

National Partnership for Women & Families

The National Partnership for Women & Families (formerly the Women's Legal Defense Fund) is a national advocacy organization that promotes fairness in the workplace, reproductive health and rights, quality health care for all, and policies that help women and men meet the dual demands of work and family. Since its founding in 1971, the National Partnership has worked to advance women's equal

employment opportunities and health through several means, including by challenging discriminatory employment practices in the courts. The National Partnership has fought for decades to combat sex discrimination and to ensure that all people are afforded protections against discrimination.

Physicians for Reproductive Health

Physicians for Reproductive Health ("Physicians") is a doctor-led nonprofit that seeks to assure meaningful access to comprehensive reproductive health services, including contraception and abortion, as part of mainstream medical care. Founded in 1992, the organization currently has more than 6,000 members across the country, including more than 3,000 physicians who practice in a range of fields: obstetrics and gynecology, pediatrics, family medicine, emergency medicine, cardiology, public health, neurology, radiology, and more.

Planned Parenthood Federation of America

Planned Parenthood Federation of America is the oldest and largest provider of reproductive health care in the United States, delivering health care services through over 600 health centers operated by 56 affiliates across the United States. Its mission is to provide comprehensive reproductive health care services and education to all who request it, regardless of race, color, sex, sexual orientation, or gender identity, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to reproductive health services.

Sargent Shriver National Center on Poverty Law

The Sargent Shriver National Center on Poverty Law ("Shriver Center") has a vision of a nation free from poverty with justice, equity, and opportunity for all. The Shriver Center provides national leadership to promote justice and improve the lives and opportunities of people with low income, by advancing laws and policies, through litigation and policy advocacy, to achieve justice for our clients. The Shriver Center rejects all forms of discrimination as a threat to justice, including discrimination against any person as a result of their being lesbian, gay, bisexual, or transgender.

SisterReach

SisterReach, founded October 2011, is a Memphis, Tennessee based grassroots 501(c)(3) nonprofit supporting the reproductive autonomy of women and teens of color, poor women/womyn, rural women, gender non-conforming people and their families through the framework of Reproductive Justice. Our mission is to empower our base to lead healthy lives, raise healthy families, and live in healthy communities. We provide comprehensive reproductive and sexual health education to marginalized women, teens, and gender non-conforming people, and advocate on the local, state and national levels for public policies which support the reproductive health and rights of all women and youth. Since 2011, SisterReach has worked to secure equal opportunities for women, girls, and gender non-conforming people,

through full enforcement of laws prohibiting discrimination and reproductive oppression.

Southwest Women's Law Center

The Southwest Women's Law Center is a non-profit policy and advocacy Law Center that was founded in 2005 with a focus on advancing opportunities for women and girls in the state of New Mexico. We work to ensure that women have equal access to quality, affordable healthcare, access to equal pay, and that girls in middle and high school have equal access to sports programs. Our work strongly supports protections for individuals, without regard to sexual orientation, as we advocate to eliminate the full range of stereotypes and biases that women and LGBT individuals often face. Accordingly, the Law Center is uniquely qualified to comment on the decision in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*.

The Women's Law Center of Maryland, Inc.

The Women's Law Center of Maryland, Inc. (WLC) is a non-profit, membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, employment law, family law, and reproductive rights. Through its direct services and advocacy, the Women's Law Center seeks to protect women's legal rights and ensure equal access to resources and remedies under the law. The Women's Law Center agrees with the proposition that sex, gender, and sexual orientation are intrinsically intertwined, particularly in the realm of discrimination. The concerns and struggles of the

LGBTQ community impact all women, regardless of sexual orientation.

Women Employed

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed believes that to allow a business to disregard non-discrimination protections in the name of religion and free speech will certainly have a negative impact on the civil rights of women to be free from sex discrimination.

Women Lawyers Association of Los Angeles

Women Lawyers Association of Los Angeles ("WLALA") is a nonprofit organization comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA has participated as an amicus in cases involving discrimination before this Court and the federal Courts of Appeals. WLALA believes that bar associations have a special obligation to protect the core guarantees of our Constitution to secure equal opportunity for women and

girls through the full enforcement of laws prohibiting discrimination.

Women Lawyers of Sacramento

Women Lawyers of Sacramento ("WLS") is a non-profit organization founded on the belief that women deserve equal rights, respect and opportunities in the workplace and in society at large. WLS dedicates itself to (1) promoting the full and equal participation of women lawyers and judges in the legal profession, (2) maintaining the integrity of our legal system by advocating principles of fairness and equal access to justice, (3) improving the status of women in our society, and (4) advocating for equal rights, reproductive choice, equal opportunity and pay for women, and current social, political, economic, or legal issues of concern to the members of WLS.

Women Lawyers On Guard Inc.

Women Lawyers On Guard Inc. is a national non-partisan organization harnessing the power of lawyers and the law in coordination with other non-profit organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all.

Women's Bar Association of Massachusetts

The Women's Bar Association of Massachusetts ("WBA") is a professional association comprised of over 1,500 members, including judges, attorneys, and policy makers dedicated to advancing and protecting the interests of women. In particular, the WBA advocates for public policy that improves the lives of

women and their children. The WBA has filed and joined many amicus briefs in state and federal courts on legal issues that have a disproportionate impact on women, including cases involving sexual discrimination, family law, domestic violence, and employment discrimination.

Women's Bar Association of the District of Columbia

Founded in 1917, the Women's Bar Association of the District of Columbia (WBA) is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, we continue to pursue our mission of maintaining the honor and integrity of the profession; promoting the administration of justice; advancing and protecting the interests of women lawyers; promoting their mutual improvement; and encouraging a spirit of friendship among our members. We believe that the administration of justice includes the full enforcement of laws prohibiting discrimination. The WBA has participated in cases before this Court involving the protection of women's rights.

Women's Bar Association of the State of New York

The Women's Bar Association of the State of New York ("WBASNY") is the second largest statewide bar association in New York and one of the largest women's bar associations in the United States. Its

more 4,200 members in its nineteen chapters[6] include esteemed jurists, academics, and attorneys who practice in every area of the law, including constitutional and civil rights. WBASNY is dedicated to fair and equal administration of justice, and it has participated as an amicus in many cases before this Court as a vanguard for the rights of women, minorities, LGBT persons, and others.

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[6] WBASNY's affiliated organizations consist of nineteen regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. The affiliates are: Chapters – Adirondack Women's Bar Association; The Bronx Women's Bar Association, Inc.; Brooklyn Women's Bar Association, Inc.; Capital District Women's Bar Association; Central New York Women's Bar Association; Del-Chen-O Women's Bar Association, Finger Lakes Women's Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women's Bar Association; Mid- York Women's Bar Association; Nassau County Women's Bar Association; New York Women's Bar Association; Queens County Women's Bar Association; Rockland County Women's Bar Association; Staten Island Women's Bar Association; The Suffolk County Women's Bar Association; Westchester Women's Bar Association; Western New York Women's Bar Association; and Women's Bar Association of Orange and Sullivan Counties. Charitable Foundations & Legal Clinic – Women's Bar Association of the State of New York Foundation, Inc.; Brooklyn Women's Bar Foundation, Inc.; Capital District Women's Bar Association Legal Project Inc.; Nassau County Women's Bar Association Foundation, Inc.; New York Women's Bar Association Foundation, Inc.; Queens County Women's Bar Foundation; Westchester Women's Bar Association Foundation, Inc.; and The Women's Bar Association of Orange and Sullivan Counties Foundation, Inc. (No members of WBASNY or its affiliates who are judges or court personnel participated in WBASNY's amicus review in this matter.)

Women's Law Project

The Women's Law Project (WLP) is a non-profit women's legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, WLP's mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, we engage in high impact litigation, policy advocacy, and public education. Throughout its history, the WLP has worked to eliminate sex discrimination, bringing and supporting litigation challenging discriminatory practices prohibited by civil rights laws. The WLP has a strong interest in the proper application of civil rights laws to provide appropriate and necessary redress to individuals victimized by discrimination.

Women's Media Center

The Women's Media Center works to make women visible and powerful in the media. We do so by promoting women as decision-makers and as subjects in media; training women to be media-ready and media-savvy; researching and exposing sexism, racism, and fakery in media; and creating original online and on air journalism. The Women's Media Center is a progressive, nonpartisan, nonprofit organization that is passionate about equal rights for all and opposes discrimination based on gender, race, sexual orientation, national origin, age, disability, or religion. Discrimination based on sexual orientation would significantly and negatively impact the work we engage in for equal rights and opportunity for all.

Women's Rights and Empowerment Network

The Women's Rights and Empowerment Network (WREN) is a South Carolina-based non-profit organization created to build a movement to advance the health, economic well-being, and rights of South Carolina's women, girls, and their families. WREN educates the public on discrimination issues and promotes laws and policies that create an environment where women and girls can equally participate in all facets of society.

WV FREE

WV FREE, founded in 1989, is a reproductive justice education and advocacy organization that promotes the dignity and equality of all West Virginians and believes that all people should be able to live their lives free from discrimination. We believe in the human right to bodily integrity and control over one's body and understand our work to be part of a larger social justice/reproductive justice movement to ensure the rights of all people and families.

YWCA USA

YWCA USA is a national non-profit organization dedicated to eliminating racism, empowering women, and promoting peace, justice, freedom, and dignity for all. We are one of the oldest and largest women's organizations in the nation, serving over 2 million women, girls, and their families through a network of 215 local associations. YWCA has been at the forefront of the most pressing social movements for more than 150 years. Today, we combine programming and advocacy to generate institutional change

in the key areas of racial justice and civil rights, empowerment and economic advancement of women and girls, and health and safety of women and girls.