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April 8, 2013

Sarah A. Shifley
Assistant Attorney General
Washington Attorney General's Office
Consumer Protection Division
800 Fifth Ave., Ste. 2000
Seattle, Washington 98104-3188

Re: *Arlene's Flowers, Inc., Richland, Washington*

Ms. Shifley:

Please be advised that this office has been retained to represent Arlene's Flowers, Inc., in regard to alleged violation of the Washington Consumer Protection Act. Please direct any further correspondence regarding Arlene's Flowers, or its proprietors, to this office.

I am in receipt of your letter to Barronelle Stutzman, dated March 28, 2013, and the enclosed "Assurance of Discontinuance" you proposed. As a preliminary matter, and upon review of Washington's anti-discrimination statute, RCW 49.60, *et seq.*, it appears that the appropriate agency charged with enforcement is the Washington Human Rights Commission. The statute appears to grant Superior Court jurisdiction to the Commission, *via* the AG office as counsel, but only for alleged violations of RCW 49.60.222 – 225, none of which apply in this context. RCW 49.60.350. Otherwise, the Commission is charged with administrative enforcement *via* RCW 49.60.120(4). Alternatively, there is a private right of action under RCW 49.60.030(2). However, it does not appear that the AG's office has statutory authority to proceed in this case. While the AG's office may be charged with enforcement of the Consumer Protection Act, in this case there cannot be a *per se* violation of the CPA absent a finding that Arlene's Flowers is in violation of the anti-discrimination act, RCW 49.60, *et seq.*

Nevertheless, it does not appear that any provision of RCW 49.60, *et seq.*, would apply in this context. If you feel otherwise, please provide reference to the specific statutory provision you allege to have been violated. Even if a viable statutory violation could be alleged, you should be aware that the First Amendment to the United State Constitution prohibits laws that would otherwise compel speech. This is certainly not a case involving public accommodation. Arlene's Flowers has catered to all patrons, including homosexuals, for many years. Arlene's Flowers has

1002 10th Street. Snohomish, WA. 98290



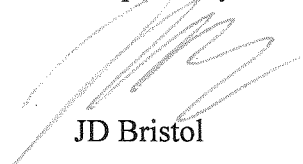
had openly gay employees. In short, discrimination is not the issue. The issue is one of expression and conscious. Although gay "marriage" may be legal in Washington for the time being, the concept offends the conscious of Ms. Stutzman and many others in Washington. Under the First Amendment, such residents of this state cannot be compelled to express assent in violation of conscious, *via* anti-discrimination statutes, the CPA, or otherwise.

The United States Supreme Court has definitively ruled on this issue. In *Hurley v. Irish-American Gay, Lesbian and Bi-Sexual Group of Boston*, 515 U.S. 557, 115 S. Ct. 2338 (1995), a pro-homosexual group was denied access to participate in a parade. The state of Massachusetts adjudicated the preclusion as unlawful discrimination based on sexual orientation. The Supreme Court reversed, holding that the parade is an act of expression, and that the organizers of the parade could not be compelled to alter their message under the guise of anti-discrimination laws.

Florists are universally engaged in the art of designing floral arrangements as an act of expression. Different floral arrangements are created for different events and sentiments, depending on a variety of factors. The florist's job is to create an arrangement that expresses the sentiment of the florist's clients. It is creative expression. If the law requires a florist to create an expression of appreciation for gay "marriage," or any other matter that offends the conscious of the florist, it is compelled speech in violation of the First Amendment. The state cannot require a florist to express appreciation for, or acceptance of gay "marriage" any more than the state can require a musician to write a song about it, or an artist to paint a picture.

If the AG's office files a complaint against Arlene's Flowers in state court, the action will be challenged on procedural grounds. There does not appear to be any statutory authority for such an action in this context. Even if there is such authority, it will ultimately prove a huge waste of the tax payer's money, and your time. If the appropriate Commission brings a regulatory action resulting in untoward consequences for Arlene's Flowers, the action will be met with an immediate challenge in federal court. I have personally conferred with a number of national non-profit organizations that are ready for the fight, but we do hope a legal battle won't be necessary, given the *clear* precedent on this issue. Thank you for your time.

Respectfully,



JD Bristol

cc. Barronelle Stutzman
Alliance Defending Freedom
Act Right Legal Foundation
American Center for Law and Justice
Family Policy Institute of Washington
Attorney Mario Ledesma
WA Rep. Steve O'Ban