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STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff

v.

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS, and
BARRONELLE STUTZMAN,

Defendants.

NO. 13-2-00871-5
(consolidated with 13-2-00953-3)

STATE'S RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT ON
STANDING

ROBERT INGERSOLL and CURT FREED,

Plaintiffs,

v.

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS, and
BARRONELLE STUTZMAN,

Defendants.

I. INTRODUCTION

The Defendants refused Robert Ingersoll's request that they provide the flowers for his wedding because Mr. Ingersoll is gay and planned to marry his longtime partner, another man. Defendants have now put into place a policy that they will refuse to sell arranged flowers for any wedding or commitment ceremony between same-sex couples. Defendants' refusal to

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1 serve Mr. Ingersoll and their policy constitute sexual orientation discrimination in commerce,
2 which is an unfair practice in violation of the Consumer Protection Act (CPA).

3 The State has sued Defendants for violating the CPA and has standing to do so pursuant
4 to the plain language of the statute, which authorizes the Attorney General to “bring an action
5 in the name of the State . . . against any person to restrain and prevent the doing of any act
6 herein prohibited or declared to be unlawful . . .” RCW 19.86.080(1). The State’s standing is
7 also demonstrated by the Legislature’s declaration that sexual orientation discrimination in
8 commerce is a matter affecting the public interest. RCW 49.60.030(3).

9 Defendants attack the State’s standing by claiming this case is simply a
10 “misunderstanding” based on their “mistake of fact.” Defs’ Mot. at 5, 13, 15. Specifically,
11 Defendants note that they learned during discovery that all Mr. Ingersoll may have wanted for
12 his wedding flowers was branches and vases, not arranged flowers. Because Defendants
13 allegedly would have sold these items to Mr. Ingersoll, they claim there is no case or
14 controversy ripe for adjudication.

15 However, Defendants’ *post hoc* understanding of what Mr. Ingersoll may have wanted
16 does not and cannot undo their refusal to serve Mr. Ingersoll. The harm has been done. And
17 even if the past harm could be undone, which it cannot, Defendants continue to hold to a policy
18 that they will engage in similar discriminatory practices in the future. As a result, the State has
19 standing to pursue this CPA action against Defendants, this matter is justiciable and not moot,
20 and Defendants’ motion must be denied.

21 II. FACTS

22 In December 2012, Robert Ingersoll’s partner, Curt Freed, proposed to him and they
23 planned to marry the following September. Decl. of Robert Ingersoll (Dkt. 82) (Ingersoll
24 Decl.) at 2 (¶ 4). Mr. Ingersoll had been a longtime customer of Defendants Arlene’s Flowers
25 and Barronelle Stutzman and, as a result, the couple wanted Defendants to do the flowers for
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1 the wedding. *Id.* (¶¶ 5-6); Dep. of Robert Ingersoll (Ingersoll Dep.) at 10:11-25–11:1-2,
2 attached as Ex. A to Decl. of Todd Bowers in Support of State’s Resp. to Defs’ Summ. J. Mot.
3 on Standing (Bowers Decl.).

4 Consequently, on March 1, 2013, Mr. Ingersoll met with Ms. Stutzman at her store.
5 Ingersoll Decl. at 2 (¶ 7). He told Ms. Stutzman that he and Mr. Freed wanted Defendants to
6 “do the flowers” for the wedding. Ingersoll Decl. at 1 (¶ 8); *see also*, Defs’ First Set of
7 Requests for Adm. to Pl. Robt. Ingersoll and Responses Thereto, RFA 6, attached as Ex. B to
8 Bowers Decl.; Dep. of Barronelle Stutzman (Stutzman Dep.) at 79:12-24, attached as Ex. C to
9 Bowers Decl. (Mr. Ingersoll “said he was going to get married. Wanted something really
10 simple, khaki I believe he said.”); 80:12-14 (“He ask – he – he wanted me to do his wedding
11 flowers. . . .”).

12 Mr. Ingersoll and Mr. Freed were considering a variety of options for their wedding
13 flowers that included purchasing branches and arranging these themselves. Ex. D to Bowers
14 Decl. (Defs’ Third Set of Disc. Requests to Pl. Robt. Ingersoll and Responses Thereto)
15 Interrogatory 34; Ex. A to Bowers Decl. (Ingersoll Dep.) at 48:20-25; 49:1-8. However, Ms.
16 Stutzman and Mr. Ingersoll did not discuss these options or the details of what Mr. Ingersoll
17 and Mr. Freed wanted for the wedding. Ex. C to Bowers Decl. (Stutzman Dep.) at 79:25; 80:1-
18 4 (“Q: Did he tell you what types of flowers he would want? A: We didn’t get into that.”).
19 The reason for this was simple: Ms. Stutzman refused Mr. Ingersoll service before he could
20 tell her what he wanted. Ex. C to Bowers Decl. (Stutzman Dep.) at 80:3-14 (“I chose not to be
21 part of his event. . . . He ask – he – he wanted me to do his wedding flowers which would have
22 been part of the event.”); 80:24-25 - 81:1-3; 81:15-17 (“Didn’t tell him I wouldn’t sell him
23 flowers, I told him I wouldn’t be part of his event. I told him I couldn’t do his wedding
24 flowers.”); 81:24-25 - 82:1 (“I told him I could not do his wedding.”); 83:8-11 (Ms. Stutzman
25 admits she did not ask about any details of the wedding); Ex. A to Bowers Decl. (Ingersoll
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1 Dep.) at 49:5-8 (“Barronelle never gave me the opportunity to discuss the flower
2 arrangements.”), 70:8-24; Ex. B to Bowers Decl., RFA 4 (“Arlene’s Flowers declined to sell us
3 flowers for the wedding before ordering decisions could be made.”), RFA 5, RFA 6.

4 Since this denial of service, Defendants have put in place an unwritten policy that they
5 will not provide arranged flowers for any wedding or commitment ceremony between a same-
6 sex couple. Ex. C to Bowers Decl. (Stutzman Dep.) at 44:10-25 (“we don’t take same-sex
7 marriages”).

8 III. STATEMENT OF ISSUES

- 9
- 10 1. Whether as a matter of law the State has standing to bring this action to enforce
11 the Consumer Protection Act (CPA) where Defendants have refused to provide
12 and continue to refuse to provide goods or services to consumers based on
13 sexual orientation.
 - 14 2. Whether as a matter of law the State’s CPA action is justiciable.
 - 15 3. Whether as a matter of law the State’s CPA action is moot.

16 IV. EVIDENCE RELIED UPON

17 The State relies upon the argument and authorities herein, the Declaration of Todd
18 Bowers in Support of Plaintiff State of Washington’s Response to Defendants’ Motion for
19 Summary Judgment for Plaintiffs’ Lack of Standing and the exhibits attached thereto, and the
20 pleadings and papers on file in this action.

21 V. ARGUMENT

22 Summary judgment is appropriate where there is no genuine issue as to any material
23 fact and the moving party is entitled to judgment as a matter of law. CR 56(c), (e). The Court
24 must “consider all facts and make all reasonable, factual inferences in the light most favorable
25 to the non-moving party.” *Scrivener v. Clark College*, _ Wn.2d _, 334 P.3d 541, 545 (2014).

26 The material facts in this case considered in the light most favorable to the State as the
non-moving party demonstrate that on March 1, 2013, Mr. Ingersoll asked Defendants to do

1 the flowers for his wedding. Defendants refused before Mr. Ingersoll could discuss the details
2 of what he and his partner may have wanted at the ceremony. This refusal was based on
3 Mr. Ingersoll's sexual orientation, and such discrimination in trade or commerce violates the
4 CPA, which the State is statutorily authorized to enforce. In addition, Defendants continue to
5 have in place a policy that they will not provide arranged flowers for the weddings and
6 commitment ceremonies of same-sex couples. As a result, the State has standing to bring this
7 action, the action is justiciable and not moot, and Defendants' motion should be denied.

8 **A. The State Has Standing to Bring This Action**

9 The State has standing to bring this action on several different grounds: under basic
10 standing rules, under the CPA's plain language, and under Supreme Court precedent applying
11 the CPA. All of these demonstrate the State's standing in this case.

12 First, the "basic rule of standing prohibits a litigant from asserting the legal rights of
13 another" and requires "that a party have a real interest therein, prior to bringing a cause of
14 action." *Dean v. Lehman*, 143 Wn.2d 12, 18-19, 18 P.3d 523 (2001) (internal citations and
15 quotation marks omitted). The State clearly meets these requirements here. The State asserts
16 its own right, created by the CPA, which authorizes the Attorney General to file suit "in the
17 name of the state . . . to restrain and prevent the doing of any act" prohibited by the CPA.
18 RCW 19.86.080(1). The State has a real interest in such cases: "The Attorney General's
19 responsibility in bringing cases of this kind is to protect the public from the kinds of business
20 practices which are prohibited by the statute; it is not to seek redress for private individuals."
21 *Seaboard Surety v. Ralph Williams*, 81 Wn.2d 740, 746, 504 P.2d 1139 (1973) (*Ralph Williams*
22 *D*). It is thus clear that the State meets the basic standing test here.

23 Second, Washington courts have long recognized that a legislative grant of enforcement
24 authority to a state agency confers standing on the agency. For example, in *In re M.K.M.R.*,
25 148 Wn. App. 383, 390-91, 199 P.3d 1038 (2009), the court held that a statute providing the
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1 Division of Child Support (DCS) authority to maintain an action under the Washington
2 Uniform Parentage Act conferred standing on DCS. Similarly, in *Blewett v. Abbott Labs.*, 86
3 Wn. App. 782, 938 P.2d 842 (1997), the court recognized that the CPA confers standing on the
4 Attorney General to bring actions for the State even where a private individual would lack
5 standing. *Id.* at 790. Indeed, even a general grant of authority can confer standing. *State v.*
6 *Gillette*, 27 Wn. App. 815, 818-19, 621 P.2d 764 (1980) (Department of Fisheries' duty to
7 protect state fish conferred standing on Department to bring civil action for damages to state
8 fishery). These cases are consistent with others holding that the legislature's creation of a
9 cause of action confers "automatic standing" on those authorized to bring suit. *See e.g.*,
10 *Armantrout v. Carlson*, 141 Wn. App. 716, 722, 170 P.3d 1218 (2007), *rev'd on other*
11 *grounds*, 166 Wn.2d 931, 214 P.3d 914 (2009) (decedent's spouse and children have
12 "automatic standing" by virtue of statutory language authorizing them to bring wrongful death
13 claim).

14 The State's standing is also clear because our Supreme Court has explained that in CPA
15 actions like this one, the standing requirement is subsumed within the elements a plaintiff must
16 prove to establish a CPA violation. *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27,
17 38, 204 P.3d 885 (2009). The *Panag* court noted that standing is established where a private
18 litigant proves the elements of public interest impact and injury. *Id.* The State establishes its
19 standing through the public interest element alone because, unlike private litigants, it need not
20 prove injury. *See State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2011) (listing
21 elements State must prove to establish CPA violation).

22 The public interest element is proven in this case in two ways. First, public interest and
23 standing are demonstrated by "a showing that a statute that has been violated which contains a
24 specific legislative declaration of public interest impact." *Hangman Ridge Training Stables,*
25 *Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 791, 719 P.2d 531 (1986). Here,
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1 RCW 49.60.030(3) provides that “any unfair practice prohibited by this chapter [the
2 Washington Law Against Discrimination] which is committed in the course of trade or
3 commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose
4 of applying that chapter, a matter affecting the public interest” (emphasis added). Second, the
5 State’s standing and the public interest element are clear because the CPA violation occurred in
6 the course of Defendants’ business and Defendants have the potential to injure other
7 consumers in the future because of their now-established policy of refusing to sell arranged
8 flowers for weddings between same-sex couples. See *Hangman Ridge Training Stables, Inc. v.*
9 *Safeco Title Ins. Co.*, 105 Wn.2d 778, 790-91, 719 P.2d 531 (1986) (describing potential to
10 injure others and violation occurring in the course of the defendant’s business as factors
11 establishing “public interest” element in private CPA actions brought pursuant to
12 RCW 19.86.090).

13 Defendants largely ignore these well-defined bases for standing, instead arguing that
14 the State lacks standing because Defendants were “mistaken” about Mr. Ingersoll’s plans for
15 wedding flowers. This argument fails for two simple reasons. First, it ignores the most salient
16 and undisputed fact: Defendants refused to serve Mr. Ingersoll because he is a gay man who
17 intended to marry his same-sex partner. At this point, Defendants’ argument that they would
18 have served him if only they had listened to what he wanted before refusing to do so is
19 completely beside the point. The unfair practice has already occurred, and the harm cannot be
20 undone. Moreover, even if Defendants could go back in time and undo the harm, they have
21 adopted a policy that they will continue to refuse to provide flowers when gay or lesbian
22 customers wish to marry their same-sex partners. Thus, the harm to the public is ongoing, and
23 the State’s standing “to restrain and prevent” such harm is clear. RCW 19.86.080(1).
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1 **B. This Case Is Justiciable Because It Presents an Actual and Existing Dispute**
2 **Between Parties Having Genuine and Opposing Interests in Which the Relief**
3 **Sought Will Be Final and Conclusive**

4 Defendants also contend that this matter is not justiciable. Defs' Mot. at 9-11. This
5 argument fails because it relies on information about what Mr. Ingersoll and Mr. Freed may
6 have wanted, but were unable to tell Defendants because Ms. Stutzman denied them service.

7 As an initial matter, Defendants rely on authority interpreting justiciability in actions
8 brought pursuant to RCW 7.24, the Uniform Declaratory Judgment Act (UDJA). This action
9 has not been brought pursuant to the UDJA but rather the CPA.

10 However, even assuming the UDJA justiciability requirements apply in CPA cases,
11 they are satisfied here. There is an actual, present, and existing dispute between the State and
12 Defendants based on the undisputed fact that Defendants refused to serve Mr. Ingersoll when
13 he asked them to do the flowers for his wedding and that Defendants have established an
14 unwritten policy that they will not serve gay or lesbian customers for their weddings or
15 commitment ceremonies in the future. The State and Defendants clearly have genuine and
16 opposing interests related to the Defendants' actual and promised denial of service that are
17 direct and substantial. Finally, a judicial determination that Defendants violated the CPA and
18 an order enjoining Defendants from engaging in sexual orientation discrimination in the future
19 will be both final and conclusive.

20 Defendants' allegation that this case is not justiciable fails for the same reason its other
21 arguments fail: It ignores that Ms. Stutzman refused Mr. Ingersoll's request that she do the
22 flowers for his wedding before he could tell her what he and Mr. Freed might want. For
23 example, although Defendants note that Messrs. Ingersoll and Freed "wanted to purchase raw
24 sticks and twigs, and perhaps vases, from Barronelle for use in their same-sex wedding," this is
25 not what Mr. Ingersoll asked of Ms. Stutzman on March 1, 2013. Defs' Mot. at 10. On that
26 day, he asked her to do the flowers for his wedding, something she refused to do before
Mr. Ingersoll could discuss the details of his request.

1 **C. This Case Is Not Moot Because the Court Can Provide Effective Relief**

2 This case is moot only if this Court “cannot provide the basic relief originally sought .
3 . . . or can no longer provide effective relief.” *Darkenwald v. Employment Security Dep’t.*, 182
4 Wn. App. 157, 165, 328 P.3d 977 (2014) (internal citations omitted). That standard is not met
5 here because the Court can provide effective relief by declaring that Defendants’ refusal to
6 serve Mr. Ingersoll on the basis of his sexual orientation a CPA violation, imposing a civil
7 penalty of up to \$2000 for the CPA violation, and enjoining Defendants from engaging in
8 sexual orientation discrimination in trade or commerce in the future.

9 Defendants’ argument that the case is moot is similar to their arguments on standing
10 and justiciability. It ignores the undisputed facts and misstates the law.

11 On the facts, for example, Defendants contend the Court should not “resolve a
12 theoretical question regarding a service Ingersoll and Freed did not seek in the past and will
13 have no need for in the future.” Defs’ Mot. at 11-12. But this ignores the undisputed fact that
14 Ms. Stutzman refused to participate in any fashion in Mr. Ingersoll’s wedding before he could
15 discuss the details of what he and Mr. Freed wanted.

16 As to the law, Defendants contend the case is moot because the injunctive relief sought
17 by the State would not be effective as to Mr. Ingersoll and Mr. Freed since they have had their
18 wedding ceremony and are now married. *See also*, Defs’ Mot. at 13-14. This argument
19 displays Defendants’ deep misunderstanding of the role of injunctive relief in CPA cases
20 brought by the State and demonstrates why this case is not, in fact, moot.

21 In *State v. Ralph Williams’ North West Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 553
22 P.2d 423 (1976), the defendants, who operated a large auto dealership, were found to have
23 engaged in a variety of CPA violations related to their advertising and sales practices. The
24 State sought and was granted broad injunctive relief prohibiting the defendants from engaging
25 in the future in those practices found by the trial court to have violated the CPA.

1 The defendants challenged on appeal the injunctive relief ordered, arguing that because
2 they had shuttered their business, any future violations were unlikely. The court rejected this
3 argument, noting that “a court may need to settle an existing controversy over the legality of
4 the challenged practices” in order to prevent a recurrence of those practices in the future. *Id.* at
5 312. In a CPA action, the trial court has authority to enter an order enjoining future CPA
6 violations if there “exist[s] a cognizable danger of recurrent violation[s].” *Id.* at 313.

7 As this discussion makes clear, whether a request for injunctive relief under the CPA is
8 moot depends not on whether it will help those who have already been victimized, but on
9 whether future violations can be prevented. This is the case here. Messrs. Ingersoll and Freed
10 have been married and now have no need of Defendants’ services. However, Defendants have
11 made clear that they will not provide certain goods and services for the weddings of same-sex
12 couples. Ex. C to Bowers Decl. (Stutzman Dep.) at 44:10-25. Given that marriage between
13 same-sex couples is legal in Washington, there is clearly a “cognizable danger” Defendants
14 will in the future engage in sexual orientation discrimination in violation of the CPA.

15 In sum, because effective relief is available for the harm already suffered by Messrs.
16 Ingersoll and Freed, and because the Court can effectively prevent future harm to other
17 consumers, this case is not moot.

18 VI. CONCLUSION

19 The Defendants engaged in sexual orientation discrimination in commerce, an unfair
20 practice prohibited by the CPA. They also now have enacted a policy that they will continue
21 to engage in such violations in the future. As a result, the State has standing to bring this
22 action to enforce the CPA and to obtain a declaration that Defendants’ past action and
23 ongoing policy violate the CPA, the imposition of a penalty, and an order enjoining
24 Defendants from engaging in such violations in the future. This matter is justiciable and not
25 moot and Defendants’ motion must be denied.
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1 DATED this 8th day of December, 2014.

2 ROBERT W. FERGUSON
3 Attorney General

4 

5 _____
6 NOAH PURCELL, WSBA #43492
7 Solicitor General

8 TODD BOWERS, WSBA #25274
9 Senior Counsel

10 KIMBERLEE GUNNING, WSBA #35366
11 Assistant Attorney General
12 Attorneys for Plaintiff
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**STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff

NO. 13-2-00871-5

v.

GR 17 DECLARATION FOR
STATE'S RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT BASED ON
STANDING

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS,
and BARRONELLE STUTZMAN,

Defendants.

I, Bryan Ovens, declares as follows:

That I am now and was at all times hereinafter mentioned a citizen of the United States, of the State of Washington, and over the age of majority.

I am employed as an Assistant Attorney General for the Washington State Attorney General's Office, Regional Services Division, and make this declaration in that capacity.

That on December 8, 2014, I received the signed State's Response to Defendants' Motion for Summary Judgment Based on Standing via electronic mail in my Outlook mailbox Bryan.Ovens@atg.wa.gov, as a PDF attachment; that I have examined the Declaration of Todd Bowers and determined it consists of 13 pages including this declaration page; and the PDF document is complete and legible.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

Dated this 8 day of December, 2014, at Kennewick, Washington.



BRYAN OVENS