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) DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON PLAINTIFFS' LACK OF 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 AND RELIEF REQUESTED

This case does not involve a justiciable controversy. Therefore, Defendants ask

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the Court to award them summary judgment on all claims against them. While Plaintiffs sued florist Barronelle Stutzman and her flower shop for not supplying flowers for Robert Ingersoll and Curt Freed's same-sex wedding ceremony, this couple only wanted to purchase raw materials for their ceremony. And Barronelle was, and still is, happy to fulfill that request. So no actual controversy exists between the parties. Defendants would have (and still will) give Plaintiffs everything they wanted. Everything else --- what Ingersoll and Freed could have wanted from Barronelle or what someone else may want from Barronelle in the future --- is pure speculation. And speculation does not meet make a justiciable controversy. Rather, the judiciary needs concrete facts and controversies to effectively settle disputes, especially for controversial and high-profile cases like this one involving difficult constitutional issues. Because such a concrete dispute is lacking, Plaintiffs do not have standing to bring this case, no justiciable controversy exists, Plaintiffs' claims are moot, and this Court should grant Defendants summary judgment.

II. STATEMENT OF ISSUES

A. Whether Plaintiffs have standing to bring this case.

B. Whether a justiciable controversy exists under the Uniform Declaratory Judgments Act ("UDJA").

C. Whether Plaintiffs' claims are moot.

III. EVIDENCE RELIED UPON

The facts are not in dispute. The depositions of Robert Ingersoll, Curt Freed, and Barronelle Stutzman tell the same story. Ingersoll and Freed were longtime customers of Barronelle. Dep. of Robert Ingersoll ("Ingersoll Dep.") 10-11; Dep. of Curt Freed ("Freed

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15100 North 90th Street
Scottsdale, AZ 85260
(480) 444-0020

Dep.") 10-11; Dep. of Barronelle Stutzman ("Stutzman Dep.") 69-71. She gladly designed and created floral arrangements for them for about nine years, including for birthdays, anniversaries, Valentine's Day, Mother's Days, and housewarmings. Ingersoll Dep. 10-11; Freed Dep. 11-14; Stutzman Dep. 71. For instance, Ingersoll commissioned Barronelle to design and create floral arrangements some twenty times or more. Ingersoll Dep. 11. And Freed had been a customer of Arlene's Flowers since he was in high school. Freed Dep. 11. Both Ingersoll and Freed considered Barronelle "their florist," and she treated them—and their relationship—with dignity and respect. Ingersoll Dep. 15-16, 25-26, 38-40; Freed Dep. 12-13, 19; Stutzman Dep. 71, 79, 81-82.

Only one issue arose during their nine-year relationship. This issue involved Barronelle's religious objection to designing and creating floral arrangements to celebrate same-sex weddings, which the State of Washington recently authorized in 2012. Ingersoll Dep. 50; Freed Dep. 9. Ingersoll and Freed planned to marry in 2013, and Freed inquired about Barronelle providing wedding flowers. Ingersoll Dep. 48, 50; Freed Dep. 32-34; Stutzman Dep. 75, 79. After much consideration and prayer, Barronelle determined that she could not design and create flower arrangements to celebrate a same-sex wedding ceremony because of her sincerely held religious belief that marriage is between and man and a woman. Stutzman Dep. 76-78; *see also* Deposition of Janell Becker ("Becker Dep.") 39.

Barronelle believed Ingersoll wanted custom designed arrangements because Ingersoll asked to see Barronelle personally and Ingersoll normally asked Barronelle to

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design and create custom arrangements. Ingersoll Dep. 12-14, 20-21; Stutzman Dep. 74-76. So when Ingersoll asked Barronelle about wedding flowers, she told him that she could not do them because of her relationship with Jesus Christ. Ingersoll Dep. 19-20; Stutzman Dep. 79. Unbeknownst to Barronelle, Ingersoll and Freed merely wished to purchase raw sticks or twigs, and perhaps vases, from her to arrange themselves. Ingersoll Dep. 49-50; Freed Dep. 33. Barronelle has no religious objection to selling raw materials—including sticks or twigs—for use in a same-sex wedding. Stutzman Dep. 80, 98. Her religious beliefs only prevent her from *creating and designing* floral arrangements to celebrate that event. Stutzman Dep. 97. As a Southern Baptist, Barronelle can sell raw materials to anyone, but she cannot use her creative talents for same-sex wedding ceremonies without participating and materially cooperating in an act she considers sinful. For this reason, Barronelle testified in her deposition that she is quite willing to sell pre-arranged flowers—made for general use and kept in coolers—to those celebrating a same-sex marriage:

> **Q:** I want to learn a little bit more about the flowers in your store kept in the -- I don't know what you would call it, is there a walk-in refrigerator or a cold case?
> **A:** Coolers.
> ---
> **Q:** Okay. And if a person had come in and said, I'd like that bouquet and it's for my marriage to my partner, and you were to learn that that partner was of the same sex, would you sell that to that person?
> **A:** Yes.

Stutzman Dep. 105-06; *see also* Becker Dep. 47.

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Due to this misunderstanding about what Barronelle would provide them, Ingersoll and Freed purchased wedding flowers at another florist that Barronelle referred them to. Ingersoll Dep. 21-23; Freed Dep. 15-17; Stutzman Dep. 104. Ingersoll and Freed were ultimately married in a small ceremony at their home on July 21, 2013. Ingersoll Dep. 58; Freed Dep. 33. Over a year later, this case is still ongoing, although this Court has not yet issued a ruling on the merits.

IV. STANDARD OF REVIEW

On a motion for summary judgment, this Court considers "all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party." *Ward v. Coldwell Banker/San Juan Props.*, 74 Wn. App. 157, 161 (1994). Summary judgment is appropriate when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. *Parks v. Fink*, 173 Wn. App. 366, 374 (2013). A plaintiff's failure to demonstrate "the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial" results in a grant of summary judgment in the defendant's favor. *Burton v. Twin Commander Aircraft LLC*, 171 Wn.2d 204, 223 (2011) (en banc) (quotation omitted).

V. ARGUMENT

A. Plaintiffs lack standing to prosecute their claims because no live controversy exists between the parties.

To have standing to prosecute this action, Plaintiffs must have "'a real interest in the subject matter of the lawsuit, that is, a present, substantial interest, as distinguished from a mere expectancy or future, contingent interest" and they must also 'show that a

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benefit will accrue [to them] by the relief granted.'" *Timberlane Homeowners Ass'n, Inc. v. Brame*, 79 Wn. App. 303, 307-08 (1995) (quoting *Primark, Inc. v. Burien Gardens Assocs.*, 63 Wn. App. 900, 907 (1992)). Without a "personal stake in the challenge, a party lacks standing to bring … suit." *Postema v. Snohomish Cnty.*, 83 Wn. App. 574, 579 (1996). And "[a]bsent a party with standing, courts lack jurisdiction to consider the challenge." *Id.* Thus, although standing is not "a matter of subject matter jurisdiction," "the claims of a plaintiff determined to lack standing are not his or hers to assert and cannot be resolved in whole or in part on the merits." *Ullery v. Fulleton*, 162 Wn. App. 596, 604 (2011); *see also Trinity Universal Ins. Co. of Kan. v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 199 (2013) ("The claims of a plaintiff who lacks standing cannot be resolved on the merits and must fail.").

Because "[s]tanding is a threshold issue," the Court should ensure that Plaintiffs have standing before proceeding any further with this case. *In re Estate of Becker*, 177 Wn.2d 242, 246 (2013). It is not enough for a potential controversy to exist: "[O]ne seeking relief must show a clear legal or equitable right and a well-grounded fear of immediate invasion of that right." *Gustafson v. Gustafson*, 47 Wn. App. 272, 276 (1987) (quotation omitted); *see also Alexander v. Sanford*, 325 P.3d 341, 351 (Wn. App. 2014) ("To have standing, one must have some protectable interest that has been invaded or is about to be invaded." (quotation omitted)). Plaintiffs are unable to make that showing because Ingersoll and Freed cannot demonstrate that Barronelle's inability to design and create flower arrangements for a same-sex wedding "operated to [their] prejudice."

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(480) 444-0020

Postema, 83 Wn. App. at 579.

According to their deposition testimony, Ingersoll and Freed intended to purchase raw materials—stick and twigs and perhaps vases—from Barronelle for use in celebrating their same-sex wedding. Ingersoll Dep. 48-50; Freed Dep. 33. And Barronelle has always maintained that she is ready and willing to sell such raw materials, and pre-made flower arrangements, for use in celebrating same-sex marriages. Hence, no live controversy exists between the parties. Barronelle was happy to sell what Ingersoll and Freed wanted to buy:

> **Q**: If Robert Ingersoll had told you that what he wanted to purchase from Arlene's Flowers for his wedding was simply branches to use for the wedding would you have sold those to him?
> **A:** Yes.
> **Q**: If he had told you that he wanted to purchase just simple stems that he would then arrange would you have sold those to him?
> **A:** Yes.

Stutzman Dep. 80. *See also id*. at 98, 105-06.

Given this clarification of the facts, Ingersoll's and Freed's interest in the outcome of this case turns on a hypothetical "expectancy" or "future, contingent interest" that they may have changed their minds and asked Barronelle to design and create a flower arrangement to celebrate their same-sex marriage. *Timberlane Homeowners*, 79 Wn. App. at 307-08 (quotation omitted). But that is too tenuous a foundation on which to predicate standing. "Ifs" and "mights" do not grant Ingersoll and Freed "a present, substantial interest" in this case. *Id.* at 307. And one cannot have "a well-grounded fear of immediate invasion" of "a clear legal or equitable right" when the purported invader is

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ready and willing to do exactly what you want. *Gustafson*, 47 Wn. App. at 276 (quotation omitted).

In short, a ruling on the merits of this case is of no "real interest" to Ingersoll and Freed because Barronelle is happy to fulfill their request for raw materials for use in a same-sex wedding. *Timberlane Homeowners*, 79 Wn. App. at 307 (quotation omitted). No "benefit will accrue" to them from determining whether Barronelle violates the Washington Law Against Discrimination ("WLAD") or the Consumer Protection Act ("CPA") by not designing and creating floral arrangements for same-sex weddings. *Id.* at 308; *see also Pac. Marine Ins. Co. v. State*, 329 P.3d 101, 107 (Wn. App. 2014) (noting that standing requires "a distinct and personal interest in the outcome of the case" (quotation omitted)).

That is a service that Ingersoll and Freed did not want. And standing doctrine prevents them and the State from raising the legal rights of hypothetical third parties who want this service. *See Trinity Universal*, 176 Wn. App. at 199 (explaining that standing doctrine "prohibit[s] a plaintiff from asserting another's legal rights"); *Ullery*, 162 Wn. App. at 604 ("It is improper for a plaintiff lacking standing to assert the rights of other parties or non-parties; its claims fail on account of its lack of standing."); *cf. McCarthy Fin., Inc. v. Premera*, 328 P.3d 940, 951 (Wn. App. 2014) ("There is no basis to grant relief to the policyholders for any injury suffered by nonpolicyholders. The trial court properly dismissed the selective underwriting claim."). Accordingly, this Court should grant summary judgment to Defendants on all claims raised by Ingersoll, Freed, and the

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State because they lack standing to raise them here. *See Ullery*, 162 Wn. App. at 604 ("[T]he claims of a plaintiff determined to lack standing are not his or hers to assert and cannot be resolved in whole or in part on the merits.").

B. No justiciable controversy exists for purposes of the UDJA.

The State requests a declaratory judgment that Barronelle's religious objection to designing and creating flower arrangements to celebrate a same-sex wedding violates the Consumer Protection Act. But "Washington courts are prohibited from rendering advisory opinions …." *To-Ro Trade Shows v. Collins*, 100 Wn. App. 483, 490 (2000). Therefore, "[b]efore the jurisdiction of a court may be invoked under the UDJA, there must be a justiciable controversy." *City of Longview v. Wallin*, 174 Wn. App. 763, 777 (2013) (alterations and quotation omitted).

A justiciable controversy exists only if four requirements are met. First, there must be "an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement." *To-Ro Trade Shows*, 100 Wn. App. at 490 (quotation omitted). Second, the parties must have "genuine and opposing interests." *Id.* (quotation omitted). Third, those interests "must be direct and substantial, rather than potential, theoretical, abstract or academic." *Id.* (quotation omitted). Fourth, "a judicial determination [must] be final and conclusive." *Id.* (quotation omitted). Unless "[e]ach of these four elements [is] met, … the court steps into the prohibited area of advisory opinions." *Lewis Cnty. v. State*, 178 Wn. App. 431, 437 (2013) (quotation omitted).

ALLIANCE DEFENDING FREEDOM
15100 North 90th Street
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(480) 444-0020

But there is no "actual, present and existing dispute" in this case. As explained above, *see supra* Parts III & V.A, Ingersoll and Freed wanted to purchase raw sticks and twigs, and perhaps vases, from Barronelle for use in their same-sex wedding and she was, and is, happy to fulfill that request. Ingersoll Dep. 49-50; Freed Dep. 33; Stutzman Dep. 80, 98. Therefore, the State cannot show that Ingersoll, Freed, and Barronelle have "genuine and opposing interests." *To-Ro Trade Shows*, 100 Wn. App. at 490 (quotation omitted); *see also Postema*, 83 Wn. App. at 580 (recognizing that a justiciable controversy "requires an actual dispute between parties having opposing interests").

Questions about Barronelle's policy of not designing and creating flower arrangements for same-sex ceremonies are simply "possible, dormant, hypothetical, [and] speculative" because Ingersoll and Freed did not desire that service. *To-Ro Trade Shows*, 100 Wn. App. at 490 (quotation omitted). And as discussed more below, any controversy is also "moot" because Ingersoll and Freed held their wedding ceremony over a year ago. *Id.*; Ingersoll Dep. 58; Freed Dep. 33; *see also City of Longview*, 174 Wn. App. at 778 (noting that "[i]nherent" in the UDJA's justiciability requirements "are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement" (quotation omitted)). As a result, Plaintiffs have not identified any service that Barronelle could possibly offer to Ingersoll and Freed that Barronelle would not offer. Indeed, Barronelle has already provided all of these services to Ingersoll and Freed during the course of their nine-year relationship. Ingersoll Dep. 10-11; Freed Dep. 11-14; Stutzman Dep. 71. And she would happily so do again. Stutzman Dep. 75,

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80, 98, 105-06.

Given these undisputed facts, Ingersoll and Freed's interest in this case—or that claimed by the State on their behalf— cannot possibly be "direct and substantial, rather than potential, theoretical, abstract or academic." *To-Ro Trade Shows*, 100 Wn. App. at 490 (quotation omitted). Plaintiffs' concerns do not rest on the facts of this case but on some alternative and hypothetical universe in which Ingersoll and Freed wanted Barronelle to design and create flower arrangements to celebrate their same-sex wedding. Or, even more hypothetically, Plaintiffs' concerns rest on some future injury resulting from their divorce and re-marriage. Both scenarios constitute "speculative," not "actual," disputes between the parties "that cannot be conclusively resolved." In short, because the State's declaratory judgment claim fails to "present a justiciable issue," it necessarily fails. *Postema*, 83 Wn. App. at 580; *cf. Wash. Beauty Coll., Inc. v. Huse*, 195 Wn. 160, 165 (1938) (finding a plaintiff's "interest … too remote to entitle it to invoke the declaratory judgments act.").

C. Because Ingersoll and Freed married over a year ago and no live controversy exists between the parties, this case is moot.

"A case is moot when it [1] involves only abstract propositions or questions, [2] the substantial questions in the trial court no longer exist, or [3] a court can no longer provide effective relief." *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99 (2005). Plaintiffs' claims fail all three requirements. *Grays Harbor Paper Co. v. Grays Harbor Cnty.*, 74 Wn.2d 70, 74 n.1 (1968) (en banc) (recognizing that courts "consistently refuse[] to decide moot questions and to give advisory opinions").

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Barronelle, as explained above, was, and is, happy to provide the raw materials Ingersoll and Freed sought for use in their same-sex wedding ceremony. Ingersoll Dep. 49-50; Freed Dep. 33; Stutzman Dep. 80, 98. Thus, no "real and substantial controversy" exists between the parties to this case. *State v. Burdette*, 178 Wn. App. 183, 203 (2013) (quotation omitted).

As a result, Plaintiffs must argue that Barronelle *would* have denied them a service they did not seek and will have no need to seek in the future because they held their same-sex wedding ceremony over a year ago. Ingersoll Dep. 58; Freed Dep. 33. But this legal question is "purely academic," and this Court "is not required to pass upon it and [should] not do so however much [Plaintiffs] desire such a determination." *Grays Harbor Paper Co. v. Grays Harbor Cnty.*, 74 Wn.2d 70, 73 (1968) (en banc); *see also Thurston Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 158 Wn. App. 263, 271 (2010) (explaining that "a case is considered moot if there is no longer a controversy between the parties …." (quotation omitted)).

Moreover, in light of the parties' deposition testimony, there are no "substantial questions" remaining for this Court to resolve. *Spokane Research*, 155 Wn.2d at 99. Plaintiffs ask the Court to decide whether Barronelle's policy against designing and creating custom floral arrangements to celebrate a same-sex wedding violates the WLAD and CPA. But that policy does not apply to Ingersoll's and Freed's purchase of raw materials, the only service they desired and one Barronelle is happy to provide to any same-sex couple. Ingersoll Dep. 49-50; Freed Dep. 33; Stutzman Dep. 80, 98. A simple

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misunderstanding about the nature of Freed's request does not present this Court with a concrete legal question. Essentially, Plaintiffs ask the Court to decide legal "questions that are no longer in controversy." *State v. Gentry*, 125 Wn.2d 570, 616 (1995) (en banc). But "any expression of disapproval or approval of the action challenged would be 'purely academic' and thus inappropriate." *Id.* at 616-17; *see also id.* at 617 (stating that because "[t]he issues are moot … we decline to consider them").

It is also impossible for the Court to "provide effective relief" in this case. *Spokane Research*, 155 Wn.2d at 99. Rather than "a real and substantial controversy admitting of specific relief through a decree of a conclusive character," *Burdette*, 178 Wn. App. at 203 (quotation omitted), Plaintiffs ask this Court to resolve a theoretical question regarding a service Ingersoll and Freed did not seek in the past and will have no need for in the future. That is the very definition of a request for "an opinion advising what the law would be upon a hypothetical state of facts." *Id.* (quotation omitted). Given the undisputed deposition testimony in this case, it is simply "too late" for Plaintiffs to claim that "an effective remedy" is available—or even necessary—here. *Gentry*, 125 Wn.2d at 616.

This fact is particularly obvious in light of Plaintiffs' dual requests for injunctive relief. A court can only issue a temporary or permanent injunction if a party establishes "(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him." *Fed. Way Family Physicians, Inc. v.*

ALLIANCE DEFENDING FREEDOM
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Tacoma Stands Up for Life, 106 Wn.2d 261, 265 (1986) (en banc) (quotation omitted). Even if Ingersoll and Freed had wanted Barronelle to design and create a flower arrangement specifically for their same-sex wedding --- and they did not ---- they held their wedding ceremony in July 2013—well over a year ago. Ingersoll Dep. 49-50, 58; Freed Dep. 33. It is simply too late for them to show "a well-grounded fear of immediate invasion" of any legal right.

"[T]he issuance of an injunction may be moot if the defendant can demonstrate that events make it absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *State v. Ralph Williams' Nw. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 312 (1976) (quotation omitted). That is the case here. Ingersoll and Freed have no ongoing need for wedding flowers; their wedding ceremony was a one-time event. It will not recur unless they get divorced and remarried, something which cannot "reasonably be expected" or assumed. *Id.* Plaintiffs' request for injunction relief is thus clearly moot because "[a]ny inconvenience to" Ingersoll and Freed "has already occurred and cannot be corrected by injunction." *Orwick v. City of Seattle*, 103 Wn.2d 249, 253 (1984) (en banc).

While an exception to mootness exists for "matters of continuing and substantial public interest," this exception applies only to "cases which became moot … after a hearing on the merits of the claim," *i.e.*, when "the facts and legal issues had been fully litigated by parties with a stake in the outcome of a live controversy." *Id.* at 253 (quotation omitted). And this Court has not held a hearing on the merits of this case.

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Thus, this case has not been fully litigated by the parties. As a result, this Court will not waste judicial resources by dismissing this case now. *See Id.* at 254 (explaining that the public interest exception to mootness applies only when needed to avoid "a waste of judicial resources" inherent in the "dismiss[al] [of] appeal[s]" of important legal issues that are "likely to recur in the future."). Further, because this case is predicated on a simple mistake of fact based on the parties' unique course of dealing, this case cannot raise "an issue of public importance which is likely to recur." *Id.* at 253. The Court should accordingly grant summary judgment in Defendants' favor on all of Plaintiffs' claims and "avoid the danger of allowing [them] to litigate … claim[s] in which they no longer have an existing interest." *Id.* at 254.

VI. CONCLUSION

Because Plaintiffs lack standing, no justiciable controversy exists, and their claims are moot, Defendants respectfully ask the Court to grant summary judgment in their favor.

RESPECTFULLY SUBMITTED this 6th day of October, 2014.

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