

**IN THE SUPREME COURT OF THE STATE OF OREGON**

**MELISSA ELAINE KLEIN**, dba  
Sweetcakes by Melissa; and **AARON**  
**WAYNE KLEIN**, dba Sweetcakes by  
Melissa,

Petitioners,  
Petitioners on Review

v.

**OREGON BUREAU OF LABOR**  
**AND INDUSTRIES**,

Respondent,  
Respondent on Review

CA A159899

Bureau of Labor and Industries  
Agency Nos. 44-14, 45-14

Supreme Court No. S065744

**APPLICATION TO APPEAR AS *AMICI CURIAE***  
**BY LAUREL BOWMAN-CRYER, RACHEL BOWMAN-CRYER, AND**  
**LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. IN**  
**OPPOSITION TO PETITION FOR REVIEW**

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Litigant Contact Information pursuant to Rule 1.30 set forth on next page.

MARCH 2018

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Pursuant to ORAP 8.15, Laurel Bowman-Cryer and Rachel Bowman-Cryer (“Laurel and Rachel” or “the Bowman-Cryers”) and Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”), seek leave to appear as *amici curiae* before this Court in support of the Oregon Bureau of Labor and Industries (“BOLI”), and to file the concurrently submitted Response of *Amici Curiae* to Petition for Review. This application is timely pursuant to Rule 8.15(5)(b), because it has been filed within fourteen days after the filing of the petition for review, filed by the petitioners on March 1, 2018.

Pursuant to Rule 8.15(1)(a), Lambda Legal seeks to present a position as to the correct rule of law that does not affect a private interest of its own.

Laurel and Rachel Bowman-Cryer are not named parties in this appeal; however, they do have a direct private interest in this case because they were the original complainants before BOLI in this case. They are a same-sex couple to whom Melissa and Aaron Klein, *dba* Sweetcakes by Melissa (“the Kleins”), refused to sell a wedding cake and thereafter attempted to justify their discrimination by referring to the couple using profoundly offensive language. These incidents led to the Bowman-Cryers filing a complaint with BOLI for sexual orientation discrimination in violation of the Oregon Public Accommodations Law, ORC 659A.400 to ORS 659A.417. Their complaint was determined to be well-founded, and Laurel and Rachel were awarded compensation for their significant emotional distress.

Their direct interest is also informed by the discrimination they have faced since this case began. Laurel and Rachel have received thousands of harassing messages, calling them evil and “the dumb lesbians who ruined those Christian bakers’ lives,” for example. Casey Parks, *The Hate Keeps Coming: Pain Lingers for Lesbian Couple Denied in Sweet Cakes Case*, *The Oregonian* (July 2, 2016), [http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/07/sweet\\_cakes\\_lesbians.html](http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/07/sweet_cakes_lesbians.html). Laurel and Rachel understand the discrimination they have suffered to be part of the larger reality of discrimination against lesbian, gay, bisexual and transgender (“LGBT”) people in Oregon. Consequently, they are affected by this case and the repercussions its decision could have across the state, both directly and as members of the broader LGBT community in Oregon. They hope that supplementing the party briefing with information about their experience and that of many other LGBT Oregonians will help the Court assess the importance of protections against anti-LGBT discrimination remaining intact and fully enforceable by the State, regardless of the religious or personal beliefs of some business owners.

As to the interest of Lambda Legal in this case, Lambda Legal is the nation’s oldest and largest legal organization working for full recognition of the civil rights of LGBT people and people living with HIV through impact litigation, education, and policy advocacy. *See, e.g., Obergefell v. Hodges*, 135 S Ct 2584, 2591-92, 192 L Ed 2d 609 (2015) (affirming equal right of same-sex

couples to marry and to marriage recognition); *Lawrence v. Texas*, 539 US 558, 561, 123 S Ct 2472, 156 L Ed 2d 508 (2003) (invalidating Texas ban on same-sex adult intimacy as unconstitutional denial of liberty).

Lambda Legal has represented same-sex couples or appeared as *amicus curiae* in numerous discrimination cases where religious freedom has been asserted as a justification. *See, e.g., State v. Arlene's Flowers, Inc.*, 187 Wash2d 804, 389 P3d 543 (Wash 2017); *Gifford v. McCarthy*, 23 NYS3d 422, 137 AD3d 30 (NY App Div 2016); *Craig v. Masterpiece Cakeshop, Inc.*, 2015 COA 115, 370 P3d 272 (Colo App 2015), *cert. granted, Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, No. 16-111, 137 SCt 2290 (2017); *North Coast Women's Care Med. Grp., Inc. v. Superior Court*, 44 Cal4th 1145, 81 CalRptr3d 708, 189 P3d 959 (Cal 2008). The issues raised in this appeal are similar to those addressed in those and in numerous other cases, and this brief draws upon Lambda Legal's knowledge of those cases to complement the party briefing here.

Lambda Legal's membership includes approximately 2,500 Oregonians. Thus, while Lambda Legal does not have a private interest for purposes of Rule 8.15(1)(a), because the Court's decision here is likely to affect Lambda Legal's members and many thousands of other LGBT people across Oregon, Lambda Legal has a general interest in assisting the Court to consider the issues with the additional legal and historical context provided in this brief.

Accordingly, applicants Laurel and Rachel Bowman-Cryer and Lambda Legal Defense and Education Fund, Inc. respectfully request that the Court grant them leave to appear as *amici curiae* and to file the proposed Response to Petition for Review in support of Respondent Oregon Bureau of Labor and Industries, as submitted herewith. This application has been served on all parties.

Dated: March 15, 2018

Respectfully submitted,

By: /s/ Stefan C. Johnson

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## CERTIFICATE OF FILING AND SERVICE

### Certificate of Filing

I certify that on March 15, 2018, I caused the APPLICATION TO APPEAR AS *AMICI CURIAE* BY LAUREL BOWMAN-CRYER, RACHEL BOWMAN-CRYER, AND LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. IN OPPOSITION TO PETITION FOR REVIEW to be electronically filed with the Appellate Court Administrator, Appellate Records Section, by using the electronic filing (eFiling) system.

### Certificate of Service

I certify that on March 15, 2018, I served the APPLICATION TO APPEAR AS *AMICI CURIAE* BY LAUREL BOWMAN-CRYER, RACHEL BOWMAN-CRYER, AND LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. IN OPPOSITION TO PETITION FOR REVIEW, to the following via the appellate courts' eFiling system at the participant's email address:

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