

No. 18-451

In the Supreme Court of the United States

ALOHA BED & BREAKFAST,
A HAWAII SOLE PROPRIETORSHIP,
Petitioner,

v.

DIANE CERVELLI AND TAEKO BUFFORD,
Respondents,

v.

WILLIAM D. HOSHIJO, AS EXECUTIVE DIRECTOR
OF THE HAWAII CIVIL RIGHTS COMMISSION,
Intervenor-Respondent.

*On Petition for Writ of Certiorari to the
Intermediate Court of Appeals of Hawai'i*

**BRIEF *AMICI CURIAE* OF BILLY GRAHAM
EVANGELISTIC ASSOCIATION, SAMARITAN'S
PURSE, NATIONAL ASSOCIATION OF
EVANGELICALS, CONCERNED WOMEN FOR
AMERICA, CONGRESSIONAL PRAYER CAUCUS
FOUNDATION, NATIONAL LEGAL
FOUNDATION, AND PACIFIC JUSTICE
INSTITUTE**

in support of Petitioner

Steven W. Fitschen
James A. Davids
The National Legal
Foundation
524 Johnstown Rd.
Chesapeake, VA 23322

Frederick W. Claybrook, Jr.
Counsel of Record
Claybrook LLC
700 Sixth St., NW, Ste. 430
Washington, DC 20001

David A. Bruce, Esq.
205 Vierling Dr.
Silver Spring, MD 20904

Table of Contents

Table of Authorities	ii
INTERESTS OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	4
ARGUMENT	4
CONCLUSION.....	7

Table of Authorities

Cases

<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003).....	6
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584 (2016)	6
<i>Thomas v. Review Bd. of the Ind. Emp't Sec. Div.</i> , 450 U.S. 707 (1981).....	7

Constitutional Provisions

U.S. Const., amend. III.....	6
------------------------------	---

Other Authorities

II John 10-11.....	5
--------------------	---

INTERESTS OF *AMICI CURIAE*¹

The **Billy Graham Evangelistic Association** (“BGEA”) was founded by Billy Graham in 1950, and continuing the lifelong work of Billy Graham, exists to support and extend the evangelistic calling and ministry of Franklin Graham by proclaiming the Gospel of the Lord Jesus Christ to all we can by every effective means available to us and by equipping the church and others to do the same. BGEA ministers to people around the world through a variety of activities including Decision America Tour prayer rallies, evangelistic festivals and celebrations, television and internet evangelism, the Billy Graham Rapid Response Team, the Billy Graham Training Center at the Cove, and the Billy Graham Library. Through its various ministries and in partnership with others, BGEA intends to represent Jesus Christ in the public square; to cultivate prayer, and to proclaim the Gospel. Thus, it is concerned whenever government acts to restrict and inhibit the free expression of the Christian faith those activities represent.

Samaritan’s Purse is a nondenominational evangelical Christian organization formed in 1970 to provide spiritual and physical aid to hurting people around the world. The organization seeks to follow the command of Jesus to “go and do likewise” in response to the story of the Samaritan who helped a hurting

¹ Pursuant to Supreme Court Rule 37, all Parties have received timely notice of intent to file this brief and have consented to its filing. No Party or Party’s Counsel authored this Brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *Amici Curiae*, their members or their Counsel, contributed money that was intended to fund the preparation or submission of this Brief.

stranger. Samaritan's Purse operates in over 100 countries providing emergency relief, community development, vocational programs and resources for children, all in the name of Jesus Christ. Samaritan's Purse's concern arises when government hostility prevents persons of faith from practicing core aspects of faith such as prayer, discipleship, evangelism, acts of charity for those in need, or other day-to-day activities of those practicing their sincerely held religious beliefs.

The **National Association of Evangelicals** ("NAE") is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 40 member denominations, as well as numerous evangelical associations, missions, social-service providers, colleges, seminaries, religious publishers, and independent churches. NAE serves as the collective voice of evangelical churches, as well as other church-related and independent religious ministries. It believes that religious freedom is both a God-given right and a limitation on civil government, all as recognized in the First Amendment, and that marriage is a God-ordained institution that is biblically reserved for the union of one man and one woman.

Concerned Women for America ("CWA") is the largest public policy organization for women in the United States, with approximately half a million supporters from all 50 States. Through its grassroots organization, CWA encourages policies that strengthen women and families and advocates for the traditional virtues that are central to America's cultural health and welfare. CWA actively promotes legislation, education, and policymaking consistent with its philosophy. Its members are people whose

voices are often overlooked—everyday, middle-class American women whose views are not represented by the powerful elite.

The **Congressional Prayer Caucus Foundation** (“CPCF”) is an organization established to protect religious freedoms (including those related to America’s Judeo-Christian heritage) and to promote prayer (including as it has traditionally been exercised in Congress and other public places). It is independent of, but traces its roots to, the Congressional Prayer Caucus that currently has over 100 representatives and senators associated with it. CPCF has a deep interest in the right of people of faith to speak, freely exercise their religion, and assemble as they see fit, without government coercion and punishment forcing them to endorse different messages that violate their convictions by either speech or association. CPCF reaches across all denominational, socioeconomic, political, racial, and cultural dividing lines. It has an associated national network of citizens, legislators, pastors, business owners, and opinion leaders hailing from thirty-three states.

The **National Legal Foundation** (“NLF”) is a public interest law firm dedicated to the defense of First Amendment liberties and the restoration of the moral and religious foundation on which America was built. The NLF and its donors and supporters, including those in Hawai`i, seek to ensure that those with a religiously based view of marriage continue to be free to express those views without being compelled to express the opposite view by state-enforced association with those holding that opposite view.

The **Pacific Justice Institute** (“PJI”) is a nonprofit legal organization established under Section 501(c)(3) of the Internal Revenue Code. Since its

founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment rights. Such includes those who, as a matter of conscience, hold traditional views of marriage and family. As such, PJI has a strong interest in the development of the law in this area.

SUMMARY OF ARGUMENT

Mrs. Young, the homeowner, acted out of her religious conviction that renting a single room to other than a married husband and wife would engage her in facilitating and endorsing immoral sexual conduct. She not only held a sincere belief to that effect, well buttressed by Biblical teaching, but her action in refusing quarter to the unmarried and same-sex cohabitants was conduct protected by the First Amendment's prohibition of state interference with her free exercise of religion and with its similar prohibition of interference with her freedom of assembly, which incorporates the right not to associate with those engaging in behavior with which one disagrees. This Court should review and reverse the decision of the state court penalizing Mrs. Young for refusing to condone and cooperate with actions she considered immoral.

ARGUMENT

It is of course illogical to hold, as the Hawai'i appellate court did, that the "Mrs. Murphy" statutory exception for those who rent parts of their own homes only covers long-term rentals. The purpose of the exception is to allow homeowners to avoid violating

their religious beliefs by refusing to facilitate and become complicit in conduct that they regard as immoral. That conduct is just as immoral whether practiced by short-term or long-term renters. Moreover, the homeowner here certainly could not reasonably have foreseen that holding of the state court.

But this Brief in Support of the Petition focuses on the fact that, even assuming no due process violation, this case presents a good vehicle for this Court to clarify that the free exercise of religion and the freedom of assembly include a right not to facilitate, cooperate, or associate with activity one sincerely believes is contrary to the dictates of her religion.

Biblical passages support the sincerity of the homeowner's action here.² Hawai'i's penalizing her for action consistent with her religious beliefs is unconstitutional. Several additional reasons support that conclusion.

1. The homeowner, Mrs. Young, from a commercial standpoint, acted against her own best interests. She lost a rental and risked being boycotted by others who disagreed with her convictions. This underscores the sincerity of her belief.
2. Mrs. Young did not single out those of a same-sex orientation. She would rent out her rooms to those with a same-sex orientation, as long as

² See, e.g., II John 10-11 ("If anyone comes to you and does not bring this teaching, do not take him into your house or welcome him. Anyone who welcomes him shares in his wicked work." (NIV)).

they did not share the same room. Similarly, she also refused to rent only one room to heterosexual couples who were unmarried. Thus, she did not discriminate against those of either same-sex or heterosexual inclinations. She simply refused to facilitate behavior that she considers sinful—sexual relations outside of marriage between a man and a woman.

3. By renting a single room in her own home to couples in a relationship that the Bible (and other religious texts such as the Qur'an) considers immoral, Mrs. Young would facilitate their unethical behavior. This is not the same as regarding them as less than full-fledged persons and citizens, and it is not “disparaging” them. She refused to facilitate or associate with such conduct even among her own family members, those whom she most loves.
4. This Court has frequently noted the special place of the home in the preservation of our freedoms.³ For example, the Constitution prohibits homeowners being forced to quarter soldiers against their will.⁴
5. The free exercise of religion covers not just beliefs, but the “exercise” of religion, *i.e.*, conduct.⁵ And it covers not just affirmative conduct, but the refusal to act in ways that would associate the believer with what the

³ *E.g.*, *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁴ U.S. Const., amend. III.

⁵ *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2625 (2016) (Roberts, C.J., dissenting).

believer believes to be the improper conduct of others.⁶

These fundamental freedoms are brought into sharp relief in this case. They are freedoms that are being threatened in similar situations throughout the country. They are freedoms that should be vindicated by this Court in this case, even if the Court does not accept the due process issue for review.

CONCLUSION

The petition should be granted and the decision of the Hawai'i Intermediate Court of Appeal's reversed.

Respectfully submitted,
this 13th day of November 2018

Frederick W. Claybrook, Jr.
CLAYBROOK LLC
Counsel of Record
700 Sixth St., NW, Ste. 430
Washington, D.C. 20001
(202) 250-3833
rick@claybrooklaw.com

Steven W. Fitschen
James A. Davids
The National Legal Foundation
2224 Virginia Beach Blvd., Suite 204
Virginia Beach, Virginia 23454
(757) 463-6133

⁶ *E.g., Thomas v. Review Bd. of the Ind. Emp't Sec. Div.*, 450 U.S. 707 (1981).

David A. Bruce, Esq.
205 Vierling Drive
Silver Spring, Maryland 20904