

## **Masterpiece Cakeshop v. Colorado Civil Rights Commission**

### **Facts**

Masterpiece Cakeshop is a specialty cakeshop owned by a baker, Jack Phillips, who is Christian. He refuses to design cakes that conflict with his religious beliefs. That means that he won't design and decorate cakes for Halloween, or those with alcohol in them. He believes that same-sex couples should not be able to marry. When a same-sex couple visited his shop and tried to order a specialized cake to celebrate their upcoming wedding, Phillips said they were free to purchase items in his store, but refused to make them a specialized cake.

The couple believed that they had been discriminated against because of their sexual orientation. Colorado has a law that prohibits discrimination in places of public accommodation. That means that business that sell to the public cannot discriminate based on race, religion, disability, or sexual orientation, among other things. The couple complained to the Colorado Civil Rights Division, which enforces the law. That agency ruled that Phillips had violated Colorado's law. They said that if Phillips was going to create cakes for opposite-sex weddings, he had to do the same for same-sex weddings.

Phillips appealed that ruling, and a Colorado court confirmed that he had violated the Colorado law. Phillips then asked the Supreme Court to hear his case, and the Court agreed to do so.

### **Issue**

Does enforcement of Colorado's anti-discrimination law require Masterpiece Cakeshop to create expression in a way that violates the baker's Free Speech or Free Exercise rights under the First Amendment?

### **Constitutional and State Law**

- **U.S. Constitution, First Amendment:** "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech..."
- **Colorado's Anti-Discrimination Law:** Colorado bans discrimination in places of public accommodation, which include restaurants, hospitals, hotels, retail stores and public transportation, among others. Discriminatory actions include denial of service, terms and conditions, unequal treatment, failure to accommodate and retaliation. Places of public accommodation are prohibited from taking discriminatory actions against people because of their: race, color, disability, sex, sexual orientation (including transgender status), national origin/ancestry, creed, or marital status.



**Legal Precedents*****Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston (1995)***

The South Boston War Veterans Council was authorized by the City of Boston to organize the St. Patrick's Day Parade. The Council refused a request by the Irish-American Gay, Lesbian and Bisexual Group of Boston (GLIB) to join the parade in order to express gay pride. The state had a law prohibiting discrimination on account of sexual orientation in public accommodations. GLIB challenged the Council's refusal in court. The case went to the Supreme Court of the United States, which ruled in favor of the Council. The Court said that if the Council (a private group) was required to include in the parade a group expressing a message that the Council did not want to convey, that would violate the Council's First Amendment rights. The First Amendment means that speakers can choose not only what to say but also what not to say.

***Bob Jones University v. U.S. (1983)***

Bob Jones University is a private, Christian institution. The University was dedicated to fundamentalist Christian beliefs and prohibited interracial dating and marriage. In 1970, the Internal Revenue Service (IRS) began to deny tax exempt status to private schools engaging in racial discrimination. The University claimed that the IRS had violated their religious beliefs by revoking their tax exempt status. In an 8 – 1 ruling, the Supreme Court ruled in favor of the IRS, saying that racial discrimination in education violated a fundamental national public policy and that not all burdens on religion are unconstitutional.



### Arguments for Colorado

- The Colorado anti-discrimination law does not target speech. It targets conduct. The law is not directed at anyone's religious beliefs. It simply says that if you are going to sell products to the public, you need to sell those products to everyone, regardless of their race, sex, or sexual orientation.
- No reasonable observer would assume that a company's provision of a cake for a wedding amounts to the owner's approval of the marriage. Making a cake to sell to someone is not a forced expression of a message.
- Masterpiece could hang up signs in the shop to make it clear that providing baked goods for an event does not constitute endorsement of the event.
- The government does have an extremely good reason for the anti-discrimination law: to fight unlawful discrimination. In the 1960s, businesses used "religious beliefs" as a reason to justify discriminating against African-Americans. This is discrimination and government has the authority to prohibit it.
- More than 100 local governments in 38 states have adopted ordinances that protect citizens from discrimination based on sexual orientation in public accommodations. The courts should not undermine the democratic choices of these communities.
- If the Court rules for the Cakeshop, it could open the floodgates. Hair salons, tailors, architects, musicians, and florists could all claim that they use artistic skills when serving customers. Countless businesses would be able to discriminate if they claimed a religious belief motivated the discrimination. Moreover, they could claim that any law does not apply to them if they believe that complying with the law would send a message with which they disagree. Those could include labor laws, health and safety laws, and other important business regulations.
- As the Supreme Court said in the *Bob Jones* case, a law can place some burden on religion as long as there is a very good reason for the law.