



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

This moot court is based on a Supreme Court of the United States Case Masterpiece Cakeshop v. Colorado Civil Rights Commission. The case addresses two principles. The first is the authority of a State and its governmental entities to protect the rights and dignity of gay persons who are, or wish to be, married but who face discrimination when they seek goods or services. The second is the right of all persons to exercise fundamental freedoms under the First Amendment, as applied to the States through the Fourteenth Amendment. The freedoms asserted here are both the freedom of speech and the free exercise of religion.

The lesson should begin with an overview of the federal and state court system and a brief explanation of appellate advocacy and the difference between a trial and an appellate argument. In order to make the event as interactive as possible, in the large group, give the students the summary of the facts followed by a brief discussion of the Supreme Court decision. Students should then be asked to take a stand “for or against” the majority decision.

Once students have taken sides, divide them into three groups, Petitioner (Masterpiece Cakeshop), Respondent (Colorado Civil Rights Commission) or Supreme Court Justices. The groups can then on their own prepare their arguments to the Supreme Court during the mini moot court. A group of 9 students should be selected to serve as the Justices of the Supreme Court.

In the small groups, have the students discuss the fact pattern and the applicable law.

### **Instructions for the students**

Start is with the BRAINSTORMING SHEET & ARGUMENT SHEET. Review the case, then work through the SHEETS which will help the group prepare their arguments. During the discussion period you will need to select representatives (2-4) who will act as the advocates during the moot court. Students (Advocates) from each side

will present a brief argument that reflects their group's strongest points for an affirmative or negative response to the question posed. Afterwards the mock Supreme Court will decide the outcome of the case. Students will be instructed that all students on each side can raise their hand to answer questions posed by the Justices of the Court if their advocates need assistance or do not have a satisfactory answer. Advocates will only have 15 minutes to present their arguments to the Supreme Court. Masterpiece may reserve up to five (5) minutes for rebuttal which must be done at the start of their oral argument (kindly remind Masterpiece to reserve time if he or she forgets as a rebuttal is a powerful tool during oral arguments). The rebuttal should focus on responding to issues that the Colorado Civil Rights Commission raised during their oral argument. You will also need to craft responses to any questions the Supreme Court might ask. The ARGUMENT SHEET is an excellent way to organize your group's thoughts.

# BRAINSTORMING SHEET

Which side do you represent?

Your Group's Arguments (Rank from best to worst):

Opposition's Arguments (Rank from best to worst):

Counter-Arguments To Opposition's Arguments:

Possible Supreme Court Questions:

Responses To Supreme Court Questions:

## FACT PATTERN MASTERPIECE CAKESHOP, LTD, ET.AL V. COLORADO CIVIL RIGHTS COMMISSION ET AL.

How do you think the Court should decide the matter?

We will argue and decide it today.

### **BACKGROUND:**

Colorado's anti-discrimination law bars places of public accommodation – that is, businesses that sell to the public – from discriminating based on (among other things) sexual orientation. In 2012, Charlie Craig and David Mullins went to Masterpiece Cakeshop, a Denver-area bakery, to order a cake to celebrate their upcoming wedding. But the couple left empty-handed ... and upset. Masterpiece's owner, Jack Phillips, is a Christian who closes his business on Sundays and refuses to design custom cakes that conflict with his religious beliefs – for example, cakes that contain alcohol, have Halloween themes or celebrate a divorce. And because Phillips also believes that marriage should be limited to opposite-sex couples, he told Craig and Mullins that he would not design a custom cake for their same-sex wedding celebration.

Craig and Mullins went to the Colorado Civil Rights Division, where they accused Phillips of discriminating against them based on their sexual orientation. The agency initiated proceedings against Phillips, who responded that he had turned down the couple not because of their sexual orientation as such, but because “he could not in good conscience create a wedding cake that celebrates their marriage.” The agency, however, dismissed that explanation as “a distinction without a difference,” and it ruled both that Phillips’ refusal to provide the custom cake violated Colorado anti-discrimination laws and that Phillips had “no free speech right” to turn down Craig and Mullins’ request. The Colorado Civil Rights Commission upheld that ruling and told Phillips – among other things – that if he decided to create cakes for opposite-sex weddings, he would also have to create them for same-sex weddings. A Colorado court affirmed, and Phillips asked the Supreme Court to take his case, which it agreed to do in June.

## ARGUMENT SHEET

Look over these arguments below. Note whether they help Cakeshop (Appellant or Petitioner) or the State (Colorado Civil Rights Commission), Craig and Mullins (Appellee or Respondent). You can also decide the arguments help both sides (B) or neither side (N).

1. \_\_\_\_\_ In 2014, the Supreme Court turned down a request by a photography studio to review a New Mexico Supreme Court decision holding that the studio violated the state’s anti-discrimination laws when it refused to photograph a same-sex commitment ceremony. The petitioners in that case, *Elane Photography v. Willock*, argued that taking those photographs would violate their religious beliefs, but – after considering the petition at three consecutive conferences – the justices declined to weigh in and let the lower court decision stand for New Mexico.
2. \_\_\_\_\_ Public-accommodations laws like Colorado’s will generally pass constitutional muster, because they normally only regulate discrimination in providing goods and services – conduct that is not protected by the First Amendment – rather than expression. **But making a cake is not like renting out a hall or a limo for a wedding—in this case**, Colorado’s public-accommodations law triggers a more searching review because it compels a baker to create custom cakes for same-sex marriage celebrations, which (depending on the cake) can be either actual speech or, at a minimum, the kind of expressive conduct that conveys a message to others, without allowing the baker to make clear that he or she does not share his or her customers’ viewpoints on same-sex marriage.
3. \_\_\_\_\_ Colorado does not have a sufficiently strong interest to justify infringing on anyone’s religious beliefs, particularly because same-sex marriage was not even legal in Colorado when Craig and Mullins asked Phillips to create a cake. This is a far cry from the kind of discrimination that the public-accommodations law was designed to combat: The Supreme Court itself has acknowledged that opposition to same-sex marriage “long has been held—and continues to be held—in good faith by reasonable and sincere people.”
4. \_\_\_\_\_ The First Amendment protects expression, which is not limited to words but can also include visual art, from traditional paintings and movies to tattoos to stained-glass windows. The “expression” protected by the First Amendment also extends to wedding cakes even if they are made with mostly edible materials like icing and fondant rather than ink and clay, because the wedding cakes convey messages about marriage and the couple being married.
5. \_\_\_\_\_ There is no constitutional problem in this case because the public-accommodations law targets only conduct, not speech; the conduct here is selling cakes. The law makes clear that when businesses sell products or services to the public, they cannot discriminate against some members of that public based on, for example, their sexual orientation.
6. \_\_\_\_\_ No reasonable observer would understand the Company’s provision of a cake to a gay couple as an expression of its approval of the customer’s marriage, as opposed to its compliance with a non-discrimination mandate – especially because the Company is also required to post a sign indicating that the law bars discrimination based on, among other things, sexual orientation. Indeed, the Company could even use its own sign to make clear that providing baked goods for an event does not constitute endorsement of that event.
7. \_\_\_\_\_ Although the state has an interest in ensuring that businesses are open to all people, it has no legitimate—let alone compelling—interest in forcing artists to express ideas that they consider objectionable. And even if the state did have a compelling interest in making sure that same-sex couples

have access to the services that they need to celebrate their marriages, the state's efforts to enforce that interest sweep too broadly, because it has not shown that same-sex couples have had any trouble obtaining such services. To the contrary, Craig and Mullins received a free rainbow-themed custom cake from another local business.

**8.**\_\_\_\_\_ The First Amendment should bar the state both from requiring someone to design cakes bearing messages that violate his or her beliefs and from punishing him or her for refusing to create such cakes – particularly when he or she could, if s/he supported same-sex marriage, refuse requests to design cakes that oppose it. .

**9.**\_\_\_\_\_ The Colorado anti-discrimination law does not impinge on anyone's right to exercise his or her religion because the Supreme Court has ruled that the free-exercise right "does not include a right to disobey neutral and generally applicable laws, including non-discrimination laws."

**10.**\_\_\_\_\_ A wide range of businesses, far beyond the countless businesses such as hair salons, tailors, architects and florists that use artistic skills when serving customers or clients, could claim a safe harbor from any commercial regulation simply by claiming that the business believed that complying with the law would send a message with which the business disagreed. Such an outcome, would eviscerate the government's ability, including through labor and health laws, to regulate all kinds of transactions.



You are a Supreme Court justice hearing the Cakeshop case. Please answer the following questions.

REMEMBER TO REFERENCE THE FACTS OF THE CASE AND THE CLASSIFYING ARGUMENTS.

1. Pretend that you are listening to the oral arguments of the attorneys representing baker Phillips. What two questions would you ask?
  - A.
  - B.
  
2. Pretend that you are listening to the oral arguments of the attorneys representing Colorado and the same sex couple. What two questions would you ask?
  - A.
  - B.
  
3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of Cakeshop or Colorado and the same sex couple. Remember, if you are ruling in favor of Cakeshop, then you are arguing that the baker had the right not to serve the same sex couple. If you are ruling in favor of Colorado and the same sex couple, then you are arguing that the baker must make their cake.

\_\_\_\_\_ Cakeshop

\_\_\_\_\_ Colorado/same sex couple

**Resources**

<https://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>  
<https://www.oyez.org/cases/2017/16-111>