

16-111 MASTERPIECE CAKESHOP V. CO CIVIL RIGHTS COMMISSION

DECISION BELOW: 370 P.3d 272

LOWER COURT CASE NUMBER: 2015COA115

QUESTION PRESENTED:

Jack Phillips is a cake artist. The Colorado Civil Rights Commission ruled that he engaged in sexual orientation discrimination under the Colorado Anti- Discrimination Act ("CADA") when he declined to design and create a custom cake honoring a same-sex marriage because doing so conflicts with his sincerely held religious beliefs.

The Colorado Court of Appeals found no violation of the Free Speech or Free Exercise Clauses because it deemed Phillips' speech to be mere conduct compelled by a neutral and generally applicable law. It reached this conclusion despite the artistry of Phillips' cakes and the Commission's exemption of other cake artists who declined to create custom cakes based on their message. This analysis (1) flouts this Court's controlling precedent, (2) conflicts with Ninth and Eleventh Circuit decisions regarding the free speech protection of art, (3) deepens an existing conflict between the Second, Third, Sixth, and Eleventh Circuits as to the proper test for identifying expressive conduct, and (4) conflicts with free exercise rulings by the Third, Sixth, and Tenth Circuits.

The question presented is:

Whether applying Colorado's public accommodations law to compel Phillips to create expression that violates his sincerely held religious beliefs about marriage violates the Free Speech or Free Exercise Clauses of the First Amendment.

CERT. GRANTED 6/26/2017