

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-02074-WYD-STV

MASTERPIECE CAKESHOP INCORPORATED,
a Colorado corporation; and
JACK PHILLIPS,

Plaintiffs,

v.

AUBREY ELENIS, Director of the Colorado Civil Rights Division, in her official and individual capacities;
ANTHONY ARAGON, as member of the Colorado Civil Rights Commission, in his official and individual capacities;
MIGUEL “MICHAEL” RENE ELIAS, as member of the Colorado Civil Rights Commission, in his official and individual capacities;
CAROL FABRIZIO, as member of the Colorado Civil Rights Commission, in her official and individual capacities;
CHARLES GARCIA, as member of the Colorado Civil Rights Commission, in his official and individual capacities;
RITA LEWIS, as member of the Colorado Civil Rights Commission, in her official and individual capacities;
JESSICA POCOCK, as member of the Colorado Civil Rights Commission, in her official and individual capacities;
AJAY MENON, as member of the Colorado Civil Rights Commission, in his official and individual capacities;
CYNTHIA H. COFFMAN, Colorado Attorney General, in her official capacity; and
JOHN HICKENLOOPER, Colorado Governor, in his official capacity,

Defendants.

**DECLARATION OF JACK PHILLIPS IN SUPPORT OF
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

I, JACK PHILLIPS, hereby declare as follows:

1. I am competent to testify and, in addition to my sworn testimony in the First Amended Verified Complaint, make this declaration based on my personal knowledge.
2. As a cake artist, I use artistic skills such as designing, painting, sculpting, and decorating to create expressive cakes.
3. My work as a cake artist is akin to the work of a painter or sculptor, except that instead of working with canvas or clay, I create art with edible materials like icing and fondant.
4. When customers ask me to create a custom cake, I collaborate with them on ways to improve any messages that they want the cake to communicate or any design or image that they want the cake to contain.
5. One of the key parts of my job as a cake artist is to act as a design consultant who improves on the ideas for cakes that my customers bring me.
6. During conversations with customers, I often educate them about what designs will look good, offer suggestions about how to express a particular idea or improve the look of the cake, provide advice about what words, designs, symbols, themes, or images to include, and give ideas on what the requested cake should look like or what messages it should communicate.
7. Even when customers have a general idea of what they want a cake to look like or the messages that they want it to communicate, they typically rely on my input and suggestions, which are based on decades spent creating cake art.
8. When discussing a custom cake request with a customer, I retain complete freedom, discretion, and control over the artistic details of the cake and the process of creating that

cake, and I reserve the right to decline any suggestion, demand, or request that a customer makes.

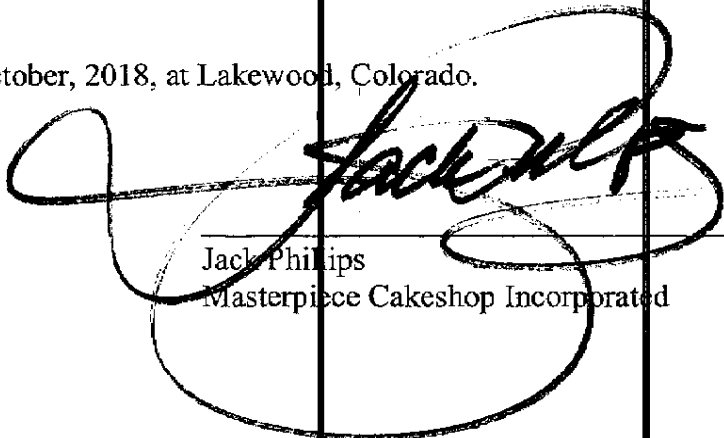
9. My role as a cake artist includes taking my customer's idea, consulting on essential details like the cake's design, shape, wording, message, and overall appearance, and using my artistic skills like sketching, designing, painting, and sculpting to bring it to life.
10. When I craft a custom expressive cake, I intend to and do in fact communicate through that cake. That is why I decline to create custom cakes that convey messages in conflict with my faith.
11. In 2012, two customers asked me to create a wedding cake celebrating a same-sex marriage. I declined because the message that the cake would have communicated was in conflict with my religious beliefs about marriage, which I believe to be a sacred union between a man and a woman. But I offered to sell the customers other items in my shop, such as cookies or brownies, or to create a different custom cake for them, like one celebrating their birthdays.
12. Those two men later filed a charge of discrimination against my shop with the Colorado Civil Rights Division. After the Division's investigation, the Colorado Civil Rights Commission filed a formal complaint against me and my shop, and after administrative proceedings, it issued an order punishing us.
13. Since I declined that request, I have endured countless hateful phone calls and multiple death threats directed at me and my family because of my decision not to create a wedding cake celebrating a same-sex marriage.

14. Since I declined that request, I have had countless people come into my shop who have told me that they are gay and that they support my freedom to decline to create cakes that express messages in violation of my faith.
15. On June 26, 2017, my shop was contacted by someone who requested a special cake designed pink on the inside and blue on the outside to celebrate a gender transition. The caller told us that the design was a reflection of the fact that the caller transitioned from male to female and that the cake was to celebrate that transition.
16. We declined that request because its design communicated that sex can be changed, can be chosen, and is determined by perceptions or feelings rather than biology. The cake also expressed celebration for those ideas. All of those messages conflict with my religious beliefs because I believe that sex is given by God, is biologically determined, and cannot be chosen or changed.
17. Masterpiece Cakeshop continues to regularly get requests for custom cakes that express through words, designs, symbols, themes, or images messages that conflict with my religious beliefs. At times when the media discusses me or my cases a lot, I receive those kinds of requests daily. At other times, when the media isn't discussing me or my cases as much, I still typically get those kinds of requests once every two to three weeks. It is my impression that a number of those requests are seeking to harass us at Masterpiece Cakeshop and to get us to do something that the state of Colorado considers a violation of the Colorado Anti-Discrimination Act.

DECLARATION UNDER PENALTY OF PERJURY

I, JACK PHILLIPS, a citizen of the United States and a resident of the State of Colorado, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of October, 2018, at Lakewood, Colorado.



Jack Phillips
Masterpiece Cakeshop Incorporated

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-02074-WYD-STV

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AUBREY ELENIS, Director of the Colorado Civil Rights Division, in her official and individual capacities;
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MIGUEL "MICHAEL" RENE ELIAS, as member of the Colorado Civil Rights Commission, in his official and individual capacities;
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CHARLES GARCIA, as member of the Colorado Civil Rights Commission, in his official and individual capacities;
RITA LEWIS, as member of the Colorado Civil Rights Commission, in her official and individual capacities;
JESSICA POCOCK, as member of the Colorado Civil Rights Commission, in her official and individual capacities;
AJAY MENON, as member of the Colorado Civil Rights Commission, in his official and individual capacities;
CYNTHIA H. COFFMAN, Colorado Attorney General, in her official capacity; and
JOHN HICKENLOOPER, Colorado Governor, in his official capacity,

Defendants.

**DECLARATION OF JACOB P. WARNER IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, JACOB P. WARNER, hereby declare:

1. I am over the age of eighteen and competent to testify, and I make this declaration based on my personal knowledge.

2. I am one of the attorneys representing Plaintiffs Masterpiece Cakeshop Incorporated and Jack Phillips in this litigation.

3. Attached as Exhibit 1 is a true and accurate copy of the Colorado Department of Regulatory Agencies webpage describing the Colorado Civil Rights Commission's current membership. This webpage is found at <https://www.colorado.gov/pacific/dora/civil-rights/commission>. I last accessed this webpage on October 18, 2018.

4. Attached as Exhibit 2 is a true and accurate copy of a La Voz webpage about Anthony Aragon. This webpage is found at <http://www.lavozcolorado.com/detail.php?id=5052>. I last accessed this webpage on October 18, 2018.

5. Attached as Exhibit 3 is a true and accurate copy of a National LGBTQ Task Force webpage that contains a biography of Anthony Aragon. This webpage is found at <http://www.thetaskforce.org/nac-bio-anthony-aragon/>. I last accessed this webpage on October 18, 2018.

6. Attached as Exhibit 4 is a true and accurate copy of an amicus brief, "Brief for National LGBTQ Task Force, et al. as Amici Curiae Supporting Respondents," that was filed in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

7. Attached as Exhibit 5 is a true and accurate copy of a webpage of the group One Colorado that lists the organization's board members. This webpage is found at <https://one-colorado.org/board-of-directors/>. I last accessed this webpage on October 18, 2018.

8. Attached as Exhibit 6 is a true and accurate copy of an amicus brief, “Brief of Amici Curiae Colorado Organizations and Individuals in Support of Respondents,” that was filed in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018). This brief names One Colorado in its list of amici curiae.

9. Attached as Exhibit 7 is a true and accurate copy of an amicus brief, “Brief Amici Curiae of Lambda Legal Defense and Education Fund, Inc., One Colorado and One Colorado Educational Fund in Support of Appellees,” that was filed in *Craig v. Masterpiece Cakeshop, Ltd.*, 370 P.3d 272 (Colo. App. 2015). This brief names One Colorado in its list of amici curiae.

10. Attached as Exhibit 8 is a true and accurate copy of a Westworld article about Anthony Aragon. This article is found at <https://www.westword.com/news/public-servant-anthony-aragon-runs-for-office-in-the-imperial-court-5118948>. I last accessed this webpage on October 18, 2018.

11. Attached as Exhibit 9 is a true and accurate copy of a City of Denver webpage about Human Rights and Community Partnerships that lists Anthony Aragon as a staff member and describes his work. This webpage is found at <https://www.denvergov.org/content/denvergov/en/human-rights-and-community-partnerships/about-us.html>. I last accessed this webpage on October 18, 2018.

12. Attached as Exhibit 10 are true and accurate screenshots of a Facebook webpage that belongs to a person identified as Anthony Aragon. These screenshots were taken from a webpage found at <https://www.facebook.com/anthony.aragon.50>. I last accessed this webpage on October 18, 2018. It includes a post that is dated December 5, 2017—the day that the Supreme Court held oral argument in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*,

138 S. Ct. 1719 (2018)—which includes an image of the White House illuminated with a rainbow-themed exterior display, and states in part: “Hello Tuesday!! Today’s an important day in our Nation’s Capital. Sharing this holiday visual of a time when life was better.”

13. Available at this link—<https://www.youtube.com/watch?v=94DRQgA7yys>—is a true and accurate copy of a YouTube video titled “Anthony Aragon – Susan J. Hyde Award for Longevity in the Movement.” I last accessed that link on October 18, 2018. In the video, a person identified as Anthony Aragon says: “I’ve been an LGBT activist, fundraiser, organizer, event planner for over 25 years.”

14. Attached as Exhibit 11 is a true and accurate copy of a Colorado Springs Independent article titled “Lottie Prize winner: Jessie Pocock.” This article is found at <https://www.csindy.com/coloradosprings/lottie-prize-winner-jessie-pocock/Content?oid=2962716>. I last accessed this webpage on October 18, 2018.

15. Attached as Exhibit 12 are true and accurate screenshots taken from a Twitter page that belongs to a person identified as Jessie Pocock. These screenshots were taken from a webpage found at https://twitter.com/jessie_pocock. I last accessed this webpage on October 18, 2018.

16. Attached as Exhibit 13 is a true and accurate copy of an Inside Out Youth Services webpage. This webpage is found at <https://www.insideoutys.org/about/>. I last accessed this webpage on October 18, 2018.

17. Attached as Exhibit 14 are true and accurate screenshots of a Facebook webpage that belongs to a person identified as Jessie Pocock. These screenshots were taken from a webpage found at <https://www.facebook.com/jessie.pocock>. I last accessed this webpage on October 18, 2018.

18. Attached as Exhibit 15 is a true and accurate copy of a One Colorado webpage titled “Heidi Jeanne Hess.” This webpage is found at <https://one-colorado.org/our-team/heidi-jeanne-hess/>. I last accessed this webpage on October 18, 2018.

19. Attached as Exhibit 16 are true and accurate screenshots of a Twitter webpage that belongs to a person identified as Heidi J Hess. These screenshots were taken from a webpage found at <https://twitter.com/hjhess3?lang=en>. I last accessed this webpage on October 18, 2018.

20. Attached as Exhibit 17 is a true and accurate copy of public session minutes from a Colorado Civil Rights Commission meeting held May 30, 2014. This document is found at <https://drive.google.com/file/d/0B83TDPp7IaM2T21pZGIONG1nM0kwaHIEQzNaYVM4RUM0RWIB/view>. I last accessed this webpage on October 18, 2018.

21. Attached as Exhibit 18 is a true and accurate copy of the transcript of the Colorado Civil Rights Commission meeting held May 30, 2014. The transcript was part of the record in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

22. Attached as Exhibit 19 is a true and accurate copy of public session minutes from a Colorado Civil Rights Commission meeting held July 25, 2014. This document is found at <https://drive.google.com/file/d/0B83TDPp7IaM2bUk3NVBOOEhqX2dzUkRqZzdldUVkVy12WFpN/view>. I last accessed this webpage on October 18, 2018.

23. Attached as Exhibit 20 is a true and accurate copy of the transcript of the Colorado Civil Rights Commission meeting held July 25, 2014. The transcript was part of the record in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

24. Attached as Exhibit 21 is a true and accurate copy of a Colorado Public Radio article titled “Former Civil Rights Commissioner Diann Rice Speaks Out: ‘I Don’t Have Any

Regrets.’’ This article is found at <http://www.cpr.org/news/story/former-civil-rights-commissioner-diann-rice-responds-i-have-no-religious-bias>. I last accessed this webpage on October 18, 2018.

25. Attached as Exhibit 22 is a true and accurate copy of a Colorado Public Radio article titled ‘‘Gov. Hickenlooper On New Cakeshop Lawsuit: ‘There Shouldn’t Be Bias In Who You Serve.’’’ This article is found at <https://www.cpr.org/news/story/gov-hickenlooper-opposes-both-oil-and-gas-measures-proposed-for-the-ballot>. I last accessed this webpage on October 18, 2018.

26. Attached as Exhibit 23 is a true and accurate copy of a CBS Denver news article titled ‘‘Supporters Rally for Gay Couple After Wedding Cake Ruling.’’ This article is found at <https://denver.cbslocal.com/2018/06/05/gay-wedding-cake-lakewood-masterpiece-supreme-court/>. I last accessed this webpage on October 18, 2018.

27. Attached as Exhibit 24 is a true and accurate copy of a ‘‘Charge of Discrimination’’ (‘‘CCRD Charge No. CP2018011310’’) that Autumn Scardina filed with the Colorado Civil Rights Division on July 20, 2017.

28. Attached as Exhibit 25 is a true and accurate copy of a ‘‘Response to Request for Information’’ that was filed on behalf Masterpiece Cakeshop with the Colorado Civil Rights Division on September 19, 2017.

29. Attached as Exhibit 26 is a true and accurate copy of a ‘‘Rebuttal to Written Position Statement in Response to the Charge of Discrimination’’ that Autumn Scardina filed with the Colorado Civil Rights Division on November 7, 2017.

30. Attached as Exhibit 27 is a true and accurate copy of the “Determination” in Charge No. CP2018011310, listing Autumn Scardina as the Complainant and Masterpiece Cakeshop Incorporated as the Respondent, and signed on behalf of the Colorado Civil Rights Division by “Aubrey Elenis, Director Or Authorized Designee.” It is dated June 28, 2018.

31. Attached as Exhibit 28 is a true and accurate copy of the “Notice of Hearing and Formal Complaint” that the Colorado Civil Rights Commission filed in *Scardina v. Masterpiece Cakeshop Incorporated* on October 9, 2018.

32. Attached as Exhibit 29 is a true and accurate copy of the 2017 Annual Report for the Colorado Civil Rights Commission and Colorado Civil Rights Division. This report is found at <https://drive.google.com/file/d/1fiffF5G4WWbqAVxu1wgh3Y0KnJhrHEt/view>. I last accessed this webpage on October 18, 2018.

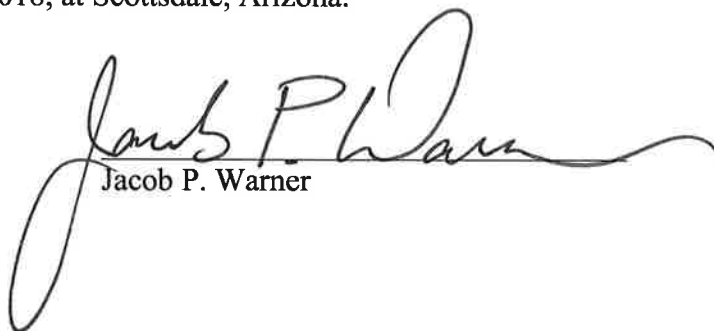
33. Attached as Exhibit 30 are true and accurate copies of “Determinations” in three discrimination complaints (“Charge No. P20140069X,” “Charge No. P20140070X,” and “Charge No. P20140071X”) that William Jack filed with the Colorado Civil Rights Division, and three letters from the Commission affirming those determinations. These documents were part of the record in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

34. Attached as Exhibit 31 is a true and accurate copy of the merits brief that the Colorado Civil Rights Commission filed in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

DECLARATION UNDER PENALTY OF PERJURY

I, Jacob P. Warner, a citizen of the United States and a resident of the State of Arizona, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 23rd day of October, 2018, at Scottsdale, Arizona.



Jacob P. Warner

EXHIBIT 1



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Civil Rights Commission

The Colorado Civil Rights Commission is a seven-member, bipartisan board whose mission is to:

- Conduct hearings regarding illegal discriminatory practices
- Advise the Governor and General Assembly regarding policies and legislation that address illegal discrimination
- Review appeals of cases investigated and dismissed by CCRD
- Adopt and amend rules and regulations to be followed in enforcement of Colorado's statutes prohibiting discrimination

Commission Meetings

The Commission meets to develop policy and hear appeals in discrimination cases. Unless otherwise announced, the Colorado Civil Rights Commission holds [meetings](#) on the fourth Friday of the month at 1560 Broadway, Denver, CO 80202, beginning at 10 a.m.

Colorado Civil Rights Commissioners

- **Anthony Aragon**, Democrat, Representing State or Local Government Entities, Denver (term expires: 3/16/19)
- **Miguel "Michael" Rene Elias**, Republican, Representing Community at Large, Pueblo (term expires:

3/13/20)

- **Carol Fabrizio**, Unaffiliated, Representing Business, Denver (term expires: 3/16/19)
- **Charles Garcia**, Democrat, Representing Community at Large, Denver (term expires: 3/13/21)
- **Rita Lewis**, Democrat, Representing Small Business, Denver (term expires: 3/16/19)
- **Ajay Menon**, Unaffiliated, Representing State or Local Government Entities, Fort Collins (term expires: 3/13/20)
- **Jessica Pocock**, Unaffiliated, Representing Community at Large, Colorado Springs (term expires: 3/13/20)

About the Commission

Commissioners are appointed by the Governor and confirmed by the state Senate to serve four-year terms.

They are selected from across Colorado and represent both political parties. Two commissioners represent business (one of whom represents small business), two represent government, and three represent the community at large. At least four of the commissioners are members of groups who have been or might be discriminated against because of disability, race, creed, color, sex, national origin, sexual orientation, marital status, religion, or age.

Matters concerning investigations or appeals before the Commission are confidential, and can only be discussed with the parties and/or their representatives.

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Anthony Aragon



By Staff
News@lavozcolorado.com

07/21/2010

Profile

Born and raised in southwest Denver, Aragon has always been involved in (Democrat) politics. Right after high school he worked at the Westin Hotel/Tabor Center. In 1988 he landed a job as receptionist in the Mayor's Office under the Federico Peña administration until 1990. He served as a personal assistant to Swanee Hunt for the next two years, and then became a

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legal assistant with the Roy Romer administration until 1994. He worked with the State Department of Public Health & Environment from 1994-1996. For the next several years, Aragon worked for U.S. West, as a legislative assistant under Tim Sandos, with the Gill Foundation as Deputy Director of Donor Resources, and as office manager on the Ari Zavarra Campaign. In 2003 Aragon became the director of scheduling for Mayor Hickenlooper. In 2007 he became the director of boards and commissions for the Mayor's office. Appointed by Gov. Bill Ritter in 2007, Aragon has served as Commissioner with the Colorado Civil Rights Commission. Aragon was hired to his current position in August 2008. Aragon has been a Gay, Lesbian, Bisexual, Transgender (GLBT) activist and has served on various boards like the Gay Rodeo Association and GOP Center of Colorado. Aragon currently serves on the board of Imperial Court, Rocky Mountain Empire, Visit Denver GLBT Task Force, Concert for Kids and One Colorado. He has also served as coordinator for the Gay Parade for the past nine years. Aragon adds, "I'm trying to make a difference everyday that I am here on this earth." Aragon has been married to partner, David Westman, for 14 years and they recently acquired a new puppy called Andale. During their free time, Aragon and his partner like to try new restaurants and enjoy spending time with Andale.

About The Denver Office on Aging

Aragon is involved in constituent outreach and is responsible for highlighting the programs and services that impact older adults through public awareness. That outreach is via senior resource fairs, DRCOG on aging and the Older Americans Coalition.

High School

Aragon struggled with his sexuality while attending Abraham Lincoln. He recalls being subjected to name calling and teasing. He was a good student, but was glad to leave high school and join the workforce.

Message to Youth

"Be true to yourself. Realize that there are people just like you. You are loved. You are incredible human beings and you should celebrate life."

Last Word

"Having been born and raised in Denver, there is no other place on earth like Denver. I enjoy the four seasons and can't wait to enjoy the winter season with our new puppy, Andale."

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EXHIBIT 3



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NATIONAL ACTION COUNCIL BIO: ANTHONY ARAGON

Anthony Aragon joined the Office of Mayor Michael Hancock in August, 2011 as the Director of Boards & Commissions. He manages over 130 different civic boards and commissions and makes recommendations to Mayor Michael Hancock who to appoint to the various boards & commissions. Prior to joining the Mayor's Office, Anthony worked for the State of Colorado as a member of Governor John Hickenlooper's transition team and helped coordinate the Governor's inaugural events. On January 11, 2011 he was named Chief of Staff to First Lady Helen Thorpe. Anthony also served as Governor John Hickenlooper's GLBT Liaison. Prior to that, he worked at the Mayor's Agency for Human Rights & Community Relations (HRCR) as the Director of the Denver Office on Aging & Community Relations on August 18, 2008. Previously, he was the Director of Boards & Commissions for Mayor John Hickenlooper and also served as the Mayor's Director of Scheduling for several years.

Anthony is a Denver native and has been a proud member of Denver's GLBT community for over 25 years. He is a long-time Democratic activist having worked for former Mayor Federico Pena, Governor Roy Romer and Ambassador Swanee Hunt. He has also been honored as the Colorado Pride Guide 2005 Coloradan of the Year and the 2006 Colorado Business Council Professional Man of the Year. Some of Anthony's civic engagement includes serving as a Commissioner on the Colorado Civil Rights Commission, having been appointed by Governor Bill Ritter in July, 2007. Anthony was also on the board of One Colorado and is a past President of the Board of Directors for Equal Rights Colorado. Anthony lives with his partner of 16 years, David Westman & their doggies Andale & Arriba in Stapleton.

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EXHIBIT 4

2017 WL 5152971 (U.S.) (Appellate Brief)
Supreme Court of the United States.

MASTERPIECE CAKESHOP, LTD. and Jack C. Phillips, Petitioners,
v.
COLORADO CIVIL RIGHTS COMMISSION, Charlie Craig, and David Mullins.

No. 16-111.
October 30, 2017.

ON WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

Brief for National LGBTQ Task Force, et al. as Amici Curiae Supporting Respondents

Candace Bond-Therault, National LGBTQ, Task Force, 1325 Massachusetts Ave., Washington, D.C. 20005, (202) 639-6315, cbond@thetaskforce.org, for amici curiae.

Marc A. Hearron, Morrison & Foerster LLP, 2000 Pennsylvania Ave., NW, Washington, D.C. 20006, (202) 778-1663, MHearron@mofo.com.

Ruth N. Borenstein, Morrison & Foerster LLP, 425 Market St., San Francisco, CA 94105, for amicus curiae National LGBTQ Task Force.

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***1 BRIEF FOR NATIONAL LGBTQ TASK FORCE, ET AL. AS AMICI CURIAE SUPPORTING RESPONDENTS**

Amici curiae National LGBTQ Task Force, et al., respectfully submit this brief in support of respondents.¹

¹ No counsel for a party authored this brief in whole or in part, and no person other than amici, their members, or their counsel made a monetary contribution to its preparation or submission. Petitioners and respondent Colorado Civil Rights Commission have filed blanket consents to the filing of amicus briefs. A letter from respondents Charlie Craig and David Mullins consenting to the filing of this brief has been submitted to the Court.

INTEREST OF AMICUS CURIAE

The National LGBTQ Task Force is the nation's oldest national LGBTQ advocacy group. As a progressive social-justice organization, the Task Force works to achieve full freedom, justice, and equality for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) people and their families. The Task Force trains and mobilizes activists across the Nation to combat discrimination against LGBTQ people in every aspect of their lives, including housing, employment, healthcare, retirement, and basic human rights. Recognizing that LGBTQ persons of color are subject to multifaceted discrimination, the Task Force is also committed to racial justice. To that end, the Task Force hosts the Racial Justice Institute at its annual Creating Change Conference, which equips individuals with *2 skills to advance both LGBTQ freedom and racial equality.

GLAAD is the world's largest LGBTQ media advocacy organization committed to growing acceptance of LGBTQ people. As a part of GLAAD's core work, it runs public education campaigns and educates reporters on the full ramifications of religious exemption legislation to ensure accurate coverage. The religious exemption agenda at the core of this case puts the LGBTQ community at direct risk and disproportionately affects LGBTQ people of color who face additional institutional discrimination.

Basic Rights Oregon is Oregon's largest nonprofit LGBTQ advocacy group. Basic Rights Oregon works to ensure that all LGBTQ Oregonians experience equality by building a broad and inclusive politically powerful movement, shifting public opinion, and achieving policy victories

Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR) believes that all people should be able to create relationships with those they love and build the families that they hope for without judgment or barriers. COLOR works to ensure that each person is treated with respect and that all families are treated with dignity. COLOR will always speak out against attempts to push personal beliefs in order to deny the health, rights and dignity of Latinas, their families, and their communities.

The LGBT Technology Partnership is the premier organization representing the interests of the LGBT community with regards to communications *3 and technology issues. Through education of members and communications providers, as well as direct engagement with policy makers at the local, state, and federal level the Partnership advocates on behalf of the needs of its LGBT members across the country. With the continued and increased adoption of technology, access to faster communications platforms, and more reliable and stable services comes greater community connections

and empowerment. Part of the work that the Partnership does is using technology to serve underserved and homeless LGBT populations and to empower LGBT communities through technology. The type of employment and personal discrimination exemplified by this case is at the core of the work that the Partnership is trying to eradicate through use of technology.

The National Coalition for LGBT Health is committed to improving the health and well-being of lesbian, gay, bisexual, and transgender individuals through federal and local advocacy, education, and research. The Coalition has adopted a “Social Determinants of Health” (SDoH) frame and vision. Health care and healthy communities are built on a foundation that must be set long before medical care or intervention is required. That foundation for health begins in homes, schools, communities, jobs, and neighborhoods.

The National Equality Action Team (NEAT) harnesses the unique power of LGBTQ+ people, their allies, and community partners to educate and take collective action across issues in the fight for justice. Denying a person service simply because of the immutable characteristics that they possess goes *4 against the very core of our Nation's ideals and the words inscribed in our founding documents.

The National Queer Asian Pacific Islander Alliance is a federation of LGBT Asian American, South Asian, Southeast Asian, and Pacific Islander (APIs) organizations. NQAPIA builds the capacity of local LGBT API groups, develops leadership, promotes visibility, educates the community, invigorates grassroots organizing, encourages collaborations, and challenges anti-LGBT bias and racism.

The Sexuality and Information Council of the United States (SIECUS) is a national organization focused on creating a world where all aspects of an individual's sexuality are treated with dignity and respect. SIECUS approaches its work with the understanding that individuals experience the world through multiple identities and work to address the multiple types of discrimination experienced by individuals, including LGBTQ people of color. SIECUS believes that prejudice and discrimination based on sexual orientation is unethical and immoral; individuals have the right to live in accordance with their sexual orientation, whether they are lesbian, gay, bisexual, or queer; and the legal system should guarantee the civil rights and protection of all people, regardless of sexual orientation.

SisterSong: National Women of Color Reproductive Justice Collective is committed to ensuring that women of color are no longer exploited, discriminated against, or harmed by the systems that have historically denied them equal rights and dignity. SisterSong works to amplify women of *5 color's lived experiences and leverage their collective power to push back on any attempts to deny their bodily autonomy, disrespect their families, or withhold the power, access and resources that all women need to make healthy decisions about their bodies, sexuality, relationships and families.

The Autistic Self Advocacy Network seeks to advance the principles of the disability rights movement with regard to [autism](#). AS AN believes that the goal of [autism](#) advocacy should be a world in which autistic people enjoy equal access, rights, and opportunities. We work to empower autistic people across the world to take control of our own lives and the future of our common community, and seek to organize the autistic community to ensure our voices are heard in the national conversation about us.

Witness to Mass Incarceration is and will be a digital library of individuals whose lives and the lives of their family will be memorialized. Our goal is to place women's and LGBTQIA people's experience at the center of the fight for alternatives to mass incarceration. We work to change the narrative from invisibility and victimization to empowerment through documentation, organizing, and advocacy.

*6 INTRODUCTION AND SUMMARY OF ARGUMENT

Business owners' personal beliefs should not exempt commercial enterprises from the reach of generally applicable public-accommodations laws that prohibit discrimination on the basis of sexual orientation.

For decades, this Court's decisions have established that a business owner's views on race or interracial couples - no matter how sincere or deeply held, and even if religion based - do not justify an exception allowing race-based discrimination. But recognizing such an exception for a business owner's views on sexual orientation or gender identity would exacerbate the multiple layers of discrimination that LGBTQ people of color already face in public accommodations, housing, and employment. Indeed, it could open the door to legally permissible discrimination based on the intersections of race, sexual orientation, and gender identity.

Moreover, LGBTQ people should not be subject to second-rate anti-discrimination laws with exceptions that do not apply to other protected classes. To recognize the exception asserted in this case could thwart the advancement that LGBTQ people have made toward full equality by sending the message that discrimination against LGBTQ people is worthy of protection. Despite progress, discrimination against LGBTQ people - and especially LGBTQ people of color - is pervasive and ongoing. A handful of recent accounts of such discrimination is collected at the end of this brief. These real-life experiences show why laws prohibiting sexual-orientation *7 discrimination in public accommodations must be fully enforced.

ARGUMENT

A. Under an Exception Permitting Refusal of Service Based on the Business Owner's Beliefs, LGBTQ Persons of Color Would Be Subject to Race-Based Discrimination

It is firmly established that commercial enterprises are not exempt from public-accommodations laws prohibiting discrimination on the basis of race, no matter the business owner's sincere, deeply held beliefs. But if businesses are permitted to refuse service because of sexual orientation, they will also be able to engage in race-based discrimination against LGBTQ people of color.

After the enactment of the federal Civil Rights Act of 1964 and state public-accommodations laws prohibiting race-based discrimination, businesses tested multiple legal theories to evade the reach of these laws, claiming that they interfered with business owners' religious and moral beliefs. These attempts were universally rejected. *See, e.g., Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (rejecting business owner's argument that his right to pursue his calling permits him to select his customers); *Katzenbach v. McClung*, 379 U.S. 294 (1964) (upholding application of Civil Rights Act of 1964 to restaurant in the face of owner's arguments about interference with constitutional right to control property and choose with whom to deal). In *Newman v. Piggie Park Enterprises*, the defendant asserted a First Amendment exemption from Title II of the Civil Rights Act of 1964, asserting a “right to *8 refuse to serve members of the Negro race in his business establishments upon the ground that to do so would violate his sacred religious beliefs.” 256 F. Supp. 941, 945 (D.S.C. 1966). When that case reached this Court, the Court called the asserted exemption “patently frivolous.” *Newman v. Piggie Park Enters.*, 390 U.S. 400, 402 n.5 (1968).

Cognizant of these decisions, petitioners and the United States attempt to distinguish between discrimination on the basis of race and discrimination on the basis of sexual orientation. The U.S. Solicitor General concedes that a State's interest in eradicating race-based discrimination can override a business owner's deeply held beliefs and expression about race. *See* U.S. Amicus Br. 32 (State's interest “may justify even those applications of a public accommodations law that infringe on First Amendment freedoms”). But he asserts that public-accommodations laws must yield to a business owner's deeply held beliefs about marriage because States do not have as compelling an interest in eradicating discrimination on the basis of sexual orientation as they do in ending race-based discrimination. *See ibid.*

But that argument fails to apprehend how discrimination often works against LGBTQ people of color. LGBTQ people of color are often subject to multifaceted discrimination. It may be impossible to know whether an act of discrimination is motivated by race or sexual orientation. If businesses are permitted to refuse to provide goods and services to LGBTQ people based on the owners' beliefs, that exception could easily be used to mask what is actually race-based discrimination. For example, a *9 cake decorator could refuse to provide a wedding cake to an LGBTQ person of color *based on race* but could justify that discrimination by asserting personal opposition to marriage by same-sex couples.

Relatedly, discrimination against an LGBTQ person may occur not solely because of the person's race or not solely because of the person's sexual orientation or gender identity, but because of the combination of both. Courts have recognized that when an individual is a member of more than one protected class, discrimination against that person may be based on the combination of both protected characteristics. *See, e.g., B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1101 (9th Cir. 2002) (collecting decisions). For example, a business that does not discriminate against African Americans or women generally may still discriminate against African American women. *See Jefferies v. Harris Cnty. Cmty. Action Ass'n*, 615 F.2d 1025, 1032 (5th Cir. 1980). Literature refers to this form of discrimination as "intersectionality." *See* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *Stan. L. Rev.* 1241 (1991). Permitting an exception for discrimination based on sexual orientation or gender identity would open the door to intersectional discrimination against LGBTQ people of color.

LGBTQ people of color are particularly susceptible to this multifaceted discrimination. They are far more likely to be the subject of bias than white LGBTQ people, and acts of bias are likelier to be more extreme. This is highlighted in the nationwide study of anti-transgender discrimination conducted by the National LGBTQ Task Force and the National *10 Center for Transgender Equality. That study found that although discrimination was pervasive for all respondents surveyed, the combination of anti-transgender bias and persistent structural and interpersonal acts of racism was especially devastating for multiracial transgender people and other people of color. Jack Harrison-Quintana & Chris Quach, *Injustice at Every Turn: A look at multiracial respondents in the National Transgender Discrimination Survey* at 1.² Multiracial transgender and gender non-conforming people often live in extreme poverty, with 23% reporting a household income of less than \$10,000 per year. *Ibid.* This is higher than the rate for transgender people of all races (15%), the general U.S. multiracial population rate (15%), and almost six times the general U.S. population rate (4%).

² <http://www.thetaskforce.org/injustice-every-turn-report-national-transgender-discrimination-survey-lmultiracial-respondents/>.

Weakening legal protections for LGBTQ people would only exacerbate the challenges already facing LGBTQ people of color and would permit race-based discrimination. State public-accommodation laws prohibiting discrimination on the basis of sexual orientation must be able to be enforced against commercial enterprises without an exception for the business owners' personal beliefs.

***11 B. Fully Enforceable Anti-Discrimination Laws Are Critical for LGBTQ People to Achieve Full Equality**

Additionally, were this Court to accept a distinction between a State's interest in ending race-based discrimination and its interest in eradicating discrimination on the basis of sexual orientation, it would enshrine in this Court's decisions a two-tiered system in which LGBTQ people are entitled only to second-class protection. That would be intolerable to LGBTQ people, who need the full protection of the laws to achieve full equality in society.

As this Court well knows, this Nation's history of discrimination against LGBTQ people is long and severe. LGBTQ people have been forced from their homes, fired from their jobs, denied service at businesses, banished from their families, subjected to violence by members of the public and law enforcement, and much more. Even worse, federal and state governments have often singled out LGBTQ people for official condemnation. *See generally Out of the Past: 400 Years of*

Lesbian and Gay History in America (PBS Online); Brad Sears and Christy Mallory, *Employment Discrimination Against LGBT People: Existence and Impact*, in *Gender Identity and Sexual Orientation Discrimination in the Workplace: A Practical Guide* (BNA); Christy Mallory, et al., *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community* (Williams Inst. Mar. 2015).

Many States are trying to counteract the history of invidious discrimination against LGBTQ people. That is well within their purview: States are *12 empowered “to pursue the profoundly important goal of ensuring nondiscriminatory access to commercial opportunities in our society.” *Roberts v. United States Jaycees*, 468 U.S. 609, 632 (1984) (O'Connor, J., concurring in part and concurring in judgment). That is as true for LGBTQ people as it is for people of color. Through their public-accommodations laws, Colorado and twenty other States and the District of Columbia have taken action to root out discrimination against LGBTQ people. But the roots of hatred run deep.

Public-accommodations laws - and in particular this Court's decisions upholding those laws against assertions that they must yield to one's deeply held beliefs - played a critical role not only in advancing the rights of African Americans but in changing society's views. Because the Civil Rights Act of 1964 was enacted without exemptions for religious or moral objectors, it helped solidify public rejection of segregation. Had those exemptions been included (they were proposed), the Civil Rights Act would have been far less effective. Indeed, were those exemptions in place, they would have prolonged segregation by sending the message that deeply held racism deserves protection. See Michael Kent Curtis, *A Unique Religious Exemption from Antidiscrimination Laws in the Case of Gays? Putting the Call for Exemptions for Those Who Discriminate Against Married or Marrying Gays in Context*, 47 *Wake Forest L. Rev.* 173, 176 (Spring 2012).

Colorado and other States should be able to pursue an end to discrimination against LGBTQ people to the same degree that they pursue an end to discrimination on the basis of race.

***13 C. Accounts of Discrimination From LGBTQ People of Color Highlight the Need for Public-Accommodations Laws Without Exceptions for Business Owners' Personal Beliefs**

Amici know that, despite the enormous progress made by LGBTQ people in achieving civil rights, discrimination remains pervasive. Amici present here selected firsthand accounts of discrimination collected from colleagues and associates who are LGBTQ people of color. These are only a tiny sample of the types of real-life actions taken on a daily basis against LGBTQ people, who deserve full access to commercial opportunities. Many of these are examples of businesses seeking to make their employees conform to gendered expectations, while other accounts demonstrate a continued desire to exclude LGBTQ people. And several show how difficult it can be to separate discrimination on the basis of race from discrimination on the basis of sexual orientation or gender identity, when the target of the discrimination is an LGBTQ person of color.

These real-life experiences of LGBTQ people of color - and countless other untold ones - highlight the need for public-accommodations laws that can be enforced fully to place LGBTQ people on an equal footing.

Naomi Washington Leapheart: This past June, my wife, Kentina, and I consecrated our legal marriage with a sacred wedding ceremony in the presence of our loved ones on a beach in Cape May, New Jersey. Three months later, we're still basking in the joy of that day. Our joy is sweeter because in *14 many ways, it is our resistance - not everyone was supportive of our union. In fact, we still ache as we remember that in January, a prospective wedding planner we considered hiring told us she couldn't work with us because she believes in the biblical definition of marriage, which, to her, made ours illegitimate. Kentina and I are Christian ministers. Our faith is precisely what animates our love and the decision we made to make a spiritual commitment to each other and to our communities. Yes, we are grateful that we could be legally married in any State in the country. Yet the rejection we experienced during one of the happiest seasons of our lives starkly reminded us that there is still so much more work to be done.

Preston Mitchum: I am a black gay and queer man from the Midwest. I have experienced discrimination based on my race, sexual orientation, and class, more times than imaginable. Because of what it means to be intersectional - that is, multiple marginalized identities existing at once - it is nearly impossible to determine whether I am experiencing discrimination and mistreatment on the basis of me being unapologetically Black or queer; and many times, both. In an ever-expanding and gentrifying Washington, D.C., where I now reside, it's commonplace to be followed by law enforcement and be watched as I'm entering more expensive stores. While browsing in Georgetown, a majority-white area, I was once told to leave a store because I "was taking too long looking" just to be mocked by other staff. Not only was I in this particular store for less than 10 minutes, I was certainly not the only one. I was profiled, targeted, and belittled because of where *15 I was and who I was perceived to be. No one defended me, no one made me feel human; and these are not isolated incidences. Every day, LGBTQ people of color wake up understanding that we can be targeted at the intersection of our identities, and it is a perpetual process of healing and understanding.

K'Danz Cruz: I was working at a retail store, and I was never allowed to start my gender-affirming transition because the management team would tell me that customers would feel uncomfortable. I was repeatedly told that the customer always comes first and that due to customer apprehension, I could not transition.

Sophia Jackson: I was working at a rehabilitation facility in San Francisco, California, which works with women and children. One day while I was on duty, my immediate supervisor said that she needed to have a conversation with me. I believed we were going to talk about me finally getting hired full time, but she started the conversation by telling me "that the Lord had brought me before her during her prayer time." After entering into a moment of prayer she disclosed to me that she was concerned that the way I dressed and carried myself was displeasing to God, and that I "knew God had created me to be a wife." At that point she asked me if I was involved in a homosexual relationship with the woman that she had seen me coming to church with. I did not respond; rather, I asked why she was asking me that question because we belonged to the same church at the time. I was curious as to why this was suddenly an issue. She said that I was sending mixed messages because I *16 presented as male. I ended up having to go on leave due to the stress, and while I was on leave my employment was terminated. I have been unemployed from that field of work ever since.

Victoria Rodriguez-Roldan: When my wife was working at a tutoring center, although the manager knew about me, my wife was forced to keep my existence hidden from the children. My wife actually had to make up a fictional male fiancé and later husband to account for the wedding rings to anyone who asked. The business claimed to be supportive of us but did not want to "upset the parents."

Taissa Morimoto: Born to immigrant parents and raised in a predominately white neighborhood, I spent most of my adolescence trying to fit in. In order to assimilate, I would always try to hide my differences, including aspects of my race and sexual orientation. For most of my life, I didn't feel comfortable to dress how I want, love whom I want, or be whom I want because I felt like I had to choose safety and security over being myself. I would comply when cashiers told me I should smile more, I would keep silent when restaurant owners made racist comments, and I refused to hold my girlfriend's hand in public, all because I was scared for my safety. I was scared something could happen to me.

***17 CONCLUSION**

The judgment of the Colorado Court of Appeals should be affirmed.

EXHIBIT 5



ABOUT US

Our Board Members

One Colorado is led by an engaged, active Board of Directors. Prior to hiring staff, the Board oversaw a research project, conducting a needs assessment survey of over 4,600 LGBTQ Coloradans and a poll of 1,000 Coloradans. This research was used to develop the organization’s strategic goals and objectives, which the organization continues to implement.

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- The 2018 Western Slope Ally Awards
- One Colorado Call Night
- One Colorado Reaction to Leaked Kavanaugh Emails
- 2018 Ally Awards

One Colorado is the state's leading advocacy organization dedicated to advancing equal rights for lesbian, gay, bisexual, transgender, and queer (LGBTQ) Coloradans and their families. We are working together for a fair and just Colorado.

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EXHIBIT 6

2017 WL 5152969 (U.S.) (Appellate Brief)
Supreme Court of the United States.

MASTERPIECE CAKESHOP, LTD., et al., Petitioners,
v.
COLORADO CIVIL RIGHTS COMMISSION, et al., Respondents.

No. 16-111.
October 30, 2017.

On Writ of Certiorari to the Colorado Court of Appeals

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*1 INTEREST OF THE AMICI CURIAE

Amici include lesbian, gay, bisexual, or transgender (LGBT) individuals resident in the State of Colorado and LGBT membership organizations based in Colorado that rely on the protections of the Colorado Anti-Discrimination Act (CADA), [Colo. Rev. Stat. §§ 24-34-301 to -804](#), to ensure equal access to basic commercial services. Amici also include organizations and individuals that seek to address the discrimination that LGBT Coloradans have faced, and continue to face, on a daily basis.

Finally, amici include current and former Colorado lawmakers who have drafted or supported legislative initiatives pertaining to the rights of LGBT Coloradans, including CADA's provisions protecting LGBT Coloradans. These include former State Senator Jennifer Veiga and former State Representative Joel Judd, who sponsored the amendment to CADA that codified the protections challenged here.¹

¹ Pursuant to Rule 37, this brief is filed with the written consent of Respondents Craig and Mullins. Respondent Colorado Civil Rights Commission and Petitioner have lodged blanket consents for the filing of amicus briefs with this Court. Counsel for a party did not author this brief in whole or in part, and such counsel or a party did not make a monetary contribution

intended to fund the preparation or submission of this brief. No person or entity, other than the amici, their members, and their counsel, made a monetary contribution to the preparation or submission of this brief.

*2 SUMMARY OF ARGUMENT

CADA fulfills Colorado's compelling interest in protecting the rights of all its citizens, including LGBT Coloradans, to participate with equal dignity in the “transactions and endeavors that constitute ordinary civic life in a free society.” *Romer v. Evans*, 517 U.S. 620, 631 (1996). Prohibited at various points in Colorado's history from engaging in intimate conduct, from “securing protection against ... injuries ... [in] public-accommodations,” and from marrying their partners of choice, LGBT Coloradans were for decades treated as “stranger[s] to [the] laws” of Colorado. *Id.* at 635. In the pitched, public, state-wide battles that heralded each act of stigmatization, LGBT Coloradans were accused of being immoral and of committing sexual offenses. These encounters left LGBT individuals vulnerable, subject to discrimination and public scorn.

Faced with this ongoing history of discrimination, Colorado legislators in 2008 sought to protect LGBT individuals' ability to fully participate in the state's commercial life. In so doing, they carefully limited CADA to avoid overburdening Coloradans' First Amendment interests by introducing exemptions from the law's reach.

CADA seeks to protect LGBT individuals from the identical injuries that this Court recognized in *Romer* as being “far reaching.” *Id.* at 627. The range of transactions and activities in which LGBT Coloradans are now protected by CADA are almost identical to the “specific legal protections” that Amendment 2 “nullifie[d],” including housing, real estate, and other business transactions. *Id.* at 629. Many of these services - including access to food and basic health care - are in short supply in remote, mountainous areas of the state. Further, there is evidence that LGBT Coloradans face unique barriers and continued discrimination in accessing these essential services. Access - and discrimination - in those circumstances does not simply determine dignity and social acceptance, but can mark the line between life and death. Under existing interpretations of federal law, LGBT Coloradans lack the explicit protections from most kinds of discrimination that many other groups enjoy. LGBT Coloradans are therefore completely reliant on CADA to ensure this access.

An expression- or religion-based exception to CADA would achieve at a retail level what Amendment 2 sought to accomplish wholesale - denying LGBT individuals equal social dignity. If the baking of a wedding cake - over whose design and message the couple would have the final say - could somehow be construed as the baker's First Amendment-protected activity, then, as Colorado's history shows, stemming the tide of discrimination against LGBT Coloradans would prove difficult. Other vendors who provide essential services, often through the written or spoken word, could seek similar exemptions. Employers, likewise, could seek to escape antidiscrimination strictures. Indeed, it is hard to see why a First Amendment exemption to discriminate against LGBT Coloradans would not extend to other groups that consistently invoke CADA for their protection.

*4 “[W]hen ... sincere, personal opposition becomes ... law ... it creates an exclusion that soon demeans or stigmatizes those whose own liberty is then denied.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2608 (2015). While all Coloradans are free to express sincere opposition to any protected group, allowing them to embed this opposition into a legal right to exclude such minorities from commercial activities would undermine the balance the legislative process has struck, and would forever alter “the structure and operation of modern antidiscrimination laws.” *Romer*, 517 U.S. at 628.

ARGUMENT

I. CADA FULFILLS THE STATE'S COMPELLING INTEREST IN PROTECTING THE RIGHTS OF ALL ITS CITIZENS, INCLUDING LGBT COLORADANS, TO EQUAL

DIGNITY AND THE OPPORTUNITY TO PARTICIPATE IN THE PUBLIC SPHERE BY PROTECTING THEM AGAINST DISCRIMINATION IN PUBLIC ACCOMMODATIONS

A. LGBT Coloradans have faced a history of demeaning and discriminatory treatment

The quest for equal treatment of LGBT individuals in Colorado has been long-running and has faced persistent, often hostile, opposition. Over the past 25 years, Colorado has enacted not one, but two, citizen-initiated amendments to the Colorado *5 Constitution specifically designed to declare gay men and lesbians “unequal to everyone else” and to “deem [them] a stranger to its laws.” *Romer*, 517 U.S. at 635. The first, known as Amendment 2, worked a “[s]weeping and comprehensive” change in the status of lesbian, gay, and bisexual individuals that placed them, “by state decree ... in a solitary class [.]” *Id.* at 627. The second, known as Amendment 43, denied Colorado's gay and lesbian citizens “equal dignity in the eyes of the law” by denying them the freedom to marry. *Obergefell*, 135 S. Ct. at 2608. While these two constitutional amendments garnered the most attention in Colorado's battle over the rights of LGBT people, they are just two chapters in a much longer story.

Until 1971, Colorado criminalized intimate conduct between individuals of the same sex. “Gays and lesbians lived hidden lives and in fear of exposure that could, and did, result in loss of a job and professional career - even eviction from one's home.” Gerald A. Gerash, *On the Shoulders of the Gay Coalition of Denver, in United We Stand: The Story of Unity and the Creation of The Center* 3, 3 (Phil Nash ed., 2016). Police raided homes of openly gay men, imprisoned organizers of a prominent gay rights organization, and confiscated the group's mailing lists. *A Brief LGBT History of Colorado*, Out Front (Aug. 20, 2014).² Even after the repeal of Colorado's antisodomy laws, gay people faced *6 significant hostility. When the Boulder, Colorado, city council voted to prohibit employment discrimination against gay men and lesbians in 1974, voters withdrew those protections by ballot initiative. See Lisa Keen & Suzanne B. Goldberg, *Strangers to the Law: Gay People on Trial* 6 (2000).

² <https://www.outfrontmagazine.com/news/colorado-lgbt-community/brief-lgbt-history-colorado/>.

In subsequent decades, the rights of LGBT people rode “a political see-saw” in Colorado. *Id.* While Boulder reinstated its antidiscrimination provisions in 1987, and Denver adopted similar measures in 1990, other cities rejected them. In these battles, some opponents of equal rights for gay people compared homosexuality with [necrophilia](#) and bestiality, and argued that homosexuality would lead to increased child molestation. See Susan Berry Casey, *Appealing for Justice: One Colorado Lawyer, Four Decades, and the Landmark Gay Rights Case: Romer v. Evans* 196 (2016); Stephen Bransford, *Gay Politics vs. Colorado: The Inside Story of Amendment 2*, at 21 (1994). By the time Amendment 2 was proposed, gay men and lesbians felt “beaten up, stigmatized, and more isolated than ever.” Casey, *supra*, at 201. And even when some communities decided to protect the rights of LGBT citizens to participate fully in civic life, opponents responded with animosity, leading the charge for passage of Amendment 2. See *Romer*, 517 U.S. at 623.

The Amendment 2 campaign sought to demean and humiliate LGBT Coloradans. Both in mainstream media outlets, such as Newsweek and National Public Radio, and through more targeted means, proponents falsely claimed that gay men had sex with minors, that many had more than 1,000 *7 partners, and that they consumed fecal material. See generally Brief for Amicus Curiae National Bar Association in Support of Respondents at 6, *Romer*, 517 U.S. 620 (No. 94-1039) [hereinafter Nat'l Bar Ass'n Brief] (listing sources).

Throughout the campaign, LGBT Coloradans “were subjected to constant scrutiny, anger and vitriol, unfair accusations, and blatant distortions about their lives.” Glenda M. Russell, *Voted Out: The Psychological Consequences of Anti-Gay Politics* 3 (2000). Such invective was backed up by physical aggression. Even as violence against gay people decreased across the nation, Colorado saw an uptick. Nat'l Bar Ass'n Brief at 7 (citation omitted). Amendment 2, which “classifie[d] homosexuals not to further a proper legislative end but to make them unequal to everyone else,” passed with a comfortable majority. *Romer*, 517 U.S. at 635.

Romer struck down Amendment 2 as a violation of the Equal Protection Clause because it was born of “a bare ... desire to harm a politically unpopular group.” *Id.* at 634 (citations omitted). But even as *Romer* lay pending before the Court, prejudice against Colorado's LGBT community endured. In 1996, the Colorado legislature enacted a bill to prohibit marriage between individuals of the same sex. Governor Roy Romer vetoed the bill, but the legislature passed it again in 1997, only to have it vetoed once more. Governor Bill Owens signed yet a third version into law in 2000. *Governor Signs Gay-Marriage Ban Among Flock of Other Bills*, Colo. Springs Gazette, May 28, 2000, at 2.

*8 The following years saw additional challenges. In 2003 and 2004, legislators proposed a civil union bill to give same-sex couples a portion of the legal protections afforded their heterosexual counterparts. The bill faced harsh opposition and died in committee both years. Michael Brewer, *Colorado's Battle Over Domestic Partnerships and Marriage Equality in 2006*, 4:1 J. GLBT Family Stud. 117, 118 (2008). In 2005 and 2006, Governor Owens vetoed proposed employment discrimination protections for gay and lesbian Coloradans. *Id.* at 123. And in 2006, the organizations behind Amendment 2 launched a new initiative - this time to cement into the State's constitution the denial of same-sex couples' freedom to marry. *Id.* at 118-19. Amendment 43, which prevented the legislature from ending gay Coloradans' exclusion from marriage, passed by a wide margin. *Id.* at 123.

Recognizing that it would be hard to obtain their freedom to marry, gay rights advocates sought to create family protections through state-level domestic partnership status. Because the Governor had previously vetoed similar protections for same-sex couples, advocates placed a domestic partnership proposal on the ballot. *Id.* at 119. Even this limited measure lost handily. *Id.* at 123.

As this history suggests, legal protections for gay and lesbian Coloradans were sorely needed and hard won. In 2007, the Colorado legislature finally passed a law prohibiting discrimination on the basis of sexual orientation in employment. [Colo. Rev. Stat. § 24-34-402](#). In 2008, as discussed further below, CADA was amended to prohibit discrimination based *9 on sexual orientation in public accommodations and housing. In 2013, a civil union law provided some of the tangible protections and responsibilities of marriage, and, in 2014, following the Tenth Circuit's decision in [Kitchen v. Herbert](#), 755 F.3d 1193 (10th Cir. 2014), same-sex couples in Colorado finally obtained equal freedom to marry.

B. The legislative record of CADA demonstrates that it was amended to address this history of discrimination

1. As this Court has recognized, “times can blind us to certain truths.” [Lawrence v. Texas](#), 539 U.S. 558, 579 (2003). The history of CADA provides an example of this reality.

Colorado has prohibited discrimination in public accommodations since 1885. *See generally* Resp't Colo. Civil Rights Comm'n Br. 7-8 (describing history). The law has been amended over time to add certain protected characteristics as society gained an understanding that discrimination on the basis of those characteristics was invidious, destructive, and without legitimate or rational purpose. But despite the long history of discrimination and stigma described above, sexual orientation was not included until the law had been in place for well over a century.

Colorado legislators sought for more than a decade to add protections for LGBT individuals in CADA, but their efforts were met with repeated failure. Compendium of Legis. Hist. of SB08-200 (2008 amendment to CADA) at 90-91 [hereinafter *10 Leg. Record].³ Finally, in 2008, following extensive evidentiary hearings and debate, the Colorado General Assembly made clear that sexual orientation discrimination, like other enumerated forms of exclusion and disadvantage, should be and was prohibited in public accommodations and housing.

³ <http://scholar.law.colorado.edu/research-data/8/>.

The purpose of the 2008 amendment was simple: as Representative Joel Judd, its chief sponsor in the Colorado House, explained, by extending protections to LGBT people in “places of public accommodation ... [that] range from ... barbershops, to hotels, to hospitals, [to] ... funeral homes,” the law ensures that LGBT individuals will “live in dignity and will ultimately die in dignity.” *Id.* at 112.

Many opponents refused to acknowledge that sexual orientation discrimination is a serious problem, however, let alone something to be prevented. One legislator who opposed the bill suggested, ostensibly in jest, that discrimination against short people was far more pervasive and serious than was discrimination against gay people. *Id.* at 76-78. Another suggested that discriminating against gay people in housing was the same as refusing to rent to a “party[ing] college freshman.” *Id.* at 131. Legislators objected to analogizing discrimination based on race to that based on homosexuality - “the science is still out on that[.],” one claimed. *Id.* at 148. Opponents argued that the measure was about nothing more than putting the “feelings” of LGBT people above the rights of others *11 to decide to whom they want to rent apartments. *Id.* at 214.

Supporters of the legislation countered that the legislation fulfilled CADA's longstanding central purpose: protecting all Coloradans' ability to engage in “transactions and endeavors that constitute ordinary civic life in a free society.” *Romer*, 517 U.S. at 631. As Mark Ferrandino, Colorado's first openly gay male legislator, explained, this amendment was about the State's compelling interest in assuring all people the ability to find housing, to serve on a jury without discrimination, and to engage in the many other fundamentals of civic and commercial life. Leg. Record at 272-73. And, these legislators noted, Colorado had a compelling interest in enacting a law to end this discrimination, alongside others, because discrimination on the basis of sexual orientation was, and is, serious and ongoing.

In documenting the need for this protection, legislators relied in part on their own experiences in Colorado. Senator Chris Romer, the son of former Governor Roy Romer, described “how painful” it was for a former staffer of his father “to explain to people what it means to be afraid and to be gay” after Amendment 2 passed. *Id.* at 78-79. Another legislator explained how his son, a prosecutor, left Colorado for Oregon, because he found Colorado to be hostile to gay people. He concluded, “I don't have formal statistics, I just have one, and the one is my son. He was uncomfortable in Colorado.” *Id.* at 88. Yet another representative explained that what motivated her was the need to ensure “basic human *12 decency,” to guarantee that the housing and health care needs of her sister, her partner, and their three children were properly satisfied. *Id.* at 222-23.

Witnesses also testified to the prevalence of discrimination on the basis of sexual orientation. A representative from the Anti-Defamation League said that its office received calls about individuals being denied housing because of their sexual orientation. *Id.* at 42. The director of the LGBT Center reported calls from people who had heard doctors in emergency rooms suggesting that they did not want to treat gay patients because of their sexual orientation. *Id.* at 52.

2. In deliberating on the addition of sexual orientation to CADA, legislators were careful to consider possible effects on speech and religion. The question presented by this case was debated in the hearings. One witness testified about his concern that religious people who run businesses would be required to serve gay people despite their “personal conscience.” *Id.* at 25-27. In response, the law's supporters noted that, by prohibiting discrimination based on sex, race, or creed, CADA already considered and rejected demands by those who elect to run a business for unfettered license to discriminate. *Id.* at 155-56.

As legislators explained, CADA seeks to strike the right balance between the desire of some individuals to discriminate, whatever their reason, and “the need for individuals to be able to acquire acceptable housing ... to raise a family,” *id.* at 127, or to access and participate in the marketplace without injury or insult. That familiar balance, *13 struck again and again over decades of civil rights legislation, one witness noted, separated “private organizations” that can “choose to exclude people based on their own creed and practices” from those in the commercial or “public sphere,” such as “housing [and] education.” *Id.* at 58. Accordingly, as one legislator observed, “[i]f you choose to go into the world of

commerce and offer your services to the general public, then, at that point, you've given up the ability to draw a line on the basis of race, on the basis of religion, or on the basis of sexual preference.” *Id.* at 197.

Even while defending the essential purposes that CADA served, legislators were eager to listen to, negotiate with, and accommodate religious interests. As Senator Jennifer Veiga, who sponsored the bill in the Senate, noted during the hearings, the proposal was amended to address the Catholic Church's one expressed concern: a provision concerning discrimination based on *religion* that the Church perceived as troublesome and duplicative. *Id.* at 40, 63-64, 71, 107. The legislature also amended the bill to allow restrictive covenants on cemetery plots to respect religious preferences. *Id.* at 62. And they expanded the exemption from CADA beyond just churches, synagogues, and mosques to include any “other place that is principally used for religious purposes,” so that religious camps, among other entities, would not be subject to the law. *Id.* at 261-62.

Notably, the substantial majority of the testimony from religious organizations during the debate over amending CADA was supportive of *14 adding protections against discrimination on the basis of sexual orientation. *E.g., id.* at 55-56, 176-79. As a Methodist minister, whose own congregation did not ordain gays and lesbians, explained, a “bill that protects gay and lesbian people from discrimination” in public accommodations helps Coloradans “rise to a higher standard from that of dehumanizing our fellow human beings.” *Id.* at 56-57.

The amendment to CADA to include protections based on sexual orientation was the culmination of a “deliberative process” in which “people [too]k [] seriously questions that they may not have even regarded as questions before.” *Obergefell*, 135 S. Ct. at 2625 (Roberts, C.J., dissenting). The result of the careful democratic balance thus achieved should not be overridden.

II. AN EXPRESSIVE OR RELIGIOUS EXCEPTION TO CADA WOULD SEVERELY UNDERMINE ANTIDISCRIMINATION PROTECTIONS AND SUBJECT LGBT AND, MOST LIKELY, OTHER COLORADANS TO WIDESPREAD DISCRIMINATION

A novel expressive or religious exception to CADA would swallow the rule against discrimination that the law embodies, and mark a departure from the respect courts have given such laws over decades. CADA's protections span a vast array of services, through which LGBT Coloradans access basic needs, such as food, shelter, and health care. Weakening these protections invites would-be discriminators to *15 “inflict[] on them immediate, continuing, and real injuries.” *Romer*, 517 U.S. at 635. Moreover, creating an exemption to permit discrimination on the basis of sexual orientation would either allow the same carve-out to discriminate on other bases (*e.g.*, gender, race, or even religion), or would impermissibly single out one class of citizens as “unequal to everyone else.” *Id.* And although some assert that discrimination against LGBT citizens is not a “real concern,” Pet'rs' Br. 52, Colorado's experience - and our nation's broader history - demonstrates that it is. LGBT people have been singled out for unequal treatment in critical contexts, from health care to housing to employment and, of course, to public accommodations.

A. CADA's protections reach across a wide array of public and commercial contexts

CADA's protections are nearly identical to the municipal protections that triggered the passage of Amendment 2. *See Romer*, 517 U.S. at 623-24. The list of “persons or entities subject to a duty not to discriminate ... goes well beyond the entities covered by the common law.” *Id.* at 628. The law prohibits “any place of business engaged in any sales to the public ... [or] offering services, facilities, privileges, advantages, or accommodations to the public” from discriminating against protected classes of individuals. To be clear about the breadth of protection the legislature intended to provide, CADA non-exhaustively lists several such entities as examples:

*16 any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation

facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an educational institution; or any public building, park, arena, theater, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor.

Colo. Rev. Stat. § 24-34-601.

Fulfilling CADA's intent to eliminate invidious discrimination in commercial life, vulnerable groups have sought the protection of CADA for a wide variety of purposes. Children have sought access to recreational facilities to which they were allegedly denied access because of their race. *Creek Red Nation, LLC v. Jeffco Midget Football Ass'n*, 175 F. Supp. 3d 1290, 1292-93 (D. Colo. 2016). Women have sought access to local stores to purchase basic necessities. *Arnold v. Anton Co-op. Ass'n*, 293 P.3d 99, 102 (Colo. Ct. App. 2011). Disabled individuals have sought access to major restaurant and retail chains. *Lucas v. Kmart Corp.*, No. 99-cv-01923-JLK, 2005 WL 1648182, at *1 (D. Colo. July 13, 2005); *Colo. Cross-Disability Coal. v. Taco Bell Corp.*, 184 F.R.D. 354, 355-56 (D. Colo. 1999). Native Americans have used CADA to challenge school regulations that burdened their religious beliefs. *Sch. Dist. No. 11-J v. Howell*, 517 P.2d 422, 423 (Colo. Ct. App. 1973). Other plaintiffs have turned to CADA to combat discrimination in public transportation, *Reeves v. Queen City Transp.*, 10 F. Supp. 2d 1181, 1182-83 (D. Colo. 1998); in obtaining cellular telephones, *Lewis v. Strong*, No. 09-cv-02861-REB-KMT, 2010 WL 4318884, at *1, 5 (D. Colo. Aug. 19, 2010); and in obtaining access to essential medical care. *Colo. Cross-Disability Coal. v. Women's Health Care Assocs., P.C.*, No. 10-cv-01568-RPM, 2010 WL 4318845, at *1-2 (D. Colo. Oct. 25, 2010). In short, CADA is an essential tool to protect equal access to a vast array of public accommodations.

Access to these accommodations can be a matter of life and death for many Coloradans. Although most of Colorado's citizens live in or near the Denver metro area, the vast reaches of the State are rural, and citizens in those areas frequently lack choice as to where they can receive essential services. Of Colorado's 64 counties, 51 are wholly or partially designated as Primary Care Health Professional Shortage Areas by the federal government. Colorado Department of Public Health and Environment GIS, Primary Care Health Professional Shortage Areas (HPSAs) (2015).⁴ Similarly, a report found that “[a]ccess to supermarkets is a problem in many Colorado neighborhoods but exceedingly so in lower-income, inner-city and rural communities where the incidence of diet-related disease is highest.” Allison Karpyn & John Weidman, The Food Trust, Special Report: The Need for More Supermarkets in Colorado at 10 (2009).⁵ CADA ensures access to stores that do exist in such areas. Cf. *Anton Co-op. Ass'n*, 293 P.3d at 102 (CADA case in which plaintiff noted that the Association's store “is the only place within 30 miles to purchase many necessities”). Colorado's geography makes seeking alternative services in the Rockies even harder. Any exception to CADA could transform a shortage into a complete deprivation of basic services for vulnerable minorities.

⁴ https://www.colorado.gov/pacific/sites/default/files/PCO_HPSA-primary-care-map.pdf.

⁵ http://www.coloradohealth.org/sites/default/files/documents/2017-01/Food_Trust_Rpt-Colorado-Special%20Report%20the%20Need%20for%20More%20Supermarkets%20in%20CO.pdf.

B. An expressive or religious exception would sweep broadly, harming LGBT individuals and perhaps members of other protected classes as well

The implications of a carve-out from CADA based on the kind of compelled speech or free exercise claim put forward in this case would be far-reaching. If a merchant could refuse service in defiance of a civil rights law simply by asserting that

its *19 expressive or religious beliefs are implicated by the identity of the customer or the customer's exercise of his or her rights, then nearly any merchant could claim an expressive or religious license to evade the law. There is no principled way to limit such an exemption to wedding cake bakers or florists, or to discrimination based only on sexual orientation. The First Amendment requires no such exemption from generally applicable, content neutral antidiscrimination laws.

1. Even assuming that cakes have an expressive function, they hardly embody the *merchant's* message. Historically and culturally, the message on the wedding cake is that of the married couple; the design and any text “are often closely identified in the public mind with the [couple],” rather than with the baker; and the customer can “maintain[] direct control” and “final approval authority” over the product. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2248-49 (2015) (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 472, 473 (2009)) (identifying factors that determine to whom speech should be attributed). Similarly, no reasonable person imputes the message on a T-shirt to the weaver, the message on a wedding photograph to the photographer, or the billboard message or campaign ad to the advertising company. These messages are rightly imputed to the person with control over the message - the customer who paid for them. Indeed, why would a customer *20 pay a merchant to spread the merchant's message?⁶

⁶ So understood, this case is distinct from *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995), wherein the organizers of a privately arranged parade - an inherently politically expressive activity - were required by the state to include a group in the parade that would alter their message. *Id.* at 559. Importantly, it was *the parade organizer's* message that controlled, not the message from the outside group. *Id.* at 568-70. Here, the merchant is not being forced to alter his speech, but is simply facilitating that of yet another customer.

If a new carve-out were based on a business owner's purported expressive interest, then any vendor who characterizes his or her work as including an expressive component could assert a right to refuse service. If this kind of discrimination were permitted because of a carve-out to CADA, then LGBT individuals could be denied even essential services. For example, medical treatment frequently requires verbal interaction between doctor and patient. Medical professionals have been held to engage in “speech” for the purposes of the First Amendment even when providing treatment. *King v. Governor of the State of N.J.*, 767 F.3d 216, 225 (3d Cir. 2014). Funeral parlors might similarly decline to provide services for same-sex couples, on the grounds that funerals, like weddings, have expressive components.

Further, such exemptions would create challenges for the LGBT groups and organizations that have been essential for fostering community and mutual support for individuals who frequently face familial rejection. For example, amicus Denver Gay *21 Men's Chorus, with nearly 150 members, might be denied access to the few venues that can hold a group its size if the owners of those venues claimed that the Chorus's pro-LGBT message would be attributed to them and thus excused their compliance with the law.

Without a principled limit, exemptions created to CADA could easily be asserted for other protections embodied in state law. Just as a vendor here seeks an exemption to laws that prohibit discrimination against customers, employers may seek exemptions from state laws that prohibit discrimination against employees, arguing that the employers' religious or expressive rights entitle them to distance themselves from members of the LGBT community.

2. A commercial carve-out in the name of religious beliefs would have similarly damaging effects. While this case involves a wedding vendor, it is not difficult to imagine the landlord who refuses to rent to a gay couple because their marriage or cohabitation is contrary to his religious beliefs. *Cf. Evans v. Romer*, 882 P.2d 1335, 1342 (Colo. 1994), *aff'd*, 517 U.S. 620 (1996) (proponents of Amendment 2 relied on cases holding that laws prohibiting marital discrimination in rentals burdened free exercise, even though those cases upheld the validity of the regulations as neutral principles of general applicability).

The impact of a religious carve-out could also cause significant harm to the children or parents of same-sex couples. In 2010, a preschool student in Boulder, Colorado was denied enrollment for kindergarten because the school learned the

child's *22 parents were a lesbian couple. Sarah Netter, *Colorado Catholic School Kicks Student with Lesbian Mothers*, ABC News (Mar. 9, 2010).⁷ If teachers or principals in schools covered by CADA were permitted a religious exemption because of their personal beliefs, the line the law draws between religious institutions and those that do not serve a primarily religious purpose would be eviscerated. The potential harm to children, to parents seeking care in nursing homes, and to others associated with same-sex couples, in addition to the couples themselves, could be significant.

⁷ <http://abcnews.go.com/WN/colorado-catholic-school-kicks-student-lesbian-mothers/story?id=10043528>.

Indeed, a religious carve-out in the case now before the Court would raise additional concerns because courts are generally reluctant to question whether a particular asserted belief is consistent with a religion's other precepts or with the commonly known beliefs of a particular religion. See, e.g., *United States v. Seeger*, 380 U.S. 163, 185 (1965) (the threshold question of whether a belief is “truly held” is a question of fact). Thus, while some businesspeople seeking to discriminate may harbor a genuine religious objection to married same-sex couples, others who seek to engage in invidious discrimination may use the religious carve-out as an opportunity to do so regardless of their actual religious convictions.

3. Equally troubling, there is no principled way to allow an exception for sexual orientation but not *23 for other characteristics protected under the same law. If commercial businesses can claim an expressive exception to CADA for participation in a wedding between two people of the same sex, a business that objected to a marriage between people of two different races, or two different religions, may also claim such an exception.

Even former Georgia Attorney General Michael Bowers - hardly a radical advocate of the equal rights of gay people, see *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Shahar v. Bowers*, 114 F.3d 1097 (11th Cir. 1997) - has publicly declared that laws creating sweeping exceptions to non-discrimination statutes for those who do not want to comply in the name of religion are “unequivocally an excuse to discriminate.” Letter from Michael J. Bowers to Jeff Graham, Executive Director, Georgia Equality, Inc. at 6 (Feb. 23, 2015).⁸ If an exemption were allowed, Bowers asserted, “there is no limit to the discrimination and disruption that could be brought about in the name of religious freedom.” *Id.* at 3.

⁸ https://drive.google.com/file/d/0B_KEK8-LWmzhUjdmMIRHZ0h2TEk/view.

Bowers, like many others, has recognized that “permitting citizens to opt out of laws because of a so-called burden on the exercise of religion in effect ‘would permit every citizen to become a law unto himself.’” *Id.* at 6 (quoting *Jones v. City of Moultrie*, 27 S.E.2d 39, 42 (Ga. 1943)). “Allowing each person to become a law unto his or herself,” in turn, “destroys uniformity to the law and creates mass *24 uncertainty,” a can of worms that would threaten our very democracy. *Id.* As Bowers concluded, “[t]his ... is not about gay marriage, or contraception, or even so-called ‘religious freedom.’ It is more important than all of these, because it ultimately involves the rule of law.” *Id.* at 7.

Accordingly, this Court has consistently rejected attempts to undermine neutrally applicable antidiscrimination laws based on the putative expressive or religious interests of those who seek to discriminate. For example, in *Hishon v. King & Spalding*, 467 U.S. 69 (1984), this Court rejected the argument that forcing a law firm to comply with Title VII's prohibition on gender discrimination infringed on the firm partnership's First Amendment freedom of association. *Id.* at 78-79. While recognizing that lawyers' work involves “a distinctive contribution ... to the ideas and beliefs of our society,” the Court concluded, as it had in other contexts, that “invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections.” *Id.* at 78 (quoting *Norwood v. Harrison*, 413 U.S. 455, 470 (1973)).

Similarly, in *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968), owners of drive-in restaurants argued that they should be exempt from Title II of the Civil Rights Act of 1964 because, by mandating that they not discriminate against

customers based on race, the law infringed on their free exercise of religion. *Id.* at 400. In awarding attorney's fees to the plaintiffs, the *25 Supreme Court characterized the merchant's free exercise argument as "patently frivolous." *Id.* at 402 n.5; see also *Bob Jones Univ. v. United States*, 461 U.S. 574, 580 (1983) ("The sponsors of the University genuinely believe that the Bible forbids interracial dating and marriage. To effectuate these views, Negroes were completely excluded until 1971."); *Loving v. Virginia*, 388 U.S. 1, 3 (1967).

In its amicus brief, the federal government seeks to limit the damage to civil rights laws that a carve-out here could unleash by suggesting that, at least in the case of race, antidiscrimination laws "may survive heightened First Amendment scrutiny" because racial bias is " 'a familiar and recurring evil' that poses 'unique historical, constitutional, and institutional concerns.' " United States Br. at 32 (emphasis added). It argues that, by contrast, anti-gay discrimination is tolerable and that the Colorado legislature's considered decision to include a prohibition of anti-gay discrimination alongside other prohibited bases somehow does "not advance[] a sufficient state interest." *Id.* at 33. The government's position is belied by the long history of anti-gay discrimination, the deliberate inclusion of LGBT protections in CADA, and the importance of access to vital services, including participation in the marketplace, which all demonstrate that the Colorado legislature acted with a compelling and sufficient interest. The government's argument taken to its logical extreme would mark LGBT Coloradans as uniquely underselling of the protections that the legislature has deemed appropriate for similarly vulnerable groups. The *26 damage that would flow from a license to discriminate here is a can of worms that should not be opened.

C. CADA is vital to protect LGBT Coloradans from ongoing discrimination in commercial settings

The compelling need for CADA's protections is not theoretical. It is real. LGBT Coloradans require access to the same services and opportunities as other Coloradans. CADA is an important measure for ensuring equal access. The need for CADA's protections is demonstrated by the sad reality that LGBT Coloradans still suffer discrimination that endangers access to these critical resources. A recent report on LGBT health care in Colorado revealed that 21% of health care providers refused to provide services to LGBT people. One Colorado Education Fund, *Invisible: The State of LGBT Health in Colorado* 9 (2012).⁹ Among LGBT patients, 55% feared they would be treated differently if their provider found they were LGBT. *Id.* Another 28% reported that their sexual orientation stopped them from seeking health services. *Id.* Only 59% are very open about sexual orientation with their medical providers. *Id.* at 11.

⁹ http://www.one-colorado.org/wp-content/uploads/2012/01/OneColorado_HealthSurveyResults.pdf

Statistics from the Colorado Human Rights Commission tell a similar story. Since 2008, when *27 the Commission began collecting data about discrimination based on sexual orientation, there has been a regular uptick in complaints, from 23 in 2007-08, to 82 in 2015-16. Colorado Civil Rights Commission, Colorado Civil Rights Division, 2016 Annual Report 9 (2016);¹⁰ Colorado Civil Rights Commission, Colorado Civil Rights Division, Annual Report 2014 5 (2014).¹¹

¹⁰ <https://drive.google.com/file/d/0B1oMNUeCI8FYQ21SNjdwTjhRRzg/view>.

¹¹ <https://drive.google.com/file/d/0Bz-k2zYFIBh6bUxwcmIvUGh3VzQ/view>.

Those statistics find even greater meaning in the stories of LGBT people around Colorado who have faced recent discrimination:

- In 2015, Tonya Smith and her wife, Rachel, were looking for an apartment to rent after their landlord sold the home in which they were living. They had a difficult time finding something in their price range. When they found a promising unit, the potential landlord asked invasive questions and told the couple at the last minute that she would not rent to them because of their "unique relationship." *Smith v. Avanti*, 249 F. Supp. 3d 1194, 1197-98, 1201 (D. Colo. 2017). Tonya

and Rachel ended up having to get rid of many of their belongings as they were unable to find another residence on short notice. *Id.* at 1198.

- In 2017, Cherry Creek Mortgage Company, Colorado's largest residential mortgage firm, was sued by a married lesbian couple because the firm declined to provide them with the same health care *28 coverage that it provided to different-sex married couples. The company changed its policy to provide equal treatment to its gay employees only after facing litigation. Mark Harden, *Cherry Creek Mortgage Chairman Resigns as Company Changes Same-Sex Benefits Policy*, Denver Bus. J. (Aug. 26, 2017).¹²

¹² <https://www.bizjournals.com/denver/news/2017/08/26/cherry-creek-mortgage-chairman-resigns-as-company.html>.

- In 2012, Coy Mathis, a 6-year-old first grade student who is a transgender girl, was denied use of the girls' restroom at her elementary school. The Colorado Civil Rights Commission found that the school had “forced her to disengage from her group of friends” and “tasked [the 6-year-old] with the burden of having to plan her restroom visits to ensure that she has sufficient time to get to one of the approved restrooms.” Coy Mathis, Charge No. P20130034X, Colo. Div. of Civil Rights, 11 (2012) (determination).¹³

¹³ <https://archive.org/details/716966-pdf-of-coy-mathis-ruling>.

- In the fall of 2017, the Equal Employment Opportunity Commission found sufficient evidence that a Denver tire company refused to hire a transgender man to support a lawsuit against the company under Title VII, and thereafter filed suit. Complaint at 2-3, *EEOC v. A&E Tire, Inc.*, No. 1:17-cv-02362-STV (D. Colo. Sept. 29, 2017). The applicant allegedly had been told that he “had the job so long as he could pass all of the screening process. *Id.* at 33. When he acknowledged in paperwork that he had been born female, the manager hired someone else. *Id.* at 42-55.

- *29 • In 2012, two different employees of the Colorado State Patrol received settlements from the agency as a result of their claims that they were discriminated against on the job because of their sexual orientation. Tak Landrock, *Colorado State Patrol Payouts Cost Taxpayers \$2 Million in 2013*, KDVR (Dec. 27, 2013).¹⁴

¹⁴ <http://kdvr.com/2013/12/27/colorado-state-patrols-payout-cost-taxpayers-2-million/>.

Of course, experience teaches that, for every instance of discrimination such as the above, there are many more that go unreported.

Importantly, CADA and its analogous state protections in the employment context, [Colo. Rev. Stat. § 24-34-402](#), currently provide the only reliable, robust, and explicit recourse for these and other LGBT Coloradans. For instance, federal protections are frequently interpreted not to include LGBT individuals. To take one example, Section 1557 of the Affordable Care Act, prohibits discrimination in health care settings based on race, sex, and other characteristics. But the federal government has stated that sexual orientation is not covered. [Nondiscrimination in Health Programs and Activities](#), 81 Fed. Reg. 31,376, 31,390 (May 18, 2016) (codified at 45 C.F.R. pt. 92). And the Tenth Circuit Court of Appeals has refused to interpret Title VII to include protections for members of the LGBT community. See [Etsitty v. Utah Transit Auth.](#), 502 F.3d 1215, 1222 (10th Cir. 2010) (Title VII does not protect transgender individuals); *30 [Medina v. IncomeSupport Div.](#), 413 F.3d 1131, 1135 (10th Cir. 2005) (“Title VII’s protections ... do not extend to harassment due to a person’s sexuality.”). Granting would-be discriminators a license to discriminate in defiance of CADA risks undoing the protections Colorado has put in place to assure LGBT people, their families, and others, equal opportunity to participate in and contribute to the marketplace and other important areas of life.

Colorado has a compelling interest in protecting the rights of all of its citizens. LGBT Coloradans have the same right to dignity and participation in the public sphere that CADA assures to all other citizens of the State. Creating a carve-out to permit discrimination against LGBT people would deny them that essential dignity, and threaten the civil rights laws themselves.

CONCLUSION

The decision of the Colorado Court of Appeals should be affirmed.

*1A APPENDIX: LIST OF AMICI CURIAE

Clemmie Engle is a retired attorney who formerly worked at the Colorado Attorney General's Office.

Daneya Esgar has served two terms in the Colorado House of Representatives. She works with the House leadership team as the Majority Caucus Chair. She is also the Chair of the Capital Development Committee and Vice-Chair of the House Health, Insurance, and Environment Committee. She sits on the House Agriculture, Livestock, and Natural Resource Committee, as well as the House Transportation and Energy Committee.

Mark Ferrandino is the Chief Financial Officer for the Denver Public Schools and, until January 2015, was speaker of the Colorado House of Representatives. Previously, he was a senior budget analyst for the Colorado Department of Health Care Policy and Financing under Governor Bill Owens; a program analyst for the United States Department of Justice, Office of the Inspector General; and a policy analyst for the White House Office of Management and Budget under Presidents Bill Clinton and George W. Bush.

Lucía Guzmán is the Minority Leader in the Colorado Senate. Appointed to the Colorado Senate in May 2010, she represents Senate District 34 in Denver.

***2a** Leslie Herod is a member of the Colorado House of Representatives representing District 8.

Joel Judd is an attorney who served in the Colorado State Legislature from 2003 to 2010, chairing the House Finance Committee from 2007 to 2010.

Dominick Moreno is the Assistant Majority Leader in the State Senate. He also serves on the Joint Budget Committee. He represented the 32nd District in the Colorado House of Representatives from 2012 to 2016, before being elected to the Colorado State Senate in 2016.

Paul Rosenthal is a community activist, teacher, and politician who was elected in 2012 to serve in the Colorado House of Representatives for House District 9.

Dr. Glenda Russell is a teacher and licensed psychologist in the state of Colorado. She has a Ph.D. degree in Clinical Psychology from the University of Colorado and an internship at the Neuropsychiatric Institute at UCLA Health Sciences Center.

Pat Steadman is an attorney, former legislator, and former lobbyist. He was appointed to the Colorado Senate in May 2009. He represented Senate District 31 from 2009 to 2017.

***3a** Jessie Uliberri served four years in the Colorado Senate representing District 21 in Adams County. He is Vice President of Impact and External Affairs at Wellstone.

Jennifer Veiga is an attorney and a former Colorado legislator. First elected to the Colorado House of Representatives in 1996, Veiga was appointed to the Colorado Senate in 2003 and subsequently elected to full terms in 2004 and 2008. She represented Senate District 31.

Center for Health Progress creates opportunities and eliminates barriers to health equity for Coloradans.

Colorado Ethics Watch is a Colorado nonprofit corporation devoted to using legal tools to promote ethics and transparency in government.

The Colorado Health Foundation is the state's largest private foundation and is dedicated to grantmaking, advocacy, and private sector partnerships that advance the Foundation's mission of improving the health of Coloradans.

The Colorado Lesbian Gay Bisexual Transgender (“LGBT”) Bar Association is a voluntary professional association of gay, lesbian, bisexual and transgender attorneys, judges, paralegals, law students, and allies who provide a LGBT presence within Colorado's legal community.

***4a** The Denver Gay & Lesbian Flag Football League fosters the community through sport and promotes positive social and athletic enjoyment of flag football among the gay, lesbian, bisexual, and transgender community, as well as our straight allies living in the greater Denver area.

EBS Support Services, LLC works to advance social equity by supporting nonprofit organizations and individuals that use technology and media to build an educated and engaged public.

Gender Identity Center of Colorado provides support to anyone gender variant in their gender identity and expression, with resources available to anyone, male/female/other, who can benefit from its services or resources, including spouses, significant others, parents, and siblings. It is also an informational and educational resource to the community at large.

The GLBT Community Center of Colorado engages, empowers, enriches, and advances the gay, lesbian, bisexual, and transgender community of Colorado by ensuring that every member of the community has access to the programs, services, and resources they need to live happy, healthy, and productive lives.

The Interfaith Alliance of Colorado brings people together from multiple faith traditions to drive social change.

***5a** NARAL Pro-Choice Colorado develops and sustains a constituency that uses the political process to guarantee every woman the right to make personal decisions regarding the full range of reproductive health choices, including preventing unintended pregnancies, bearing healthy children, and choosing legal abortion.

New Era Colorado reinvents politics for young people, mobilizing and empowering a new generation to participate in our democracy to make Colorado a better place for everyone.

Northern Colorado Equality seeks to enhance the well-being of the LGBT+ community through activities, programs, services, and education, thus empowering our members and allies.

One Colorado is the state's leading advocacy organization dedicated to advancing equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) Coloradans and their families.

Padres & Jovenes Unidos is a multi-issue organization led by people of color who work for educational equity, racial justice, immigrant rights, and advocating for equal access to achieve a better quality of life.

***6a** PFLAG Boulder County is the extended family of the LGBTQ community, made up of LGBTQ individuals, family members, and allies. Because together it is stronger, PFLAG Boulder County provides support, education, and advocacy for the families, friends, and allies of lesbians, gays, bisexual, transgender, queer, and intersex (LBGTQI) people, as well as for the LBGTQI community itself.

PFLAG Greeley provides support, education, and advocacy for lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals, their families, friends, and allies in the Greeley community.

Planned Parenthood of the Rocky Mountains, which includes Planned Parenthood of Southern Nevada, Planned Parenthood of New Mexico, and Planned Parenthood of Wyoming, empowers individuals and families in the communities we serve to make informed choices about their sexual and reproductive health by providing high-quality health services, comprehensive sex education, and strategic advocacy.

ProgressNow Colorado Education works to improve the lives of all Coloradans by acting as the collective voice for the progressive movement in both traditional and new media.

***7a** Rocky Mountain Arts Association builds community through music performed by both the Denver Gay Men's Chorus and the Denver Women's chorus, providing educational, cultural, and social enrichment for our audiences and our members.

Southern Colorado Equality Alliance brings LGBTQ and ally communities together through education, advocacy, and empowerment for support and inclusion.

Trans* Youth Education and Support (TYES) empowers and supports families and caregivers of gender expansive youth by providing resources, education, outreach, and advocacy, in order to create supportive environments that allow youth to experience the joy of authenticity.

The Transformative Freedom Fund supports the authentic selves of transgender Coloradans by removing financial barriers to transition-related health care.

The Women's Lobby of Colorado has sought to provide better opportunities for women in our state since 1993 by ensuring that public policies reflect gender equity and justice.

EXHIBIT 7

<p>COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203</p>	<p>DATE FILED: February 17, 2015 9:18 AM</p>
<p>COLORADO CIVIL RIGHTS COMMISSION, DEPARTMENT OF REGULATORY AGENCIES 1560 Broadway, Suite 1050 Denver, CO 80202 Case No. 2013-0008</p>	
<p>RESPONDENTS-APPELLANTS:</p> <p>MASTERPIECE CAKESHOP, INC., and any successor entity, and JACK C. PHILLIPS,</p> <p>v.</p> <p>PETITIONERS-APPELLEES:</p> <p>CHARLIE CRAIG and DAVID MULLINS.</p>	
<p>John M. McHugh, No. 45456, jmchugh@rplaw.com Anthony L. Giacomini, No. 26057, agiacomini@rplaw.com REILLY POZNER LLP 1900 16th Street, Suite1700 Denver, CO 80202 (303) 893-6100</p> <p>Jennifer C. Pizer, <i>of counsel</i> Lambda Legal Defense and Education Fund, Inc. 4221 Wilshire Boulevard, Suite 280 Los Angeles, California 90010 (213) 382-7600 ext. 242 jpizer@lambdalegal.org</p>	<p>▲ COURT USE ONLY ▲</p> <p>Court of Appeals Case No. 2014CA1351</p>
<p>BRIEF AMICI CURIAE OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., ONE COLORADO AND ONE COLORADO EDUCATIONAL FUND IN SUPPORT OF APPELLEES</p>	

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

It contains _____ words.

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. __, p. __), not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

s/ John McHugh
John McHugh

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INTERESTS OF AMICI

Amicus Curiae Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) is the nation’s oldest and largest legal organization working for full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and people living with HIV through impact litigation, education and policy advocacy. *See, e.g., Lawrence v. Texas*, 539 U.S. 558 (2003) (Texas ban on same-sex adult intimacy was unconstitutional denial of liberty); *Taylor v. Rice*, 451 F.3d 898 (D.C. Cir. 2006) (allowing challenge to U.S. Foreign Service’s blanket exclusion of HIV-positive applicants to proceed to trial).

Lambda Legal has represented lesbian and gay couples in many cases of sexual orientation discrimination involving assertions that neutral statutes, rules, or policies regulating businesses, professional services, and other public accommodations infringed religious freedom. *See, e.g., North Coast Women’s Care Med. Grp., Inc. v. San Diego Cnty. Superior Court (Benitez)*, 189 P.3d 959 (Cal. 2008) (rejecting claim that nondiscrimination statute protecting LGBT patients infringed physician’s speech and religious exercise rights); *Cervelli v. Aloha Bed & Breakfast*, Hawaii Intermediate Court of Appeals Case No. CAAP-13-0000806 (in case concerning refusal of lodging to lesbian couple, appeal by proprietor of rejection of religious liberty defense), information available at

<http://www.lambdalegal.org/in-court/cases/cervelli-v-aloha-bed-and-breakfast;>
McCrea and White v. Sun Taxi Assoc. et al., Illinois Dept. of Human Rights Charge No. 2014-CP-1093 (sexual orientation discrimination charge filed by gay couple after being ejected from taxicab), information available at http://www.lambdalegal.org/sites/default/files/mccrea_il_20131028_charge-of-discrimination.pdf; *Odgaard v. Iowa Civil Rights Comm'n*, Iowa Supreme Court Case No. No. 14-0738 (case filed by owners of art gallery and event space who refused rental to same-sex couple for wedding reception, seeking to bypass state civil rights agency's investigation of couple's discrimination complaint), information available at <http://www.lambdalegal.org/in-court/cases/odgaard-v-iowa-civil-rights-commission>.

Amicus Curiae One Colorado is a statewide advocacy organization dedicated to securing and protecting equality and opportunity for LGBT Coloradans and their families. It works toward that goal by advocating for LGBT Coloradans and their families and by lobbying the General Assembly, executive branch, and local governments on issues such as safe schools, recognition of LGBT people's family relationships, and LGBT health and human services. *Amicus Curiae* One Colorado Education Fund is a 501(c)(3) nonprofit organization that shares with One Colorado a mission to secure and protect equality and opportunity for LGBT

Coloradans and their families. The One Colorado Education Fund provides educational programming on LGBT issues, conducts research to understand public opinions, mobilizes a community of LGBT people and straight allies, and develops campaigns to build public support for fairness and equality. Together, these organizations are working for a fair and just Colorado.

The legal issues before this Court on the instant appeal are similar to those addressed in cases arising in many other states. Because the Court’s decision here is likely to affect thousands of LGBT people across Colorado, Lambda Legal, One Colorado and One Colorado Educational Fund share a particular interest in ensuring that the Court may consider the issues presented here with the additional context provided in this *amici* brief.

STATEMENT OF THE CASE

Amici Curiae join in the Statement of the Case presented by Appellees.

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case concerns sexual orientation discrimination by a man who has chosen to earn his living by making and selling cakes—including wedding cakes—to the general public. Through his business, Appellant Masterpiece Cakeshop, Inc. (“Cakeshop”), Appellant Jack Phillips offers a variety of styles, colors and flavors

from which his customers may choose what suits their tastes and plans. While he decides the range of options that will comprise his offerings, he does not, of course, limit certain colors or flavors to persons of particular races or ethnicities. Likewise, and similarly in keeping with Colorado law, Cakeshop does not limit sales to those who share Mr. Phillips’ religious beliefs. But unlike this routine willingness to serve those of faiths different from his, as well as atheists and interfaith couples, Cakeshop and Mr. Phillips claim a religious right to turn away lesbian and gay couples.¹ Regardless of what motivates Mr. Phillips personally, that is sexual orientation discrimination and it violates the Colorado Anti-Discrimination Act (“CADA”), COLO. REV. STAT. §§ 24-34-601-605 et seq.

Appellants contend that this Court should create an exception to CADA that allows them to turn away same-sex couples because they claim that the State’s interest in enforcing the law with respect to this business is only “marginal,” that

¹ Appellants Cakeshop and Phillips also claim a privilege to turn away same-sex couples based on constitutionally protected rights of expression and expressive association. *Amici Curiae* agree with the explanations submitted by Appellees David Mullins and Charlie Craig in their Responding Brief on the Merits, and by *Amicus Curiae* Americans United for Separation of Church and State, as to why those arguments are mistaken. This brief addresses only Appellants’ claim that they may refuse to make and sell wedding cakes for same-sex couples notwithstanding Colorado’s nondiscrimination law, as a matter of protected exercise of religion. This brief complements the *amicus* brief of the National Center for Lesbian Rights also addressing this claim.

allowing this exception will not “swallow the nondiscrimination rule,” and that, after all, Appellees Charlie Craig and David Mullins “easily” obtained a cake elsewhere after Cakeshop refused them because they are a gay couple. Appellants’ Opening Brief (“AppBr”) at 36, 35, 5.

Appellants miss the point. Fortunately, given our history, most Americans now do recognize that being told essentially, “we don’t serve your kind here” is discrimination that inflicts dignitary harm on those rejected and stigmatizes the entire disparaged group. On this point, the United States Supreme Court has admonished firmly that nondiscrimination laws “serve interests of the highest order.” *Roberts v. United States Jaycees*, 468 U.S. 609, 624 (1984) (requiring enforcement of California’s public accommodations law). The Court has emphasized in particular that public accommodations nondiscrimination laws serve the essential social function of reducing the “moral and social wrong” of discrimination. *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 250 (1964). They “eliminate [the] evil” of businesses serving only those “as they see fit,” which demeans both the individual and society as a whole. *Id.* at 259.

Religious motivations cannot mitigate this harm. To the contrary, from the Crusades and the Inquisition to current disputes in the Balkans, the Middle East, parts of Africa and elsewhere round the globe, too much of human history shows

how religious sectarianism can exacerbate human strife when deployed to justify lesser treatment of those perceived as different. We have learned this lesson the hard way in America, too. Time and again, religion has been proffered to excuse invidious discrimination. Given the immense demographic diversity and religious pluralism of our Nation, the law must be crystal clear that each person's religious liberty ends where harm to another would begin.

That well-settled principle of American law must apply equally with regard to invocations of religious belief whether urged to justify racial, gender or marital-status discrimination, or discrimination based on sexual orientation. Religious liberty must not become a shield for invidious deprivations of other's basic rights. Our shared pledge that we are "one nation, indivisible, with liberty and justice for *all*" demands nothing less.

The Colorado Civil Rights Commission considered and properly rejected Appellants' arguments for a religiously based exemption from CADA. *Amici Curiae* thus support Appellees' request for affirmance.

II. ARGUMENT

A. **Across Generations Of Equality Struggles, Courts Repeatedly Have Confirmed That Religious Objections Do Not Trump Society's Compelling Interests In A Nondiscriminatory Marketplace.**

In the United States, differing religious beliefs about family life and gender roles often have generated disputes not only in public accommodations, but also in education, employment, medical services and other arenas. Prominent among them, in particular, have been problems arising when religious convictions prompt some to believe that others have sinned or should be kept apart, leading to discrimination in commercial and other public settings. Although some forms of religiously motivated discrimination doubtless have receded, our history tells a recurring saga of successive generations asking anew whether our protections for religious liberty warrant exemptions from laws protecting others' liberty and right to participate equally in civic life. Our courts rightly and consistently have recognized that the answer to that question must remain the same: religious beliefs do not entitle any of us to exemptions from generally applicable laws protecting all of us.

Thus, for example, during the past century's struggles over racial integration, some Christian schools restricted admissions of African American applicants based on beliefs that "mixing of the races" would violate God's

commands. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 580, 583 n.6 (1983). Some restaurant owners refused to serve African American customers citing religious objections to “integration of the races.” *Newman v. Piggie Park Enters., Inc.*, 256 F. Supp. 941, 944-45 (D.S.C. 1966), *rev’d* 377 F.2d 433 (4th Cir. 1967), *aff’d and modified on other grounds*, 390 U.S. 400 (1968). Religious tenets also were used to justify laws and policies against interracial relationships and marriage. *See, e.g., Loving v. Virginia*, 388 U.S. 1, 3 (1967) (in decision invalidating state interracial marriage ban, quoting trial judge’s admonition that “Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. . . . The fact that he separated the races shows that he did not intend for the races to mix.”); *Whitney v. Greater N.Y. Corp. of Seventh-Day Adventists*, 401 F. Supp. 1363 (S.D.N.Y. 1975) (firing of white clerk typist for friendship with black person was not protected exercise of religion despite church’s religious objection to interracial friendships).

And as our society began coming to grips with the desire and need of women for equal treatment in the workplace, some who objected on religious grounds sought exemptions from employment non-discrimination laws as a free exercise right. Notwithstanding the longstanding religious traditions on which such claims often were premised, courts recognized that these religious views could not

be accommodated in the workplace without vitiating the sex discrimination protections on which workers are entitled to depend. *See, e.g., EEOC v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986) (school violated antidiscrimination law by offering unequal health benefits to female employees); *Bollenbach v. Bd. of Educ.*, 659 F. Supp. 1450, 1473 (S.D.N.Y. 1987) (employer improperly refused to hire women bus drivers due to religious objection of Hasidic male student bus riders).

Similarly, after state and local governments enacted fair housing laws that included protections for unmarried couples, landlords unsuccessfully sought exemptions based on their belief that they would sin by providing residences in which tenants would commit the sin of fornication. *See, e.g., Smith v. Fair Emp. and Hous. Comm'n*, 913 P.2d 909, 925 (Cal. 1996) (rejecting religious exercise claim of landlord because housing law did not substantially burden religious exercise); *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska 1994) (same).

Across generations, then, these questions have been asked and answered, echoing with reassuring consistency as courts have recognized the public's abiding interests in securing fair access and peaceful co-existence in the public marketplace. Today, these common interests are tested once again as LGBT people

seek full participation in American life. There is growing understanding that sexual orientation and gender expression are personal characteristics bearing no relevance to one's ability to contribute to society, including one's ability to form a loving relationship and build a family together. *United States v. Windsor*, 133 S.Ct. 2675, 2694-96 (2013); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). And yet, there remain pervasive and fervent religious objections on the part of many people to interacting with LGBT people in commercial contexts, still inspiring widespread harassment and discrimination. *See, e.g., Bodett v. Coxcom, Inc.*, 366 F.3d 736 (9th Cir. 2004) (supervisor religiously harassing lesbian subordinate); *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004) (anti-gay proselytizing intended to provoke coworkers); *Knight v. Conn. Dep't. of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (visiting nurse proselytizing to home-bound AIDS patient); *Erdmann v. Tranquility, Inc.*, 155 F. Supp. 2d 1152 (N.D. Cal. 2001) (supervisor harassment of gay subordinate with warnings he would "go to hell" and pressure to join workplace prayer services); *Hyman v. City of Louisville*, 132 F. Supp. 2d 528, 539-40 (W.D. Ky. 2001) (physician refusal to employ gay people), *vacated on other grounds*, 53 Fed. Appx. 740 (6th Cir. 2002); *North Coast Women's Care Med. Grp., Inc. v. San Diego Cnty. Superior Court (Benitez)*, 189 P.3d 959, 967

(Cal. 2008) (applying strict scrutiny and rejecting physicians’ religious objections to treating lesbian patients).

As laws and company policies have begun to offer more protections against this discrimination, some who object on religious grounds are asking courts to change course and allow religious exemptions where they have not done so in past cases. For the most part, the past principle has held true and the needs of third parties have remained a constraint on religion-based conduct in commercial contexts. *See, e.g., Bodett*, 366 F.3d at 736 (rejecting religious accommodation claim); *Peterson*, 358 F.3d at 599 (same); *Knight*, 275 F.3d at 156 (same); *Erdmann*, 155 F. Supp.2d at 1152 (antigay harassment was unlawful discrimination); *Hyman*, 132 F.Supp.2d at 539-540 (rejecting physician’s claim of religious exemption from nondiscrimination law); *North Coast Women’s Care Med. Grp.*, 189 P.3d at 970 (same).

The exemption Cakeshop seeks here would mark a sea change – opening the door to similar denials of goods, access to services, and other equitable treatment for LGBT people, persons living with HIV, and anyone else whose family life or minority status is disfavored by a merchant’s religious convictions. As the U.S. Supreme Court has recognized, our laws and traditions have “afford[ed] constitutional protection to personal decisions relating to marriage, procreation,

contraception, family relationships, child rearing, and education.” *Lawrence*, 539 U.S. at 574 (citation omitted). The Court’s explanation of the “respect the Constitution demands for the autonomy of the person in making these choices,” *id.*, makes clear that the “person” whose autonomy is protected is the individual himself or herself – not those offering goods or services to everyone in the marketplace. This must remain the rule. Religion must not be made into a shield for invidious deprivations of basic human rights.

B. Colorado’s Interest In Ending Discrimination Against Gay People, Regardless Of The Motivations For That Discrimination, Is Compelling.

According to the 2010 United States Census, approximately 12,500 same-sex couples make their home in Colorado, with nearly two thousand of those couples raising children. Gary J. Gates & Abigail M. Cooke, *Colorado: Census Snapshot: 2010*, available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Colorado_v2.pdf. Treatment of same-sex couples, and of LGBT people generally, in Colorado has not always been kind. Researchers at the Williams Institute at UCLA School of Law have documented the history of discrimination against LGBT Coloradans, reporting substantial discrimination by government actors as well as the general public. Williams Institute, *Colorado – Sexual Orientation and Gender Identity Law and Documentation of Discrimination* (UCLA School of Law, Sept. 2009), available at

<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Colorado.pdf>

(documenting public sector employment discrimination based on sexual orientation and gender identity in Colorado, as part of 15-chapter study reporting widespread, persistent unconstitutional discrimination by state governments against LGBT people) (“*Documenting Discrimination*”).

Documenting Discrimination reports that the State of Colorado surveyed the law on sexual orientation discrimination in Colorado as of 1992 for the purpose of informing voters in connection with that year’s ballot measures, including Amendment 2 to the Colorado Constitution which proposed to prohibit the enactment or enforcement of nondiscrimination protections for gay, lesbian and bisexual Coloradans. *Id.* at 1. According to the State’s survey, the cities of Aspen, Boulder and Denver had “determined that discrimination based on sexual orientation was a sufficient problem to warrant protections against discrimination in the areas of employment, housing, and public accommodations.” *Id.* at 2 (citing *Colorado General Assembly, Legislative Counsel Report on Ballot Proposals, An Analysis of 1992 Ballot Proposals*, RESEARCH PUBL. NO. 369, 9-12 (1992)).

In 1992, Colorado voters famously passed Amendment 2, Colo. Const., Art. II, § 30b, intentionally thwarting the municipal ordinances Aspen, Boulder and Denver had adopted to ban such discrimination. Although the U.S. Supreme Court

held Amendment 2 unconstitutional as a violation of Equal Protection and Due Process, *Romer v. Evans*, 517 U.S. 620 (1996), Colorado voters again changed their state constitution to deny lesbian, gay and bisexual Coloradans equality under state law, approving Amendment 43 in 2006 to exclude same-sex couples from the freedom to marry. Colo. Const. Art. II, Amend. 43; see *Brinkman et al. v. Long et al.*, No. 13-CV-32572 2014 WL 3408024, at *21 (Colo. Dist. Ct. July 9, 2014) (ruling Amendment 43 unconstitutional).

The legislature's subsequent addition of sexual orientation and gender identity protections to CADA was a significant improvement for LGBT Coloradans. But the events at issue in this case are part of a larger, persistent pattern of business proprietors in many states claiming religious rights to defy nondiscrimination laws, with refusal of wedding-related goods and services inflicting particular humiliation and reinforcing stigma for same-sex couples. For example:

- In Washington State, a florist refused to sell flowers for a gay couple's wedding. See Associated Press, *Ruling against florist who didn't want to do gay wedding*, KOMONEWS.com (Jan. 7, 2015), <http://www.komonews.com/news/local/Ruling-against-florist-who-didnt-want-to-do-gay-wedding-287857051.html>; Sara Schilling, *Judge:*

Arlene's Flowers owner can be sued in her personal capacity, TRI-CITY HERALD (Jan. 7, 2015), http://www.tri-cityherald.com/2015/01/07/3346717_judge-denies-motion-to-toss-out.html?rh=1; *Ingersoll v Arlene's Flowers*, AM. CIVIL LIBERTIES UNION (Oct. 11, 2013), <https://www.aclu.org/lgbt-rights/ingersoll-v-arlenes-flowers>.

- An Oregon baker objected on religious grounds to selling a cake to a lesbian couple. Everton Bailey, Jr., *Same-sex couple files complaint against Gresham bakery that refused to make wedding cake*, THE OREGONIAN (Feb. 1, 2013), <http://perma.cc/MJ5W-VJ5L>; Molly Young, *Sweet Cakes by Melissa violated same-sex couple's civil rights when it refused to make wedding cake, state finds*, THE OREGONIAN (Jan. 17, 2014), <http://perma.cc/66XH-5EYQ>.
- And in Iowa, a couple who operates an event facility, bistro, and art gallery refused on religious grounds to rent the venue to a gay male couple for a reception after their wedding. Sharyn Jackson, *Gortz Haus owners file suit against Iowa Civil Rights Commission*, DES MOINES REGISTER (Oct. 8, 2013), <http://perma.cc/B9MB-NRN2>. *See also* Verified Petition, *Odgaard v. Iowa Civil Rights Comm'n*, NO. CVCV046451 (Polk Cty., Iowa, Dist. Ct. Oct. 7, 2013); Ruling on

Defendants' Motion to Dismiss, *Odgaard v. Iowa Civil Rights Comm'n*, No. CVCV046451 (Apr. 3, 2014) (dismissing petition); *see also* www.lambdalegal.org/in-court/cases/odgaard-v-iowa-civil-rights-commission.

But, this discrimination did not begin when same-sex couples gained the opportunity to marry. Rather, lesbian and gay couples have been encountering refusals of services based on proprietors' religious objections for years and in diverse settings. For example:

- Diane Cervelli and Taeko Bufford were refused vacation lodging at the Aloha Bed & Breakfast, despite Hawaii's nondiscrimination law, due to the owner's religious objection to hosting lesbians. *See Cervelli v. Aloha Bed & Breakfast*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/cervelli-v-aloha-bed-and-breakfast>.
- In Illinois, a gay couple planning their civil union reception was turned down by two establishments that routinely host weddings; one not only refused the couple but berated them with religiously condemning emails. *See Mattoon couple challenge denial of services at two Illinois Bed and Breakfast Facilities*, ACLU-ILLINOIS (Nov. 2, 2011), <http://www.aclu->

il.org/mattoon-couple-challenge-denial-of-services-at-two-illinois-bed-and-breakfast-facilities/.

- In California, Lupita Benitez was refused a standard infertility treatment because her physicians objected on religious grounds to treating her the same as other patients because she was in a relationship with another woman. *North Coast Women's Care Med. Grp.*, 189 P.3d at 959.

See generally Douglas NeJaime, *Marriage Inequality: Same-Sex Relationships, Religious Exemptions, and the Production of Sexual Orientation Discrimination*, 100 CAL. L. REV. 1169, 1189–92 (2012).

Many business owners hold religious and other beliefs that guide their lives. Those beliefs remain with many of them when operating their businesses. As recognized in the decisions cited above, permitting those engaged in for-profit commerce to apply a religious litmus test to would-be customers not only would encourage other businesses to do the same, but would subvert the compelling state interests in equality served by Colorado law. Cakeshop and Phillips offer no limiting principle and, indeed, there is none. Religious critiques of marriage for same-sex couples can be leveled just as easily at interracial and interfaith marriage, at same-sex cohabiting relationships, at heterosexual cohabitation, at divorce, at

contraception, sterilization, and infertility care, and at innumerable other personal decisions about family life.

Amici sound alarm bells here because discriminatory refusals of goods or services exacerbates the stress from social exclusion and stigma that can lead to serious mental health problems, including depression, anxiety, substance use disorders, and suicide attempts. Ilan Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, *Psychological Bulletin*, Vol. 129, No. 5, 674-97 (2003); Vickie Mays & Susan Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, *19 Am. J. Pub. Health* 1869-76 (2001).

Religious reinforcement of anti-LGBT bias and discrimination often increases the negative impact on mental health. *See* Ilan H. Meyer, Merilee Teylan & Sharon Schwartz, *The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians, Gay Men, and Bisexuals*, WILLIAMS INST. (2014) (research shows anti-gay messages from religious leaders/organizations increases severe mental health reactions), <http://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/lgb-suicide-june-2014/>; Edward J. Alessi, James I. Martin, Akua Gyamerah & Ilan H. Meyer, *Prejudice Events and Traumatic Stress among Heterosexuals and*

Lesbians, Gay Men, and Bisexuals, WILLIAMS INST. (2013), available at <http://www.tandfonline.com/doi/full/10.1080/10926771.2013.785455#abstract>. See also Maurice N. Gattis, Michael R. Woodford & Yoonsun Han, *Discrimination and Depressive Symptoms Among Sexual Minority Youth: Is Gay-Affirming Religious Affiliation a Protective Factor?*, ARCH. SEX. BEHAV. 1589 (2014) (finding that harmful effects of discrimination among sexual minority youth affiliated with religious denominations that endorsed marriage equality were significantly less than those among peers affiliated with denominations opposing marriage equality).

The case before this Court concerns baked goods, but the “go elsewhere” approach Appellants defend is not necessarily confined to wedding-related services. The notion that the owner of a commercial business sins by engaging in a commercial transaction with a “sinful” customer could apply just as well to business transactions concerning any goods or services, medical care, housing or employment. Some might find this connection implausible. But for those hoping that nondiscrimination protections soon will reduce stigma, health disparities, wage disparities, job loss, and unequal employment benefits based on sexual orientation

or gender identity,² Cakeshop’s quest for a religious exemption for commercial activity poses a potentially devastating threat with distressing historical echoes. *See generally* David B. Cruz, Note, *Piety and Prejudice: Free Exercise Exemption from Laws Prohibiting Sexual Orientation Discrimination*, 69 N.Y.U. L. Rev. 1176, 1221 (1994) (desired exemptions “would undermine the egalitarian public order that such laws seek to establish, creating precisely the access and dignitary harms that the Supreme Court held to be the legitimate concern of antidiscrimination laws.”).

Accepting Cakeshop’s arguments would eviscerate bedrock doctrine reaffirmed consistently over time. This settled approach permits and encourages a flourishing coexistence of the diverse religious, secular, and other belief systems that animate our nation while ensuring equal opportunity for everyone in the public marketplace. The proposed alternative would transform that marketplace into segregated dominions within which each business owner with religious convictions “becomes a law unto himself,” *Employment Division v. Smith*, 494 U.S. 872, 879

² *See generally* Jennifer Pizer, et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L.A.L. Rev. 715 (2012); Randy Albelda, et al., *Poverty in the Lesbian, Gay, and Bisexual Community* (March 2009), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Albelda-Badgett-Schneebaum-Gates-LGB-Poverty-Report-March-2009.pdf>.

(1990), and would force members of vulnerable minority groups to suffer the harms and indignities of being shunned and required to go from shop to shop searching for places where they will not be treated as pariahs.

Religious freedom is a core American value and burdens on it can make for hard cases. But this is not among those hard cases, given the compelling interests served by the Colorado Anti-Discrimination Act's insistence that commercial enterprises open to the public serve all members of the public without distinction based on sexual orientation.

III. CONCLUSION

For the foregoing reasons, Lambda Legal Defense and Education Fund, Inc., One Colorado and One Colorado Education Fund as *amici curiae* respectfully urge this Court to affirm the decision of the Colorado Civil Rights Commission.

Respectfully submitted this 13th day of February, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2015, I electronically filed a true and correct copy of the foregoing: **AMICI CURIAE BRIEF OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., ONE COLORADO AND ONE COLORADO EDUCATION FUND** through ICCES which will send notification of such filing to the following:

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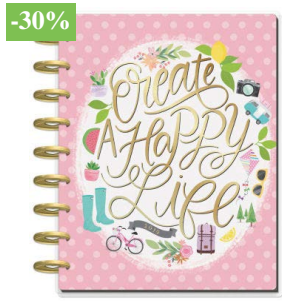
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Anthony Aragon (right) as Lushus La'Rell.

Public servant Anthony Aragon runs for office in the Imperial Court

| DECEMBER 13, 2012 | 4:00AM



Scene and herd: "I like to think I'm a downhome Denverite who only wants to treat people with dignity and respect each and every moment of every day," pronounces **Anthony Aragon** on his Facebook page. Aragon has a head for politics and a heart in public service; he worked for **John Hickenlooper** when he was mayor, moved over to the governor's office with Hickenlooper, then went back to City Hall as a special assistant to Mayor **Michael Hancock** for boards and commissions. And now he's making a run of his own — but not for Denver City Council or the Colorado Legislature. No, as **Lushus La'Rell**, his drag queen alter ego, he'll be running for the fortieth Empress of the Imperial Court of the Rocky Mountain Empire, a mostly drag organization with a powerful record of fighting for GLBT causes over the past four decades. Aragon has only been doing drag for eleven of those years, but he has a major resource in husband **David Westman**, who's also the very colorful drag queen **Nuclia Waste**, and strong support from a cadre of supporters who showed up at a campaign kickoff on Sunday, where Lushus was looking luscious.

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Lisa Calderón is running for Denver mayor.

Gem Reul

Lisa Calderón Running for Denver Mayor

CHRIS WALKER | OCTOBER 15, 2018 | 6:00AM



Today, October 15, Lisa Calderón is launching a campaign to unseat incumbent Mayor Michael Hancock in May 2019. Her campaign slogan? “It’s Time” — which alludes to, among other things, her bid to become the first female mayor of the Mile High City.

Calderón joins a field of contenders that underwent a significant shakeup in recent weeks with the **exit of entrepreneur Kayvan Khalatbari** and the **entrance of former state lawmaker Penfield Tate**.

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Calderón, age fifty, is hardly an establishment candidate, though she is well known for her activism and work around domestic violence, criminal justice and anti-gentrification. Calderón is currently a criminal justice professor at Regis University and the co-chairwoman of the **Colorado Latino Forum**. A Denver native born to a Mexican-American mother and an African-American father, she holds four degrees, including a doctorate of education, a master's degree and a law degree, and over the years has run nonprofits assisting survivors of domestic violence and inmates transitioning back into society after serving jail or prison sentences.

She's also been a vocal critic of Hancock and a thorn in his side since his first day as mayor.

Calderón has many issues with the way the two-term mayor has run the city, citing a housing crisis, overcrowded jails, inefficient and non-transparent agencies, traffic congestion and unrestrained development.

Yet she says it was a broken promise that Hancock had made to her that precipitated her opposition to him and his administration; in 2011, shortly before Hancock became mayor and was then a city councilman, Calderón recalls having a conversation with him about reining in over-aggressive policing in neighborhoods like hers, Cole, that were predominantly communities of color.

"My son was being racially profiled by the police," Calderón recalls, "so I told Michael, 'You've got to do something about this aggressive policing policy, because our children are being harassed and abused.'"

"[Hancock] emphatically said he would do something," Calderón continues. "But then, under his reign as mayor, he accelerated the aggressive policing. That's when I realized that a black mayor wasn't going to save us. This is a guy who will say one thing to your face, but when he ascends to power he'll do something else. He didn't need us once he had his power structure in place. So I have been opposing him ever since. I feel like he lied to me."





Lisa Calderón at the Ink! Coffee demonstration on November 25.

Danielle Lirette

As an activist, Calderón has taken the mayor to task for speeding up gentrification, and she skewered him during speeches she delivered at the **Ink! Coffee protest in November** and during a **large gentrification summit** she helped organize in December at the Shorter AME Church.

Then, when Leslie Branch-Wise, a Denver Police detective and former member of Hancock's security detail, **came forward with allegations and evidence this past spring that the mayor had sent her unwanted sexually suggestive text messages** in 2012, Calderón was one of the organizers behind the **"Time's Up Hancock" rally**, which called for his resignation. (Hancock did not say the behavior amounted to sexual harassment, but **apologized for what he and his office called "inappropriate behavior."**)

"Time's Up Hancock came from being absolutely disgusted that city council was not holding Hancock accountable and not making an investigation," Calderón explains. "That was our pre-Kavanaugh moment on a much smaller scale. Here was a woman saying that she was sexually harassed by the most powerful man in our city, and yet city council was saying, 'We can't really do anything about it.'"

Calderón's feuding with the Hancock administration came to a head when the city denied her nonprofit, the Community Re-entry Program, a \$550,000 contract to continue overseeing jail-to-community transition services that Calderón had herself helped design under former mayor John Hickenlooper. **Calderón is currently suing Hancock and the City of Denver in federal court,** alleging that the contract was denied because of discrimination and political retribution against her. (The Hancock administration has denied these claims).

After she lost the program (and before she landed her professorship at Regis), Calderón was unemployed for nine months. During that time, she says, she had a lot of time to think about running for mayor, though she wanted first to see who would emerge. She has not seen the type of candidate she was looking for.

“It needs to be a woman,” Calderón says flatly. “Not only haven’t we had a woman mayor — which is ludicrous in 2018 for that not to be a strong possibility — but we’re at a point of convergence where the future of our city is at stake.”

By announcing her candidacy, Calderón joins a national wave of women running for elected office, in what's being dubbed another “year of the woman” (the first being 1992, following the Clarence Thomas/Anita Hill hearings). But Calderón says she was also convinced to throw her hat in the ring because she knows Denver's neighborhoods and has years of firsthand experience with public safety and the full spectrum of housing (she says she's experienced brief periods of homelessness, living in public housing, and is now a home owner).





Lisa Calderón speaking before a crowd at a demonstration against Brett Kavanaugh in front of Cory Gardner's office.

Kenzie Bruce

So what is her platform?

At this early stage of her campaign, Calderón says that she's organizing policy positions under three broad ideals:

Equity

Calderón will champion equity for women, so that more city departments will be headed by women, female city workers will have equal pay with men, and city employees who experience sexual harassment in the workplace will have a safe place to report that behavior. Additionally, she wants equity for workers, including a mayoral administration that would be less antagonistic toward unions. And she wants equity for residents, including giving the people of Denver more say over development in their neighborhoods.

Fairness

She envisions a city administration that is more transparent, with robust open-records laws and independent agencies that help select who sits on boards and commissions. When it comes to transportation, fairness means building out

public transit and bicycle infrastructure so that Denver is not so much of a car-based city. She wants to put pressure on developers to include more affordable housing in new projects and hiring local, smaller contractors to handle city building projects rather than large, out-of-state corporate contractors.

Justice

Calderón wants to continue reforms of the police and sheriff departments, but says the city needs measurable outcomes based on ongoing studies of results rather than “simply checking boxes.” She wants a sheriff, police chief and Independent Monitor who are selected independently, rather than appointed by the mayor. “If anything, I’m looking to decentralize the power of the mayor,” she says. “The administration is top-heavy right now, and we need to put those resources back to base levels.”

Calderón will elaborate more on her platform at a speech this Wednesday, October 17, at 10:30 a.m. at the Rev. Dr. Martin Luther King, Jr., statue in City Park.

Asked about funding her run for mayor, Calderón says she is aware that Hancock and Tate have significant resources behind them. Hancock's campaign has \$532,000 in the bank. Tate clearly has some cash on hand, too — enough to run a prime-time advertisement two weeks ago during the Rockies wild-card game.

“I’m a realist; I know we have to raise a lot of money,” Calderón says. “At the same time, we have to do with people what they do with money. We have to be rich in people power.”

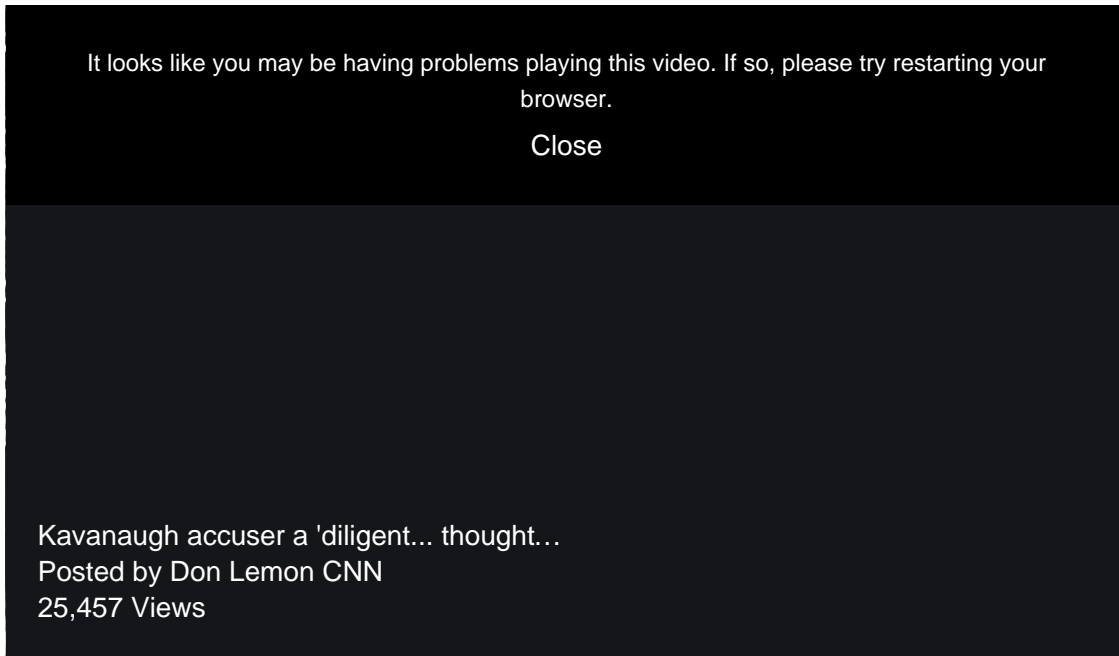
Calderón says she hopes to emulate other campaigns run by women of color around the nation that have generated a groundswell of support. Her formal campaign launch party will take place on November 14.

Asked by *Westword* if she's worried that all of her criticism of Hancock over the years will make her a larger target, Calderón says, “When you’ve had someone who’s almost killed you, compared to someone who says bad things about you, I can deal with that.”

Calderón was referring to a period in her young adulthood when she says she

had an abusive boyfriend who controlled her, manipulated her, and once sent her to the hospital after throwing her head-first into a wall. The boyfriend took Calderón out of state, she said, where he briefly held her hostage in his family home. When she saw her boyfriend's battered and downtrodden mother, she saw what her future might become. She called 911 to be rescued, and had the police take her to a domestic-violence shelter.

This formative experience is what later inspired her to work at the Boulder Safe House, a nonprofit serving victims of domestic violence, where Calderón was a legal and social policy director from 1995 to 2007. Recently, that work came up in a national context during Brett Kavanaugh's nomination to the U.S. Supreme Court; Calderón hired and trained Kavanaugh's second accuser, **Debbie Ramirez of Boulder**.



Calderón had permission from Ramirez **to speak to local news outlets, including *Westword***, about Ramirez, and even made an appearance on CNN in an interview with Don Lemon (above).

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But while that may have been Calderón's highest-profile media appearance, she says, “I’ve been getting my face out there the past ten years in the community.”

Asked about her chances of winning and what she thinks of the current field

of candidates, she says, "I'm glad Penfield has gotten into the race because Penfield's and Michael's base is really similar, so they'll be competing for the same voters."

She believes her voters will be looking for something much different.

"Are we simply going to change seats of political power-holders, or are we going to change our political power structure fundamentally?" she asks.



Chris Walker covers news and music as a staff writer at *Westword*. Prior to living in Denver, he spent two years bicycling across Eurasia, during which he wrote feature stories for *VICE*, *NPR*, *Forbes*, and *The Atlantic*. Read more of Chris's feature work and view his portfolio [here](#).

CONTACT: **Chris Walker**
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EXHIBIT 9



Human Rights and Community Partnerships

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ABOUT HUMAN RIGHTS & COMMUNITY PARTNERSHIPS

VISION

This agency creates opportunities for innovation to take root in local government and throughout the community to impact local challenges. HRCP is the model of inclusiveness, recognizing that diverse perspectives, skills and resources strengthen the foundation for lasting solutions.

MISSION

Our mission is to proactively protect human rights, build capacities, and strengthen connections that result in stronger relationships in the community through collaboration, communication and advocacy. We address issues concerning **older adults, racial, ethnic and religious minorities, women and families, people with disabilities, gay, lesbian, bisexual and transgender individuals, immigrants and refugees, neighborhood partnerships, and non-profit partnerships.**

STAFF BIOGRAPHIES

Derek Okubo, Executive Director, Agency for Human Rights and Community Partnerships +

Jamie Torres, Deputy Director, Agency for Human Rights & Community Partnerships +

Rowena Alegria, Communications Director +

Roz Alston, Executive Assistant to the Executive Director and Special Projects Coordinator +

Anthony Aragon, Senior Advisor, Office of Community Affairs -

Anthony Aragon is part of the Community Affairs team in the Agency. His community outreach efforts are focused on the LGBTQ & Latino(a) communities. He also serves as the Mayor's LGBTQ Liaison and staffs the Denver LGBTQ Commission.

He previously served as Mayor Michael B. Hancock's Director of Boards & Commissions where he managed over 130 different civic boards and commissions. Prior to joining the Mayor's Office, Anthony worked for the State of Colorado as a member of Governor John



Hickenlooper’s transition team and helped coordinate the Governor’s inaugural events. On January 11, 2011 he was named Chief of Staff to First Lady Helen Thorpe. Anthony also served as Governor John Hickenlooper’s GLBT Liaison.

Anthony is a Denver native and has been a proud member of Denver’s GLBT community for over 25 years. Anthony lives with his husband of almost 21 years, David Westman & their Spanish Water Dogs, Andale & Arriba in Stapleton.

María Corral, Office of Immigrant & Refugee Affairs, Community Integration Coordinator +

Kim Desmond, Director, Office on Women and Families +

Perla Gheiler, Director, Office on Aging +

Shawn Johnson, Senior Advisor, Office of Community Affairs +

Jessica Jorgensen, Data & Research Analyst, Agency for Human Rights & Community Partnerships +

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Swanhilda Lily, Deaf Programs Specialist, Office of Sign Language Services +

Grace López Ramírez, Neighborhoods Adviser, Office of Community Affairs +

Juan Pasillas, ADA Building Plans Reviewer +

Miriam Peña, Director, Office of Strategic Partnerships +

Aisha Rousseau, Director, Office of Disability Rights +

Jason Salas, Director, Office of Financial Empowerment +

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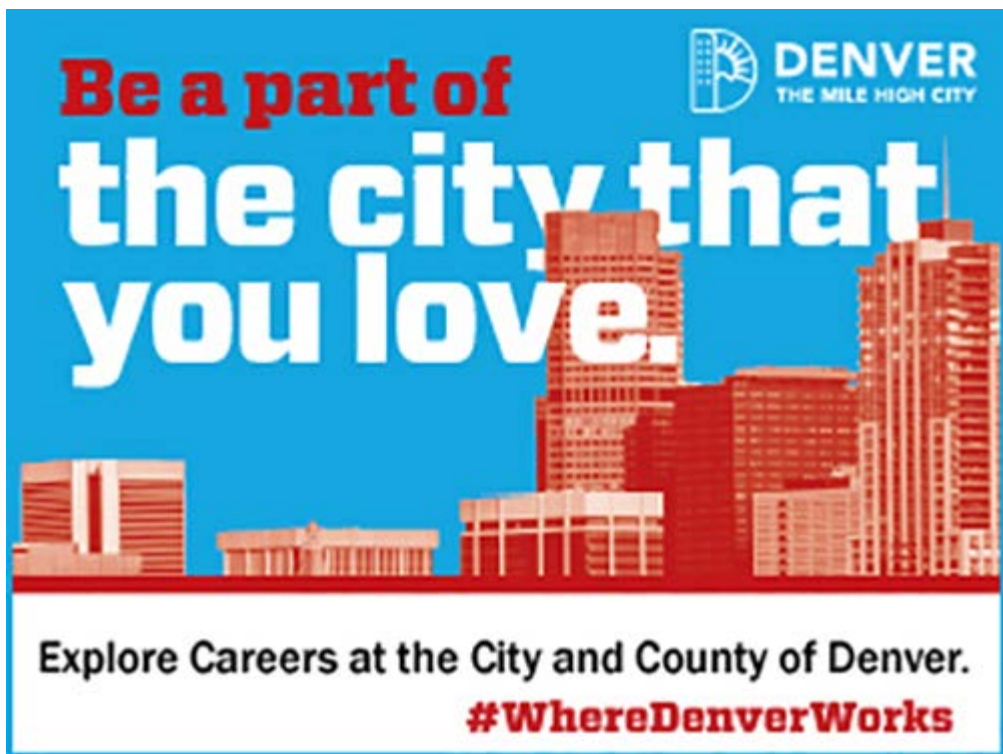
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EXHIBIT 10

 Anthony Aragon 



Anthony Aragon
(Lushus La'Rell)

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Anthony Aragon



December 5, 2017 · 🌐

Hello Tuesday!! Today's an important day in our Nation's Capital. Sharing this holiday visual of a time when life was better...In other news, so much negativity surrounds us all, my heart hurts. So, how about a smile 😊 or a hello to someone you don't know. If only for one moment in time. Could just brighten both your days 😊



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Anthony Aragon

January 25 · 🌐



Hello Thursday!! Super excited to head to D.C. to attend the National LGBTQ Task Force Creating Change conference!!! It's the one place I learn what's happening in the movement. It also affords me the opportunity to fill up the battery so when stupid people do stupid stuff, I have reserves to pull from 😊
Enjoy today's Inspiration & don't forget to smile 😊



52

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November 05, 2014

Lottie Prize winner: Jessie Pocock

By Edie Adelstein @edieadelstein

Late one Monday night in May 2012, Jessie Pocock stood inside the state Capitol building, waiting to hear the fate of civil unions in Colorado. Shouts of "Shame on you!" and "I hope you [expletive] die!" rang throughout the day. Outside, protesters had rallied for days, and inside, supporters packed the committee room. Tim Gill, a gay-rights leader, made a rare public appearance that night.



Edie Adelstein

Once and future activist: 'That's in my blood for sure,' Pocock says.

At midnight, the bill was dead — killed in committee, without even a chance to reach a vote on the floor. The *Denver Post* called it a "late-night game of political chicken."

Pocock, then the southern Colorado field organizer for One Colorado, the state's largest gay-rights group, was photographed by the *Post* in tears. Not only did months of work by the organization die with the bill, but the decision was punctuated by testimony that shocks her to this day.

"It was so stupid. God, it was painful. ... The talk on the floor, just in addition to being really insane, like really crazy testimony, was really painful and mean," she remembers. "And you're there with people you love and family members ... It was a quiet ride home."

But it wasn't the end. Pocock and her colleagues would get to work on civil unions again. And in 2013, it passed.

"People needed critical protection immediately," the 32-year-old says. "We weren't going to be able to wait for marriage. That was going to take some time, but families that have kids and are worried about not being able to hold their partner's hand in the hospital, they needed protection right away. So we went for civil unions. It was doable, and we got



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Lottie Prize winner: Jessie Pocock | Cover Story | Colorado Springs | Colorado Springs Independent

it, and what is it, a year and a half later? Marriage. Boom. So great."

The story echoes much about Pocock, in that out of adversity comes strength, and in the face of hate, grace. What seems like a long shot actually isn't so impossible after all.

When you meet Pocock, you feel her friendliness right away. Above a broad smile, her twinkling eyes don't betray the long hours she spends planning events, writing grants and staffing galleries in her current position, as development and events professional at the University of Colorado at Colorado Springs' Galleries of Contemporary Art.

With the expansion of UCCS, and the \$56 million visual and performing arts building the university is planning (set to open in 2017), GOCA is bustling. Amid other plans, there is talk of new partnerships, made possible by the promise of an on-site recital hall and theater. GOCA director Daisy McConnell says Pocock has been instrumental in helping her lay the groundwork.

"Jessie's so talented in that she effortlessly connects with people," says McConnell. But there's plenty of effort, too: "She puts her whole heart into her work."

A Springs native, Pocock has studied at three of the four major schools in town: first at Pikes Peak Community College, then as a transfer to Colorado College, where she graduated in 2008 with a major in sociology. Last year, she finished her post-graduate work in public administration at UCCS.

It was in one CC class where she discovered a love for nonprofit work. "It almost seemed like a lot of social justice in action, like, 'Here's all the theories, but what are you going to do to change it?'" she recalls, adding, "This is theory in action. This is where people actually make the change."

Pocock started out at the small-scale level at the Club of Arts, a visual and performing arts organization geared primarily toward serving people with disabilities, and then moved to the far-reaching, well-oiled machine of Pikes Peak United Way. After a one-year stop at Colorado Technical University, it was on to One Colorado.

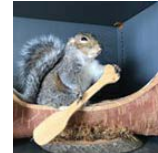
By now, Pocock, says, "I feel like a generalist, like, 'I know a little bit about everything nonprofit.' Because you really do, especially at small organizations. You fundraise, you help work with the board, you're working with the clients, whoever they might be, you're doing any administrative type work — I did the books, you know? Everything."

At GOCA, she touches everything from grant writing to programming to planning. And lots of events. In the past two years, GOCA has held more than 100: art shows, of course, but also wine tastings, lunchtime dance parties, speaking engagements and its big annual fundraiser, *Brilliant*.

"I can't even tell you how many hours go into something like that," Pocock says of the latter. Beyond tracking down sponsorships, coordinating the artists who would perform or create works for the affair — which included a show from Ormao Dance Company and



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large-scale screens airing seven channels of motion-based art — she also had to round up items for the silent auction, and keep the GOCA board clued in each step of the way.

People were still talking about the event months later, and it won third place for best fundraising event in the *Indy's* recent Best Of Colorado Springs readers poll.

"That's how you get people to know that they care about your organization," Pocock says, "is you bring them to you, and especially in the arts right now, there's a lot of research that suggests that arts really — people no longer want to passively visit a museum, they want to experience it, they want to experience each other, they want a social experience."

Looking forward, Pocock sees the world as her oyster.

"I have so many things I want to do in life. I'm not a one-track person," she says, smiling wider than ever. "That's one of the things I learned about myself when doing things that didn't jibe with me. I don't think that that's flaky, I think that that's really empowering, because I can work at a high intensity on something I really care about, and once I've created a system and structure that I know can really survive in the future, then I can go do that somewhere else."

That somewhere will stay, though, in the realm of activism (and in the Springs, at least for now, where her family is rooted).

"It would be really cool to run for office someday," Pocock says. "I think that would be really awesome, to actually go and be a lawmaker and really bring activism to the policy level in that way."

And if that means more experiences like the one at the Capitol in 2012, well, she'll deal with them.

"You know, I was a pretty renegade person growing up," she says. "I dropped out of high school and lived in a lot of places. I moved out for the first time when I was 13. I've been all over the place — here — but there are some crazy places you can be here, and I think through that experience, I just kind of am a self-starter. ... At this point, if I can drop out of high school and make it to CC, I can do whatever."

I ask what advice she would give to a young woman starting out in her sector. Pocock covers more points than this space can contain, but finishes this way:

"Don't be afraid to take chances, and push the envelope in organizations, because sometimes that's how you step up to the next level. And you know, enjoy it, man. You get to be a change-maker. Where else do you get to be a change-maker in this world?"

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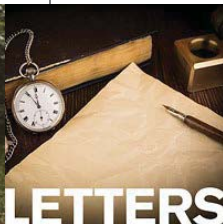
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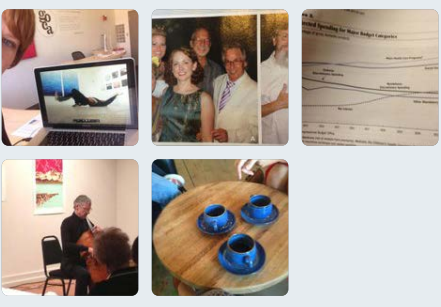
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Jessie Retweeted

 **Carrie Simison** @CarrieSimison · 19 Jun 2014
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 **Jessie** @jessie_pocock · 11 Nov 2013
Editing breakdance footage in the gallery #dayinlgbt

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Jessie @jessie_pocock · 23 Jan 2013

Civil unions proposal clears first legislative hurdle fb.me/2eLBYw16Z



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One Love! fb.me/1Jmq2IXJF



Jessie @jessie_pocock · 23 Jan 2013

[#civilunions](https://twitter.com/civilunions) passes senate judiciary 3 to 2 and is off to the house next! Pro equality Rep. Pete Lee stepped in to catch the victory.



Jessie @jessie_pocock · 23 Jan 2013

Sen. Aguilar reminds us that pot didn't pass in 2006 either! [#civilunions](https://twitter.com/civilunions) [#LGBT](https://twitter.com/LGBT)



 Jessie Retweeted



One Colorado @One_Colorado · 23 Jan 2013

Lundberg again attempting to get religious exemption for [#civilunions](https://twitter.com/civilunions) by offering amendment [#coleg](https://twitter.com/coleg)





Jessie @jessie_pocock · 23 Jan 2013
The motion to move SB 11 and the votes are...



Retweeted by Jessie



Nic Garcia @NicGarcia · 23 Jan 2013
Anus Grandma, Rosina Kovar, says she doesn't have that much to add. She's already said so much: [youtube.com/watch?v=YGiuX0...](https://www.youtube.com/watch?v=YGiuX0...) #COLeg #LBGT




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Jessie @jessie_pocock · 23 Jan 2013
Love you! "@hjess3: Haha! My stepson: So when I buy a wedding cake I have to say it's a straight cake?" #civilunions #coleg"



- 





Jessie @jessie_pocock · 23 Jan 2013 ▼


My favorite: Bigoted cake- 50% off cakes for STRAIGHT cougars on the prowl!
[#coleg](#)


  
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Jessie @jessie_pocock · 23 Jan 2013 ▼





Last year it was chocolate this year it's cake


  
-  Jessie Retweeted



Lynn Bartels  @lynn_bartels · 23 Jan 2013 ▼




Possible lead for tomorrow on [#civilunions](#): "Let them eat cake." [#coleg](#)

 2  4  2
-  Jessie Retweeted



COLOR @colorlatina · 23 Jan 2013 ▼

[@CCharitiesUSA](#) didnt expect tough Qs to come from Sen. Ulibarri who called out inconsistency & blatant discrimination [#civilunions](#) [#coleg](#)

  1 



Jessie @jessie_pocock · 23 Jan 2013

Should have said cake hater



Jessie @jessie_pocock · 23 Jan 2013

Back to cake baker...



↻ Jessie Retweeted



Lynn Bartels @lynn_bartels · 23 Jan 2013

Steadman nailing Catholic Charities guy, asking about church opposing last year's civil unions bill that had an exemption. [#coleg](#)



Jessie @jessie_pocock · 23 Jan 2013

And apparently cake bakers should be able to discriminate and should be excluded from SB 11 even though state law... fb.me/xMjzjk5q





Jessie @jessie_pocock · 23 Jan 2013

Hearing on Colorado civil unions bill underway in Senate committee
fb.me/H7MT6kGg



Jessie @jessie_pocock · 23 Jan 2013

Lynn Hopkins to Sen. Lundberg "we may be related, my mother's maiden name is Lundberg" lol "I come to speak in... fb.me/211gPzaoq



Jessie @jessie_pocock · 23 Jan 2013

Cripple Creek father of 5 comes out to his kids, "we don't care if you are gay--you are our dad!" "We need to... fb.me/2a5WY8Yyl



Jessie Retweeted



Rep. Pete Lee @PeteLeeColorado · 23 Jan 2013

Civil Unions is conquering its first hurdle. It is currently being heard in the Senate Judiciary Committee.
coloradoga.granicus.com/MediaPlayer.ph... #coleg



 Jessie Retweeted



Heidi J Hess @hjhes3 · 23 Jan 2013

Epitome of ignorance. RT @Colorado_Family: Why...keep saying TRANS. Since when do we have transgender people in CO? Who let them in? #coleg

 1  1  1



Jessie @jessie_pocock · 23 Jan 2013

APA Research shows "children who are raised by same sex couples end up the same as children raised by opposite... fb.me/1QwpWen7Q



Jessie @jessie_pocock · 23 Jan 2013

fb.me/12bRQegtM

 Jessie Retweeted



John Hickenlooper  @hickforco · 23 Jan 2013

Civil unions is about justice and economic prosperity. We've said before, saying again: Pass this bill! #COleg #civilunions

 6  79  20



Jessie @jessie_pocock · 23 Jan 2013

chief legal council of #hickforco says #civilunions "Promotes justice and prosperity" I love my gov!



↻ Jessie Retweeted



One Colorado @One_Colorado · 23 Jan 2013

Hancock: "I come from a family where I watched my mother be discriminated against...that doesn't have a place in our society" #coleg



Jessie @jessie_pocock · 23 Jan 2013

"Colorado must move towards fairness, inclusivity, and respect" -Mayor Hancock testifying for #civilunions #LGBT #coleg



↻ Jessie Retweeted



One Colorado @One_Colorado · 23 Jan 2013

Our leader Brad Clark is up first. "This bill isn't marriage. #civilunions are not the same as marriage...they don't provide dignity" #coleg





Jessie @jessie_pocock · 23 Jan 2013

The smile and spirit of justice in this room is overwhelming [#civilunions](#) [#LGBT](#)



Jessie Retweeted



One Colorado @One_Colorado · 23 Jan 2013

Packed house for [#civilunions](#). Media in every corner, and every seat is filled. Openly [#LGBT](#) Senators Steadman and Guzman presenting. [#coleg](#)



Jessie @jessie_pocock · 23 Jan 2013

I posted a new photo to Facebook fb.me/190wpC9kM



Jessie @jessie_pocock · 23 Jan 2013

Listen to the Civil Union Senate Judiciary hearing live @ 1:30pm. [#coleg](#)
fb.me/2BL0fOGuq



Jessie @jessie_pocock · 23 Jan 2013

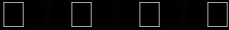
Time for some equality!



EXHIBIT 13

Select Page

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About



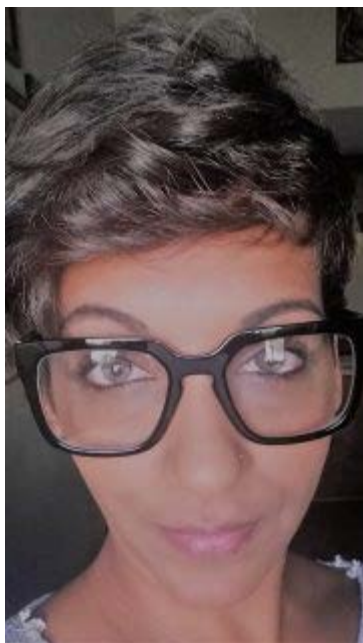
JESSIE POCOCK

EXECUTIVE DIRECTOR

Jessie has held various roles in the nonprofit sector. Most recently, she was the Executive Director of the LEAD Foundation empowering students who struggle with learning disabilities and attention issues. She worked at UCCS as the Development and Events Director for the Galleries of Contemporary Art and was a Campaign Officer for Pikes Peak United Way.

Jessie comes to us as someone who is committed to a variety of pro-equality initiatives and campaigns. She spearheaded One Colorado's Southern Colorado grassroots efforts to advance statewide pro-LGBTIQ and equity legislation as well as support pro-LGBTIQ candidates. In 2016, she was appointed by Governor Hickenlooper to the Colorado Civil Rights Commission to uphold our state's anti-discrimination laws and protect individuals' civil rights in housing, public accommodations, and employment.

Jessie attended Colorado College where she earned her Bachelor Degree in Sociology and continued on to UCCS School of Public Affairs where she earned a Master of Public Administration degree.



PRISCILLA MORALES- MITCHELL

YOUTH PROGRAM MANAGER & VOLUNTEER ENGAGEMENT

Priscilla Morales-Mitchell joined Inside/Out Youth Services in June 2017 and received her B.S. in Criminal Justice from Troy University. She previously worked at Turner Job Corps Center as an Instructor, mediator, counselor, and Safe Space advocate for the LGBTIQ community at the facility.

Priscilla recently moved to Colorado Springs accompanied by her wife, 2 year old daughter and her tea cup Shi-Poo. She also has two older children, a 19 year old old son and 21 year old daughter. While not at Inside/Out, she enjoys spending time with family, hiking, camping, and meeting new people.



SOPHIE THUNBERG **OUTREACH EDUCATOR &** **PROGRAM ASSISTANT**

Sophie has a wide scope of professional experience in arts education and the non-profit sector. From stage managing productions to marketing as an arts professional for theatre companies and work as an educator in local high school programs, Sophie has many years of experience in community engagement and project development.

After receiving a MA in French Studies from NYU, she worked with refugee and immigrant youth populations in NYC through the International Rescue Committee (IRC) and the French Heritage Language Program. While at NYU, Sophie was also involved with the

LGBTQ center as a program coordinator for a gender discussion group in Paris, France where she began researching on intersex identity and formed many relationships with scientists, activists, and scholars in the community.

In 2016, she moved back home to Colorado and began volunteering with Inside Out Youth Services (IOYS) as a facilitator while also working as a short-term and long-term guest teacher in local public-school districts (D20, D14, D11, D49). As the current Outreach Educator and Program Assistant at IOYS, Sophie aims to continue developing ongoing projects in educational outreach and operational support that provide and ensure safe space(s) for LGBTIQ youth throughout the Springs.

OUR TEAM

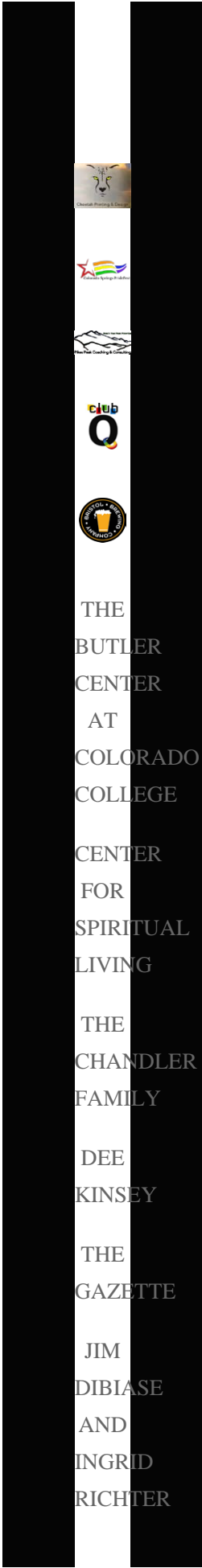


GRANT
MAKERS



CENTURYLINK

FOUNDATION
COMMUNITY
SHARES OF
COLORADO
FIRST
CONGREGATION
CHURCH
THE
LEIGHTY
FOUNDATION
PIKES PEAK
COMMUNITY
FOUNDATION
MARSON
FOUNDATION
SAPONAS
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TONY
GRAMPSAS
YOUTH
SERVICES
PROGRAM



THE
BUTLER
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AT
COLORADO
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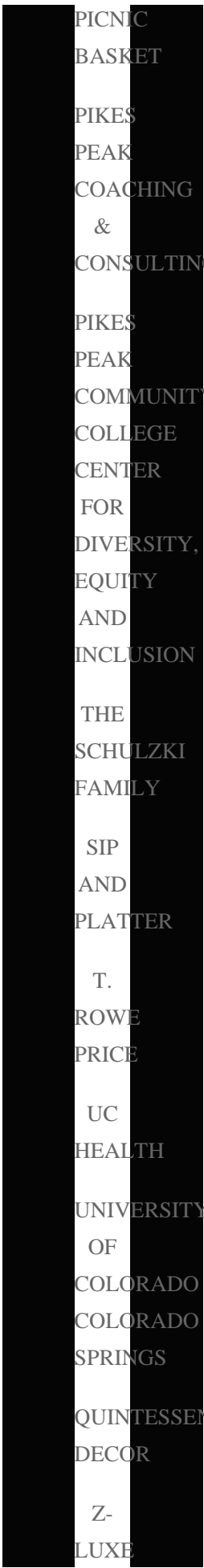
CENTER
FOR
SPIRITUAL
LIVING

THE
CHANDLER
FAMILY

DEE
KINSEY

THE
GAZETTE

JIM
DIBIASE
AND
INGRID
RICHTER



PICNIC
BASKET

PIKES
PEAK
COACHING
&
CONSULTING

PIKES
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COLLEGE
CENTER
FOR
DIVERSITY,
EQUITY
AND
INCLUSION

THE
SCHULZKI
FAMILY

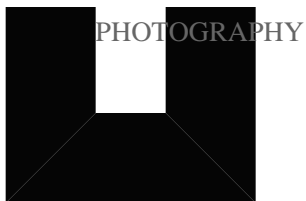
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EXHIBIT 14



Jessie Pocock Message ...

[Timeline](#) [About](#) [Friends](#) [Photos](#) [More](#) ▾

DO YOU KNOW JESSIE?

If you know Jessie, send her a message.

Intro
"Fundamentally brave and badass" - Kristy Milligan

Photos


Friends

Posts from 2017

Jessie Pocock updated her cover photo.
August 19, 2017 · 🌐

 **Jessie Pocock** is with Daneya Esgar at Colorado State Capitol. ...
March 27, 2017 · 🌐

Today I get confirmed by the senate to serve on the Colorado State Civil Rights Commission. And all of that would not be possible had I not had the chance to learn and grow with powerhouse leaders like Rep. Esgar. Proud to know you, sister and proud to serve. [#coloradical](#) [#civilrights](#) [#SOCO](#)

   348 40 Comments 1 Share

 Like  Comment  Share

EXHIBIT 15



Western Slope Field Organizer

Heidi Jeanne Hess

Heidi Jeanne Hess is the Western Slope Field Organizer for One Colorado, coordinating the organization's grassroots efforts, developing diverse coalitions, and bridging gaps within LGBTQ communities in Grand Junction and along the Western Slope.

Heidi is relatively new to Colorado, having moved to the Western Slope in 2009 from North Dallas, Texas. Born and raised in Omaha, Nebraska, Heidi has been actively involved in LGBTQ rights and activism since 1982.

She has a Bachelor of Science in Journalism and a Master of Arts in Communication both from the University of Nebraska-Omaha. While at university, Heidi was President of the Gay Lesbian Student Organization, served as a long-time volunteer at Nebraska AIDS Project when it was first formed, and worked to establish the first-ever LGBTQ Pride Parade in Omaha.

In her spare time, Heidi enjoys reading, going on day trips with her partner, Dannie, and being involved with their church.



Contact Me

(214) 298-4446



Email

HEIDIH@ONE-COLORADO.ORG

★ MEET THE REST OF OUR STAFF



One Colorado is the state's leading advocacy organization dedicated to advancing equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) Coloradans and their families. We are working together for a fair and just Colorado.

Getting in Touch

- > **Our Office**
1490 Lafayette St.
Suite 304
Denver, CO 80218
[Get Directions](#)
- > [\(303\) 396-6170](tel:(303)396-6170)

Helpful Links



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NEWS & EVENTS



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EXHIBIT 16

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Tweets 750 Following 367 Followers 106 Likes 236 Follow

Heidi J Hess
@hj_hess3

Tweets Tweets & replies Media

New to Twitter?
Sign up now to get your own



Heidi J Hess @hj_hess3 · 11 Mar 2013
RT @rxmaryjane: I'm really sick of the phrase "deeply held religious beliefs."
#coleg #civilunions



Heidi J Hess @hj_hess3 · 11 Mar 2013
So deeply held religious beliefs that discriminate is ok? #civilunions #coleg



Heidi J Hess @hj_hess3 · 28 Feb 2013
RT @Sonrisa_Lucero: Cake writing, though a professional service, is apparently free speech. #civilunions



Heidi J Hess @hj_hess3 · 28 Feb 2013
RT @jcobb5280: Dear bakers, if you want to stay in business, stop giving the gays more reasons to hate carbs. #coleg





Heidi J Hess @hjhes3 · 28 Feb 2013

RT @pinklaura: Apparently, making a gay wedding cake is the same as making a "happy birthday, hitler" cake #godwinslaw #coleg #civilunions



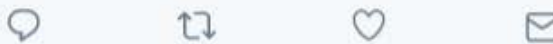
Heidi J Hess @hjhes3 · 28 Feb 2013

RT @alexcobell: I don't remember the last time I saw a wedding cake that said "Happy gay weeding" #tacky #coleg



Heidi J Hess @hjhes3 · 28 Feb 2013

RT @lynn_bartels So gay cakes and gay cookies are okay, but not gay wedding cakes. Gotcha. #coleg



Heidi J Hess @hjhes3 · 28 Feb 2013

Woot! The Cake Lawyer is up! #gaycake #civilunions #coleg



Heidi J Hess @hjhes3 · 28 Feb 2013

Freedom OF religion does NOT mean freedom FOR YOUR religion. #coleg #civilunions



Heidi J Hess @hjhes3 · 28 Feb 2013

RT @BigotedCake: Yes! My cakes are art for God! Not for the "gays" #coleg #civilunions



Heidi J Hess @hjhes3 · 28 Feb 2013

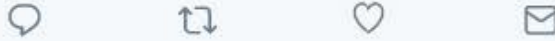
Opposition testimony starting. Focus today: supposed "religious protection" #civilunions #coleg





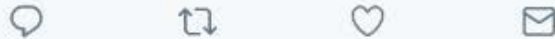
Heidi J Hess @hjhes3 · 28 Feb 2013

Pastor Connor: The bible has been quoted in favor of slavery and in favor of women's suffrage. #coleg #civilunions



Heidi J Hess @hjhes3 · 23 Jan 2013

Haha! My stepson: So when I buy a wedding cake I have to say it's a straight cake? #civilunions #coleg



Heidi J Hess @hjhes3 · 23 Jan 2013

Rainbow cake. RT @amwheeland: I need cake soon. Non-bigoted cake. #coleg #civilunions



Heidi J Hess @hjhes3 · 23 Jan 2013

RT @BigotedCake: Miniature figurines on top of cakes must be limited to ONE man and ONE woman. #coleg #focusonthecake



Heidi J Hess @hjhes3 · 23 Jan 2013

Hahahaha RT @BigotedCake: I'm trying to make big fluffy pink wedding cakes, not further the gay agenda, dammit! #coleg #civilunions



Heidi J Hess @hjhes3 · 23 Jan 2013

The side that brough cake as an argument says WE are intellectually dishonest? That's rich. #coleg #civilunions





Heidi J Hess @hj Hess · 23 Jan 2013



Sen. Steve King wants to add an amendment to allow cake bakers to discriminate. Go Western Slope! #ugh #civilunions #coleg



Heidi J Hess @hj Hess · 11 Mar 2013



RT @ZackFord: Nothing makes me roll my eyes quite like an old white man standing up for inequality. Sorry, Rep. Gardner. #COleg #civilunions



EXHIBIT 17

PUBLIC SESSION MINUTES

**TENTH (2013-2014) MONTHLY MEETING
Of the
COLORADO CIVIL RIGHTS COMMISSION**

**Friday, May 30, 2014
Colorado State Capitol
200 E. Colfax Ave, Old Supreme Court Chambers
Denver, CO 80203**

Convened: 10:05 a.m.

Public Session

The tenth 2013-2014 Monthly Public Session of the Colorado Civil Rights Commission was held on Friday, May 30, 2014, at the Colorado State Capitol, 200 E. Colfax Ave, Old Supreme Court Chambers, Denver, CO 80203 and was convened at 10:05 a.m., Commissioner Katina Banks, Chair, presiding.

Commissioners present were: Katina Banks, Chair, Raju Jairam, Susie Velasquez, Marvin Adams, Diann Rice, Heidi Hess, and Dulce Saenz.

Present from the Civil Rights Division:

Steve Chavez, Director

Shayla Malone, Commission Coordinator

Present from the Colorado Office of the Attorney General:

Counsel for the Commission, Assistant Attorney General Charmaine Rose

Counsel for the Division, Assistant Attorney General Molly Moats

Members of the Public present:

Helen Bowman

Paula Greisen

Sara Neel

Dana Menzel

Billy Mac

Lisa Elderick

Jack Phillips

Natalie Decker

Nicolle Martin

Jeremy Tedesco

David Mullins

Charlie Craig

Stacy Worthington

Sarah Spears

James Gavin

Andrea Turner

Diana Black

Vikki Otrro
Dan Weiss
Rebecca Wallace
Stephen Meswarb
Rachel Pryor Lease
Leah Pryor Lease
Carolyn Tyler
Matt Stegeman
Kathy McLroy
Austin Berstein
Scott Levin
Jon Wilson
Aubrey Elenis
Lindsay Huusko
Ashley Wheeland

CALL TO ORDER

Commissioner Banks called the meeting to order and asked the Commissioners present to read their names into the record for the purpose of establishing a *quorum*. Attorneys present from the Colorado Office of the Attorney General, staff of the Colorado Civil Rights Division, and members of the public also identified themselves for the record.

APPROVAL OF PUBLIC SESSION MINUTES

April 25, 2014

Commissioner Rice moved to approve the minutes of the Public Session of April 25, 2014, Commissioner Hess seconded, and the motion passed.

May 16, 2014

Commissioner Rice moved to approve the minutes of the Public Session of May 16, 2014 as amended, Commissioner Hess seconded, and the motion passed.

May 28, 2014

Commissioner Rice moved to approve the minutes of the Public Session of May 28, 2014 as amended, Commissioner Hess seconded, and the motion passed.

DIRECTOR'S REPORT

Commissioner Chavez advised the Commission that two new investigators have been hired.

Director Chavez also informed the Commission that he attended a roundtable discussion with Senator Udall in regards to sexual abuse with migrant workers.

ATTORNEY GENERAL'S REPORT

P20130008X; CR2013-0008; Charlie Craig & David Mullins v. Masterpiece Cakeshop, Inc.

Commissioner Jairam moved that the Commission direct Assistant Attorney General, counsel for the Commission, to draft an order that will adopt in full the Initial Decision of Administrative Law Judge Robert N. Spencer, Affirming the Order Granting Complainants Motion for Protective Order, and the Respondents Motion to Dismiss the Formal Complaint and Motion to Dismiss Jack C. Phillips. Ordering the Respondents to cease and desist from discriminating against Complainants and other same-sex couples by refusing to sell them wedding cakes or any product Respondents would sell to heterosexual couples, provide quarterly compliance reports to the Colorado Civil Rights Division for two years from the date of the order, to include number of patrons denied service by Mr. Phillips or Masterpiece Cakeshop, Inc. and the reason why the patrons were denied service. The motion was seconded by Commissioner Velasquez, and the motion passed.

AUDIENCE PARTICIPATION

Nicolle Martin raised questions about the record for Masterpiece Cake Inc., she was reminded by Assistant Attorney General Rose that she could address those concerns with her at a later date and time.

OTHER BUSINESS

None

EXECUTIVE SESSION

Commissioner Rice made the following motion, Commissioner Jairam seconded, and the motion passed:

I move that the Commission enter into Executive Session at this time in order to consider the following matters:

- To address the following cases on the May consent agenda, hearing worthy review cases, and settlements: E20140002, P20140013X, H20140051, E20140074, E20130796, P20140024X, H20140026, H20120119 , E20110085 which are required to be kept confidential pursuant to Sections 24-34-306(3), and 24-6-402(3)(a)(III), C.R.S.;
- For the purpose of receiving legal advice pursuant to Section 24-6-402(3) (a) (II), C.R.S.

Next Meeting – to be held in Denver, Colorado on June 18, 2014.

ADJOURNMENT
Commission Public Meeting adjourned

EXHIBIT 18

STATE OF COLORADO
CITY AND COUNTY OF DENVER

COPY

Colorado Civil Rights Commission Meeting

Held on May 30, 2014

Colorado State Capitol

200 East Colfax Avenue, Old Supreme Court Chambers

In re: CHARLIE CRAIG and DAVID MULLINS v.

MASTERPIECE CAKESHOP, INC.

Case No.: P20130008X, CR2013-0008

This transcript was taken from an audio recording by Teresa Hart, Registered Professional Reporter and Notary Public.

1 P R O C E E D I N G S

2 * * * * *

3 THE CHAIRWOMAN: Okay. Welcome to the
4 old Supreme Court chambers, where because of the high
5 level of interest of the matter that we will be
6 discussing later in our meeting, Colorado Civil Rights
7 Commission is honored to meet.

8 For those of you who have not attended
9 one of our proceedings, we meet -- typically we meet
10 monthly. The Commission is a seven-member bipartisan
11 panel whose mission is to conduct hearings on the
12 character, cause, and extent of illegal discriminatory
13 practices throughout the state; advise the governor and
14 the general assembly regarding policies and legislation
15 that address illegal discrimination; review appeals of
16 cases investigated and dismissed by the Colorado Civil
17 Rights Division; and adopt and amend rules,
18 regulations, et cetera, to be followed in the
19 enforcement of the state's statute regarding
20 discrimination.

21 Our first order of business is to make
22 sure that we read our names into the record so that we
23 can establish a forum. And so I'm going to ask each
24 commissioner do that. And then I'll ask anyone who's
25 representing the -- excuse me, from the attorney

1 general's office or the staff of the Colorado Civil
2 Rights Division to also read their names into the
3 record for purposes of these proceedings.

4 So Commissioner Saenz, would you begin?

5 COMMISSIONER SAENZ: Sure. Commissioner
6 Saenz from Denver.

7 COMMISSIONER RICE: Commissioner
8 Diane Rice from Loveland.

9 COMMISSIONER JAIRAM: Commissioner
10 Raju Jairam from Fort Collins.

11 COMMISSIONER BANKS: Commissioner
12 Katina Banks from Denver.

13 COMMISSIONER VELASQUEZ: Commissioner
14 Susie Velasquez from Greeley.

15 COMMISSIONER ADAMS: Commissioner
16 Marvin Adams from Colorado Springs.

17 COMMISSIONER HESS: Commissioner
18 Heidi Hess from Grand Junction.

19 MS. ROSE: Charmaine Rose, counsel for
20 the commission.

21 MS. MOATS: Molly Moats, counsel for the
22 Divisions.

23 MR. CHAVEZ: Steve Chavez, Civil Rights
24 Division director.

25 MS. MALONE: Shayla Malone, Colorado

1 Civil Rights Division.

2 THE CHAIRWOMAN: Great. Thank you.

3 Okay. At this time the next order on the
4 agenda is for us to approve our public session
5 meeting -- minutes, excuse me, for a few sessions that
6 we've had. First is for April 25th, 2014.

7 UNIDENTIFIED SPEAKER: Madame Chair, I
8 move approval of the minutes of the public meeting of
9 April 25th, 2014.

10 UNIDENTIFIED SPEAKER: Second.

11 THE CHAIRWOMAN: All in favor?

12 (Responses were heard.)

13 HEARING OFFICER: Okay. May 16th, 2014,
14 we had an emergency public session meeting.

15 UNIDENTIFIED SPEAKER: Madame Chair, I
16 move approval of the minutes of the May 16th emergency
17 meeting with the Colorado Civil Rights Commission.

18 UNIDENTIFIED SPEAKER: (Inaudible.)

19 THE CHAIRWOMAN: One question I had. I
20 believe that it indicates on the minutes that only one
21 commissioner was via phone conference. But my
22 impression -- my recollection is that most of us
23 were ...

24 UNIDENTIFIED SPEAKER: Yeah, I think it
25 would help if we moved the item in parenthesis to the

1 front of the number of people that were on the forum.

2 THE CHAIRWOMAN: Yeah. Can we just make
3 that edit to just be correct for the record?

4 Okay. If we're okay with that amendment,
5 so moved and seconded. All in favor?

6 (Responses were heard.)

7 THE CHAIRWOMAN: And then finally, the
8 approval of the public session meeting minutes for
9 May 28th, 2014.

10 UNIDENTIFIED SPEAKER: Madame Chair, I
11 move approval of the minutes of the May 28th, 2014,
12 emergency meeting. Also noting that the phone
13 conference be (inaudible) put to the beginning of the
14 list.

15 THE CHAIRWOMAN: Okay. So as amended, is
16 there a second?

17 UNIDENTIFIED SPEAKER: Second.

18 THE CHAIRWOMAN: All in favor?

19 (Responses were heard.)

20 THE CHAIRWOMAN: All right. Next on the
21 agenda is the director's report.

22 MR. CHAVEZ: Good morning, Commissioner
23 Banks, and good morning other commissioners. It's
24 great to see all of you today. I'm going to keep my
25 remarks brief because I know there's a lot on your

1 agenda.

2 And I'd only like to mention just a
3 couple of things. Operationally the Division has hired
4 two new investigators. And so that's great for --
5 we're happy to have them on board. Our budget for the
6 coming year looks great.

7 And as far as human outreach events we
8 conducted reasonably, I had the privilege of speaking
9 to the parents and friends of lesbians and gays, people
10 in Colorado Springs last week, and it was really well
11 attended. You know, there were probably 70 or 80
12 people there. And there was a great deal of interest
13 in the work that the Division does.

14 I was also invited by Senator
15 Mark Udall's office to participate in a panel that he
16 convened involving some nonprofit organizations in the
17 United States, Equal Employment Opportunity Commission
18 here in Denver, to have a discussion between community
19 groups and various resource organizations regarding
20 sexual assault in the workplace.

21 You know, as you know, that's an issue
22 that's a great deal of interest to the Division, as
23 well as the Commission, and it went very well. So
24 unless anybody has any questions, that's all I have.

25 THE CHAIRWOMAN: Does anyone? Great.

1 Thank you very much, Director Chavez. We appreciate
2 those updates. Those are all very interesting. And
3 very encouraging to know that you got two new
4 investigators to help with the workload so ...

5 Okay. The next item on the agenda is the
6 attorney general's report, Case P20130008X,
7 CR2013-0008, Charlie Craig and David Mullins versus
8 Masterpiece Cakeshop, Inc.

9 And really the only matter for us to do
10 now is to deliberate this case. As I indicated to the
11 audience, the commission meets to formulate policies
12 and to hear appeals in discrimination cases. And today
13 we're going to be reviewing an initial decision
14 rendered by an administrative law judge in this case.

15 The administrative law judge found that
16 respondent's, Masterpiece Cakeshop and Jack Phillips,
17 violated the public accommodations section of
18 Colorado's antidiscrimination act.

19 Masterpiece Cakeshop and Mr. Phillips
20 have now filed exceptions to the administrative law
21 judge's initial decision, so today we're going to be
22 deliberating, and we hope to make a determination soon.

23 We may decide to adopt the initial
24 decision. Or if the facts or the law support it, the
25 Commission may decide to overturn the initial decision

1 in whole or in part. The Commission may also decide to
2 remand the case back to the administrative law judge
3 for further consideration consistent with its
4 directives.

5 We may make and issue a final order today
6 or at a later date. And also, our decision will be --
7 may be appealed, I'd will -- may, but it probably will,
8 may be appealed to the Colorado court of appeals.

9 Now, pursuant to the Commission
10 Rule No. 10.13 (d), the commission's final order shall
11 be made a part of a certified transcript of the record
12 of the proceedings. And the entire record shall be
13 filed at the Division's Denver office located on the
14 10th floor at 1560 Broadway in Denver.

15 Now, this final order will be available
16 for examination by the parties during regular business
17 hours. However, it will not be available on-line.

18 Now I want to just begin our discussion
19 amongst the Commission about this case. I see three
20 primary issues. There's a couple -- well, really
21 there's two procedural issues and then of course the
22 main issue, which is the respondent's exception to the
23 administrative law judge's initial decision to grant
24 the motion for summary judgment filed by the
25 complainants.

1 Is there someone who would like to begin?

2 No? Really?

3 UNIDENTIFIED SPEAKER: Well, I usually
4 (inaudible).

5 THE CHAIRWOMAN: Yeah, I see that. Well,
6 okay. Let's start with -- we can break it down.
7 There's a few issues, right? The first one being --
8 the first point of interest is this motion to dismiss.

9 And the respondents are basically
10 indicating that they believe the administrative law
11 judge's denial of the motions to dismiss was erroneous.
12 And they've made several arguments that have been
13 briefed for us. The complainants have responded. We
14 need to decide do we agree with the respondents or do
15 we agree with the administrative law judge.

16 UNIDENTIFIED SPEAKER: Madame Chair, if I
17 may.

18 THE CHAIRWOMAN: Sure.

19 UNIDENTIFIED SPEAKER: There were
20 several, I think, issues raised by the respondent that
21 really are technical issues.

22 THE CHAIRWOMAN: Uh-huh.

23 UNIDENTIFIED SPEAKER: And this is a case
24 that, from my point of view, has some significance.
25 And to dismiss the case based on a technicality would

1 not be serving either party well.

2 The fact that the wrong statute was cited
3 has, I think from my point of view, been adequately
4 addressed by the staff at the Division testifying under
5 oath that it was just a typographical error.

6 So that's one for sure that -- and the
7 other points that were technical issues, I think to me,
8 should be considered moot because it's too significant
9 to just determine on those grounds.

10 THE CHAIRWOMAN: I see. Okay.

11 COMMISSIONER VELASQUEZ: And I would
12 agree with that, as well.

13 THE CHAIRWOMAN: Thank you, Commissioner
14 Velasquez. Well, if there's not any other
15 discussion --

16 COMMISSIONER JAIRAM: I have a question.

17 THE CHAIRWOMAN: Sure.

18 COMMISSIONER JAIRAM: So do we take each
19 one of these by vote or do we just vote on the whole
20 thing?

21 THE CHAIRWOMAN: I think we should just
22 talk about them, each issue, and then we can make a
23 final decision. I don't know that we need to -- unless
24 there's a point of contention that we need to --

25 UNIDENTIFIED SPEAKER: Unless there's

1 some issue within that --

2 THE CHAIRWOMAN: Correct.

3 UNIDENTIFIED SPEAKER: Okay.

4 THE CHAIRWOMAN: So with respect to the
5 motion to dismiss, what I'm hearing is that we think
6 that the -- there's still ample notice despite the
7 typographical error, and that also -- errors, I should
8 say, and that still the respondents were on notice.
9 They were on notice of what the charge was and who the
10 charge was -- who the charge was against. Yes.

11 UNIDENTIFIED SPEAKER: (Inaudible.)

12 THE CHAIRWOMAN: Okay.

13 COMMISSIONER JAIRAM: And I agree with
14 Commissioner Rice, that I think it is very well
15 documented. The letter of determination was well
16 phrased. And I don't think there's any question as to
17 what the charge is.

18 THE CHAIRWOMAN: Okay.

19 COMMISSIONER JAIRAM: So trying to
20 overturn it based on the wrong citation I think is
21 ridiculous.

22 THE CHAIRWOMAN: Okay. Any other
23 comments with respect to the motion to dismiss either
24 in general or with respect to Respondent Jack Phillips?
25 Okay.

1 The other -- the next point that the
2 respondents make in their brief has to do with the fact
3 that the administrative law judge granted the
4 complainant's request or motion for a protective order
5 in the time that they were doing discovery.

6 Specifically they're arguing that they
7 feel like they were -- should have been entitled to
8 seek discovery that the complainants argued was beyond
9 the scope of the case and not germane to either the
10 claim being made, which is, of course, discrimination
11 under the public accommodation statute, or the defenses
12 being raised by the respondent.

13 Who has thoughts that they'd like to
14 start with on this particular issue? Anyone?

15 COMMISSIONER RICE: (Inaudible.)

16 THE CHAIRWOMAN: Okay. Thank you,
17 Commissioner Rice.

18 COMMISSIONER RICE: You know, if -- I
19 would be surprised if a judge would allow such
20 interrogation. It's not -- from my point of view,
21 the -- those issues were not germane to the facts of
22 the case. It seems to me it is a delay tactic. And to
23 drag this out any farther than we need to is
24 inappropriate.

25 Plus, it might also infringe on the

1 complainant's right to privacy. I don't know for sure,
2 but it seems like some of the issues were (inaudible)
3 in nature and not necessary to the case.

4 THE CHAIRWOMAN: Well, I'm not
5 necessarily sure about the privacy issue. But I do
6 think that there is an issue with respect to relevancy,
7 right, that we want to stay -- you know, with respect
8 to -- to these questions we want to stay focused on
9 what facts kind of deal with the case and with the
10 claim.

11 And it seemed that many of the questions,
12 at least in the record as we saw, were seen beyond that
13 and not getting us -- moving us towards getting
14 information that's helpful.

15 Anyone else or do we feel comfortable
16 that we -- we're -- we can make a decision about that
17 particular argument? You feel good?

18 UNIDENTIFIED SPEAKER: Yes, I do.

19 THE CHAIRWOMAN: Okay. So then the
20 larger question at hand, well, the legal question at
21 hand is this question of the fact that the
22 administrative law judge granted the motion for summary
23 judgment filed by the complainants and denied the
24 respondent's motion for summary judgment. And we're
25 being asked to reconsider that.

1 And there are a number of issues. I
2 think there's sort of three central arguments: That
3 the respondents did not discriminate because of sexual
4 orientation; that forcing the respondents to provide
5 their services to the complainants is compelled speech;
6 and that also it -- that the administrative law judge
7 violated the respondent's right to free exercise of
8 religion.

9 Who would like to start on any of those
10 issues?

11 COMMISSIONER JAIRAM: Should we take them
12 one at a time?

13 THE CHAIRWOMAN: If that would -- if that
14 pleases the commission, I'm okay with that.

15 UNIDENTIFIED SPEAKER: I didn't hear him.

16 THE CHAIRWOMAN: He said, should we take
17 each issue one at a time?

18 UNIDENTIFIED SPEAKER: I think so.

19 UNIDENTIFIED SPEAKER: Can all the
20 commissioners turn their microphones on?

21 UNIDENTIFIED SPEAKER: I think they're
22 on.

23 UNIDENTIFIED SPEAKER: Thank you.

24 UNIDENTIFIED SPEAKER: Thank you.

25 COMMISSIONER JAIRAM: Okay. With respect

1 to the issue of where the respondent claims that they
2 were not discriminating based on sexual orientation,
3 but based on same sex marriage, to me I think they're
4 tied together.

5 Obviously, people of the same sex are
6 wanting to get married, so discriminating against same
7 sex marriage is the same as, you know, discriminating
8 against their sexual orientation. I mean, that's my
9 (inaudible).

10 THE CHAIRWOMAN: I see nods. Any other
11 comments on that point?

12 UNIDENTIFIED SPEAKER: Yes. I agree with
13 Commissioner Jairam. And when I thought about this
14 issue, I thought about (inaudible) back not very many
15 decades ago where -- to when interracial marriage
16 was -- was frowned upon, was not recognized, was
17 actually illegal in some states. And I think that that
18 is the same issue as same sex marriage.

19 And the courts have held that
20 interracial -- discrimination based on interracial
21 marriage is the same as race discrimination and that
22 they can't be separated. So based on those things, I
23 think -- and, you know, there have been many attempts
24 to justify that kind of discrimination in the past.
25 And I think it's time we recognized that it's

1 discrimination.

2 UNIDENTIFIED SPEAKER: Commissioner
3 (inaudible), I had a similar thought. The terminology
4 used was miscegenation. And that too was the law in
5 several places for a number of years. And it took a
6 long time for, I think, the courts and others to come
7 to some realization that that didn't make much sense.
8 So I had the similar thought in reviewing this case,
9 you know.

10 The line has to be drawn somewhere. And
11 we think we've come a long way, but we've still got a
12 long way to go in that regard. So (inaudible) on that
13 point.

14 THE CHAIRWOMAN: Okay. Anyone else
15 want -- have anything else to add? I mean, ultimately,
16 right, we're just deciding whether we think the
17 administrative law judge's decision should be
18 overturned on this point, and it sounds like we don't.
19 We think that we are in agreement with the thinking
20 there.

21 UNIDENTIFIED SPEAKER: I (inaudible).

22 THE CHAIRWOMAN: I'm sorry, say that
23 again?

24 UNIDENTIFIED SPEAKER: I said, I don't
25 have any different --

1 THE CHAIRWOMAN: Great. Right, I mean,
2 this nexus, this connection between being opposed to
3 same sex marriage and sexual orientation is the basis
4 that they are --

5 COMMISSIONER JAIRAM: Yeah, I mean,
6 seriously, let's look at this. I mean, isn't it kind
7 of ridiculous to think that people of the opposite sex
8 can be considered to be having same sex marriage? And
9 so it speaks to the issue of, what is sexual
10 orientation?

11 THE CHAIRWOMAN: Uh-huh.

12 COMMISSIONER JAIRAM: So I think it's
13 very clear to me, that they are one and the same.

14 THE CHAIRWOMAN: Right. That they are
15 connected. Okay. With respect to this question of
16 compelled speech, again, our ultimate decision is to
17 determine whether the administrative law judge's
18 opinion here should be overturned in part or in whole
19 on the question of whether requiring the respondent to
20 provide his services is somehow compelled speech in
21 violation of the First Amendment of the United States,
22 as well as the Colorado's First Amendment in the --
23 excuse me, free speech under the Colorado Constitution.

24 So I think we have to determine -- one of
25 the arguments is that making cake is an expression.

1 The counterargument is that this is being provided in
2 the course of offering a business, offering services,
3 and that the speech -- the speaker in that case is not
4 the cake maker, but the customer. Yeah.

5 UNIDENTIFIED SPEAKER: I do believe that
6 the reason that we have these laws also is because of
7 the public accommodation. What we have here is public
8 accommodation. And I think within -- you know,
9 somebody within their own home and freedom of speech,
10 wanted to bake a cake, and wouldn't allow that, that's
11 completely different, that's private.

12 But what we have here is a business. And
13 it's public accommodation so it should be -- it should
14 be open to everyone regardless of whether it's a same
15 sex marriage or not.

16 UNIDENTIFIED SPEAKER: Well, and even if
17 it -- if someone wanted to bake a cake on a public
18 parking lot and not charge -- not try to sell their
19 product as an expression of speech, that would be a
20 different -- in my mind, a different question than --
21 than the question before us. And there's a -- there's
22 a -- there's a sale of the cake and the business at
23 hand, so ...

24 UNIDENTIFIED SPEAKER: I think we've
25 established -- I mean, we've talked about the issue

1 that same sex marriage is -- cannot be separated from
2 sexual orientation, but that same sex marriage -- that
3 the two are tied. So it seems to me that in a public
4 accommodation, that it is the same -- the same rules
5 apply regarding speech within that public
6 accommodation.

7 If it were a -- a person came in and
8 said -- and the cake shop had said, No, I don't bake
9 cakes for Hispanics, it would be the -- it would be the
10 same issue. And it would be still they don't have the
11 right to do that under their freedom of speech either.
12 So we could overturn every civil rights statute if
13 we --

14 THE CHAIRWOMAN: Yeah, it sort of
15 swallows it up whole, right, if you sort of let them --
16 let that be the standard.

17 Yes, Commissioner Raju.

18 COMMISSIONER JAIRAM: Yeah, I think any
19 business that chooses to -- or any person that chooses
20 to do business in the state of Colorado has to
21 recognize that they have to conduct business in an
22 ethical and law-abiding way.

23 And if the laws of the state say that you
24 will not discriminate, that should be very clear. I
25 mean, it's not an issue of free speech. I mean, I can

1 believe anything I want to believe.

2 But if I'm going to do business here,
3 then I'd better not discriminate if I'm going to follow
4 the laws of discrimination and be (inaudible).
5 (Inaudible). And to refuse service to somebody is --
6 you know, it is discriminatory in my mind.

7 THE CHAIRWOMAN: I think it -- I think
8 that's the gist of it, right, is this idea that -- you
9 know, that's why the law is here, because
10 discrimination is harmful, right? And our job is to
11 try to eradicate that.

12 The purpose of the Colorado
13 Antidiscrimination Act is to eradicate that so that
14 people aren't being hurt and their dignity isn't
15 harmed. The justification here seems to be, Well,
16 you're making me say something I don't want to say, I
17 don't know -- I don't know that that's entirely true.

18 I think that the cake shop owner could --
19 they can't say -- put up a sign that says, We refuse
20 service, but they certainly could put up a sign that
21 says, you know, we're opposed to, you know, same sex
22 marriage. They could say that. I don't know that --
23 and I don't know that by making a cake that someone has
24 ordered, that they're being forced to say something
25 that they don't agree to with (sic).

1 I don't think that that's what's
2 happening. I think they're just -- they're making a
3 cake. Yes, it's creative. But there are lots of
4 industries or businesses that require some creativity,
5 some artistry.

6 And if we -- we start drawing these
7 lines, I think that's where we get into trouble.

8 UNIDENTIFIED SPEAKER: It seems to me you
9 could make the same argument whether you were building
10 a website, almost anything that takes some -- some
11 imagination or maybe -- maybe not (inaudible). But
12 other than that, almost any profession takes -- and any
13 business takes some creativity.

14 THE CHAIRWOMAN: Okay. Is there any
15 other comments anyone has?

16 COMMISSIONER JAIRAM: Well, it's been
17 over, what, 60, 70 years since -- there used to be
18 signs in restaurants saying, We refuse service to
19 certain segments of the population. And I'm glad --
20 hopefully we're progressing further to the point where
21 we stop this kind of behavior.

22 THE CHAIRWOMAN: All right. So on this
23 question of the -- the argument that there's a
24 violation of respondent's free speech rights, our
25 thought is that the administrative law judge got it

1 right in this?

2 UNIDENTIFIED SPEAKER: Yes.

3 COMMISSIONER JAIRAM: I think so. I
4 mean, they don't even, you know, get to any
5 discussions. He just refused them service, period.

6 THE CHAIRWOMAN: Okay. What's the next
7 issue? I guess the last one is -- I real -- the reason
8 that we're here in the first place, right, is that the
9 respondents assert that the administrative law judge's
10 decision violates their freedom to exercise their
11 religion.

12 And there's a couple arguments within
13 that, that are folded into that. One is that there
14 should be -- the Colorado Antidiscrimination Act should
15 be reviewed under strict scrutiny. And they're also
16 basically saying that this is a violation, that this
17 isn't -- that there -- because there are exceptions in
18 our statute, that, you know, this isn't correct, this
19 is unconstitutional. At least that's what I -- how I
20 read it. Tell me if you're (inaudible).

21 COMMISSIONER RICE: I think that the
22 Colorado Antidiscrimination Act is written in a very
23 neutral manner. Some exceptions have been made for
24 religious organizations or businesses or organizations
25 that clearly serve a single sex. As noted, a women's

1 clinic or some other organization like that.

2 But those are very clear -- clearly
3 delineated exceptions. If Masterpiece Cake were -- or
4 Mr. Phillips were an ordained minister and he was only
5 serving commissioners or congregates of his church,
6 that might be a different situation. But he is -- does
7 have a public business and is he serving the public.

8 So I -- you know, I don't think that this
9 case falls within the exceptions.

10 THE CHAIRWOMAN: Uh-huh.

11 COMMISSIONER RICE: I think there is a
12 very significant and important reason for the
13 Antidiscrimination Act and a significant -- it is a
14 significant benefit to this state to have this statute
15 and to enforce it.

16 THE CHAIRWOMAN: Thank you, Commissioner
17 Rice. I think that's well said. And you certainly
18 speak for me. But does anyone else have anything they
19 want to add? Okay. So.

20 COMMISSIONER JAIRAM: I don't think the
21 act necessarily prevents Mr. Phillips from believing
22 what he wants to believe. And -- but if he decides to
23 do business in the state, he's got to follow
24 (inaudible). And I don't think the Act is overreaching
25 to the extent that it prevents him from exercising his

1 free speech.

2 THE CHAIRWOMAN: Well, free speech we
3 already -- we talked about. But what do you think
4 about his --

5 COMMISSIONER JAIRAM: His belief system,
6 yes.

7 THE CHAIRWOMAN: Right, right, his
8 religious beliefs.

9 COMMISSIONER JAIRAM: We all have our own
10 belief systems.

11 THE CHAIRWOMAN: Yes.

12 COMMISSIONER JAIRAM: And, you know, as a
13 businessman, I shouldn't allow my belief system to
14 impact on how I treat people, bottom line.

15 THE CHAIRWOMAN: Okay. That is the
16 bottom line, Commissioner Jairam, thank you.

17 Okay. So then my sense is, from what
18 we're saying, I just want to make sure that I'm
19 helping -- or I'm -- because we're going to have to
20 draft up an order.

21 To make sure I'm understanding, we're
22 saying that we think that the statute -- there are good
23 reasons for the statute; that it is valid; and that
24 it's neutral in general in its application simply --
25 just as the administrative law judge determined. Yes.

1 UNIDENTIFIED SPEAKER: (Inaudible.)

2 THE CHAIRWOMAN: Okay. I think one other
3 argument made was simply that the recommendations made
4 by the administrative law judge were overbroad. And I
5 think that was briefed by -- by both sides. Does
6 anyone have any thoughts or comments on that particular
7 point? I don't --

8 I think I understand what the respondents
9 are arguing. And I just think it's just not as narrow
10 as they would have us -- have us want it to be. But I
11 want to make sure (inaudible).

12 UNIDENTIFIED SPEAKER: (Inaudible.)

13 THE CHAIRWOMAN: No, I don't think it is.

14 UNIDENTIFIED SPEAKER: My sense is that
15 the ALJ was appropriate in (inaudible) what he decided
16 was not overbroad. He is not making the final
17 decision. And it is up to the commission to issue that
18 final order and to decide what the remedies are.

19 THE CHAIRWOMAN: Right.

20 UNIDENTIFIED SPEAKER: And I don't think
21 it's appropriate for the ALJ to -- to do that. So I
22 think it's what it should be.

23 THE CHAIRWOMAN: Right. And I certainly
24 feel that -- I mean, we're within our rights and our
25 purview of -- under the statute, right, to be -- to

1 have -- have a respondent take the steps necessary to
2 ensure that there isn't continuing discrimination,
3 right. So narrowing it to just the complainants
4 doesn't make much sense.

5 UNIDENTIFIED SPEAKER: Madame Chair, I'd
6 like to -- and I should have done this much earlier.
7 Going back to the respondent's argument ...

8 THE CHAIRWOMAN: Okay.

9 UNIDENTIFIED SPEAKER: Way back.

10 THE CHAIRWOMAN: Okay.

11 UNIDENTIFIED SPEAKER: About separating
12 Mr. Phillips from Masterpiece Cake, and the respondent
13 that had some arguments about whether they are one and
14 the same and personal liability. And I think we just
15 need to make sure that we address that so that it's not
16 left that we didn't consider it, I think.

17 THE CHAIRWOMAN: Okay. I thought we did.
18 But what is it that you'd like to add?

19 UNIDENTIFIED SPEAKER: Oh, I thought we
20 talked about --

21 THE CHAIRWOMAN: It's okay. What would
22 you like to ...

23 UNIDENTIFIED SPEAKER: I just want to
24 make sure that we all agree that Masterpiece Cake and
25 Mr. Phillips are --

1 THE CHAIRWOMAN: Are both respondents?

2 UNIDENTIFIED SPEAKER: -- are both
3 respondents.

4 THE CHAIRWOMAN: Right.

5 UNIDENTIFIED SPEAKER: One and the same.

6 THE CHAIRWOMAN: Yeah. I think that
7 that's what we agreed, that the -- because there were
8 two motions to dismiss. There was a motion to dismiss
9 the case in general. And then there was also a motion
10 to dismiss Respondent Jack Phillips.

11 In our discussion we talked about both
12 and the idea that they were both -- there was notice,
13 there was sufficient notice for both Jack Phillips and
14 Masterpiece Cakeshop to be on notice about the charge.

15 UNIDENTIFIED SPEAKER: Okay. I'm fine.
16 I just wanted to make sure.

17 THE CHAIRWOMAN: Is everyone else on the
18 same page with that?

19 UNIDENTIFIED SPEAKER: Uh-huh.

20 UNIDENTIFIED SPEAKER: Yes.

21 THE CHAIRWOMAN: Is there anything else
22 that we need to address? And actually I'm looking at
23 the attorney to see ... Because she will be drafting
24 our order. Since -- we would ask you to help draft our
25 order. I just want to make sure there's not anything

1 else that you need to know or hear from us.

2 UNIDENTIFIED SPEAKER: Thank you,
3 commissioner. I would just ask that the commission
4 consider what remedies they want to order. The ALJ
5 (inaudible) highlighted two things (inaudible)
6 discretion.

7 But the first is the cease and desist
8 from discriminating against the plaintiffs and other
9 same sex couples by refusing to sell them wedding cakes
10 or any other products that (inaudible) couples.

11 So if you decide -- it sounds like you're
12 deciding to (inaudible). And then the other course of
13 action (inaudible) appropriate by the commission.
14 Under the statute there are some other penalties and
15 remedies available. And that is under 24-34-602. You
16 have some finding ability, but -- give me just one
17 moment.

18 THE CHAIRWOMAN: Sure.

19 UNIDENTIFIED SPEAKER: I'm sorry. This
20 is my inability to find it, so ... (Inaudible) but if
21 there is anything else that you can think of that would
22 be an actual remedy (inaudible) that on. But other
23 than that, that's the extent of your jurisdiction and
24 your discretion.

25 THE CHAIRWOMAN: Sure.

1 UNIDENTIFIED SPEAKER: So we can issue an
2 order, a cease and desist. And also, can we not
3 order -- report it to the commission?

4 THE CHAIRWOMAN: I definitely want that.
5 We can. And I would want that if everyone's in
6 agreement. We can decide on it as a group. I think
7 that we should request a report back. I think that
8 we -- we want a cease and desist and, you know, an
9 amendment of this policy is the ideal situation.

10 Commissioner Jairam, you had some
11 thoughts?

12 COMMISSIONER JAIRAM: Oh, I just had a
13 comment. And that is, I want to put this one matter to
14 rest, and that is: There was an argument by the
15 respondent saying that they -- you know, that they --
16 he didn't offer to sell them a wedding cake, but he
17 offered to sell them different products.

18 Yet, the evidence is there that there was
19 another same sex couple that wanted cupcakes and he
20 refused to serve them. So I think it's a speechless
21 argument to try to say that, you know -- obviously he
22 does not want to -- or he is -- (inaudible)
23 discriminated against these people.

24 And I believe the -- it was best said by
25 the judges in the New Mexico case, where the laws are

1 here just to protect individuals from humiliation and
2 dignitary harm. And that should be very clear, that
3 is, we do not want people to feel undignified when they
4 walk into any place of business and do business that,
5 you know, serves the public.

6 And I will also, you know, refer -- you
7 know, I'm referring to the comments made by Justice
8 (inaudible) in that case. And essentially he was
9 saying that if a businessman wants to do business in
10 the state and he's got an issue with the -- the law's
11 impacting his personal belief system, he needs to look
12 at being able to compromise. And I think it was very
13 well said by that judge.

14 THE CHAIRWOMAN: Sure. Sure. Well, I
15 think that's the challenge, right? It's, like, you can
16 have your beliefs, but you can't hurt other people at
17 the same time. So on this question of remedies, we're
18 in line with the cease and desist not just with respect
19 to the complainant's right, but with respect to any
20 similar situated individuals; amendment of revision of
21 the policy of reporting to the Commission.

22 Is there anything else? All remedial
23 action that's been taken to eliminate discriminatory
24 practices is what we'd want. Yes, Commissioner --

25 UNIDENTIFIED SPEAKER: Sorry, I just have

1 one question on the reporting requirements (inaudible).
2 How long would you like the reporting to take place and
3 on what frequency?

4 UNIDENTIFIED SPEAKER: I would like to
5 see quarterly reports for the next three years.

6 UNIDENTIFIED SPEAKER: Thank you.

7 THE CHAIRWOMAN: Is everyone in agreement
8 with that?

9 UNIDENTIFIED SPEAKER: (Inaudible.)

10 UNIDENTIFIED SPEAKER: What's the -- I
11 think, what's the normal range? I was thinking about
12 that (inaudible).

13 THE CHAIRWOMAN: Cases, it varies. You
14 know, three is probably on the high end of what we've
15 done before. And -- but it is typically quarterly,
16 right? So if you think over the span of three years,
17 that's 12 reports, right, so it's not a large number of
18 reports, it's just a longer period of time.

19 So -- but it is not atypical for us to
20 require reporting over a period of years. But I think
21 three is on the high end of it. Yeah?

22 UNIDENTIFIED SPEAKER: What I'm hearing
23 is that three is a little on the high side --

24 THE CHAIRWOMAN: Yeah.

25 UNIDENTIFIED SPEAKER: -- and that two is

1 probably typical --

2 THE CHAIRWOMAN: Is typical, right.

3 UNIDENTIFIED SPEAKER: And then I also
4 wanted to know, what are the parameters of reporting?
5 What is it that you want them to report?

6 UNIDENTIFIED SPEAKER: I agree with the
7 two years. I'd like to see the reporting reflect
8 who -- whether -- who cakes were baked for, or products
9 were produced for, let's put it that way, celebration
10 products and whether they were for the sexual
11 orientation or the -- of those --

12 THE CHAIRWOMAN: Well, so -- can I
13 rephrase? I think I know what you're getting at. As a
14 point clarification, what I was asking for is a report
15 on all remedial action that's been taken. You know, so
16 what immediate remedial action has been taken to
17 eliminate the discriminatory practice that's created
18 this problem in the first place. You know, getting rid
19 of the policy, training for the staff, whatever that
20 happens to be, so a report of that.

21 And then I think what Commissioner Rice
22 is looking for is something that sort of demonstrates
23 that this isn't happening anymore. And so that to me
24 looked like for a period of two years a quarterly
25 report that gives us the number of individuals who came

1 in seeking a wedding cake for a same sex wedding.

2 UNIDENTIFIED SPEAKER: Or a reception

3 or --

4 THE CHAIRWOMAN: Or a reception or what
5 have you, but a same sex union of some sort. Just the
6 number of those, right? Not every single ...

7 UNIDENTIFIED SPEAKER: Oh, that's --
8 (inaudible) a question about that, though. Are we then
9 asking the employees at Masterpiece Cake at the bakery
10 to inquire of everyone who comes in to order a cake of
11 celebration to inquire about their sexual orientation?

12 THE CHAIRWOMAN: Right. I don't want
13 that either. I think it's just the number of cakes
14 made, right? Right?

15 UNIDENTIFIED SPEAKER: Perhaps if I may
16 make a suggestion, that it may be a requirement to
17 report just the number of people that they've turned
18 away in any means possible of those individuals.
19 Because I think that that really gets to the heart of
20 what --

21 THE CHAIRWOMAN: Sure. I think it's the
22 reverse of that. What I think Commissioner Rice is
23 wanting to see is that over a period of time this isn't
24 continuing to happen. I think that's the ultimate
25 goal, so ...

1 UNIDENTIFIED SPEAKER: And so would a
2 report of the number or the -- some information about
3 patrons that they've turned away, would that suffice?

4 UNIDENTIFIED SPEAKER: I suppose, yeah.
5 Yeah. I mean, there should be no report then. You're
6 asking -- I mean --

7 UNIDENTIFIED SPEAKER: I think that's
8 what you're looking for.

9 UNIDENTIFIED SPEAKER: Yes. And that
10 should be -- so that should be very brief for them to
11 file and not take -- I mean, it should be, you know,
12 one sentence, we didn't turn anyone away.

13 UNIDENTIFIED SPEAKER: As far as the
14 report, is that something that we have to decide now?
15 Because I'm wondering if maybe we can get some help
16 maybe from the attorney, if maybe we can get some
17 assistance in coming up with the report, as well?

18 UNIDENTIFIED SPEAKER: Yeah.
19 Commissioners, I think that for the purposes of if you
20 wanted to finalize your order today, then yes. But in
21 terms of the guidance that I have here that the -- that
22 you want a report quarterly if any remedial action
23 taken such as policies implemented and training for
24 staff, as well as for example the number of individuals
25 turned away who were refused service, that that gives a

1 little bit of leeway for the Division to carry out the
2 order.

3 THE CHAIRWOMAN: Commissioner -- oh,
4 sorry, Director?

5 MR. CHAVEZ: Thank you. Yeah, on behalf
6 of the Division, I think this is relatively
7 (inaudible). You know, the crux of what you want to
8 know is, you know, whether or not people are continuing
9 to be denied this service based on sexual orientation.

10 So if you would consider issuing an order
11 that just includes the number of individuals turned
12 away and why, you know, you can do that quarterly for a
13 period of two years, including some training by staff,
14 that's something the Division could certainly monitor
15 and report back to the Commission.

16 COMMISSIONER JAIRAM: I like that.

17 THE CHAIRWOMAN: All right. I think
18 that's -- I think that's what you're looking for.
19 Thank you.

20 COMMISSIONER SAENZ: I have a question.

21 THE CHAIRWOMAN: Yes, Commissioner Saenz.

22 COMMISSIONER SAENZ: Director, is there
23 also this -- in the past is there a way that we can
24 keep the names (inaudible) investigators all up as to
25 why?

1 MR. CHAVEZ: I'm not sure what your
2 question is, Commissioner.

3 COMMISSIONER SAENZ: (Inaudible) in order
4 to not ask about people's sexual orientation, just
5 making sure that we understand why people were turned
6 away as opposed to another reason.

7 MR. CHAVEZ: Sure. Sure. Right. And
8 that would keep in more focus. That's a good point.

9 THE CHAIRWOMAN: Okay. So I think that
10 we have what we need now to have a final order that we
11 can draft up. But we could today decide that order.
12 And I think that that would be in the best interest of
13 everyone, is to make a decision, right, that we're
14 going to issue a final order, right, basically.

15 UNIDENTIFIED SPEAKER: Do you need a
16 motion then?

17 THE CHAIRWOMAN: Uh-huh.

18 UNIDENTIFIED SPEAKER: Madame Chair, I
19 move that the commission accept the administrative law
20 judge's order and initial decision.

21 THE CHAIRWOMAN: Okay.

22 UNIDENTIFIED SPEAKER: Second.

23 UNIDENTIFIED SPEAKER: Or should there be
24 more?

25 THE CHAIRWOMAN: Is there any debate -- I

1 think there is more to it because we do have to address
2 some of the other issues raised on appeal, right? So I
3 think if we could amend it, that would be ideal, right?

4 We're wanting to adopt the administrative
5 law judge's initial decision, as well as the order with
6 respect to the protective order and the order with
7 respect to the motions to dismiss.

8 UNIDENTIFIED SPEAKER: Madame Chair, so
9 I'll offer (inaudible) amendment if I may, that the
10 commission uphold the administrative law judge's
11 decision on motions to dismiss and the administrative
12 law judge's decision that Masterpiece Cake and
13 Mr. Jack Phillips did, in fact, discriminate in
14 violation of the Colorado Antidiscrimination Act; and
15 issue an order to cease and desist; and to file
16 quarterly reports for a period of two years showing
17 remedial actions taken, including staff training,
18 policy changes, and a report of all customers turned
19 away for celebration cakes and the reason for that.

20 UNIDENTIFIED SPEAKER: Second.

21 THE CHAIRWOMAN: I think that we can only
22 amend it, and also include that we would accept the
23 administrative law judge's order granting the
24 protective order.

25 UNIDENTIFIED SPEAKER: Oh. Thank you.

1 THE CHAIRWOMAN: Uh-huh. As amended?
2 Yes, Commissioner (inaudible).

3 UNIDENTIFIED SPEAKER: I'd like to say
4 (inaudible) amendment --

5 THE CHAIRWOMAN: An amendment to the
6 amendment.

7 UNIDENTIFIED SPEAKER: -- an amendment to
8 the amendment.

9 THE CHAIRWOMAN: Yes.

10 UNIDENTIFIED SPEAKER: I don't believe
11 that we need to say (inaudible) -- for people --
12 (inaudible) reporting for people who have just been
13 turned away and why for ...

14 THE CHAIRWOMAN: I'm trying to follow
15 you.

16 UNIDENTIFIED SPEAKER: Well, I understood
17 that we weren't limiting it to just celebration cakes
18 or -- because we get into a, what if it's celebration
19 cookies or ... I mean, so I (inaudible) that we were
20 going to just say for people who have been turned away,
21 that the report was going to include just people who
22 have been turned away for (inaudible).

23 UNIDENTIFIED SPEAKER: That's agreeable.

24 THE CHAIRWOMAN: All right. Okay. So
25 we're clear on the motion. Is there a second?

1 UNIDENTIFIED SPEAKER: Second.

2 THE CHAIRWOMAN: All in favor?

3 (Responses were heard.)

4 THE CHAIRWOMAN: Any opposed?

5 (No responses were heard.)

6 THE CHAIRWOMAN: And any abstentions?

7 (No responses were heard.)

8 THE CHAIRWOMAN: Okay. We're done with
9 our deliberation then of the Craig/Mullins and David --
10 sorry. Craig and Mullins versus Masterpiece Cakeshop.

11 The next order of business on the agenda
12 is audience participation. I believe that we had a
13 sign-in sheet for anyone who was interested, who might
14 be interested in making any comments to the commission,
15 and there wasn't any. Okay.

16 UNIDENTIFIED SPEAKER: (Inaudible.)

17 THE CHAIRWOMAN: Okay. So it doesn't
18 appear that anyone wants to speak. If I'm incorrect
19 about that, please let me know. Anyone is welcome. We
20 would need you to state your name for the record.

21 By the way, everyone who's here should
22 have signed in for the record, so please do that.

23 UNIDENTIFIED SPEAKER: I'll speak.

24 THE CHAIRWOMAN: Okay. So there are a
25 few guidelines with respect to audience participation.

1 Please identify -- come forward --

2 UNIDENTIFIED SPEAKER: (Inaudible.)

3 THE CHAIRWOMAN: Okay. Are you wanting
4 to chat -- discuss this particular case or speak to us
5 in general?

6 UNIDENTIFIED SPEAKER: Speak to you in
7 general about (inaudible).

8 THE CHAIRWOMAN: That's what I suspected
9 you might say, counsel.

10 UNIDENTIFIED SPEAKER: (Inaudible.)

11 THE CHAIRWOMAN: I'm sorry, I didn't hear
12 that last part.

13 UNIDENTIFIED SPEAKER: We just have a
14 couple of anomalies in the record. I spoke to Ms. Rose
15 about that prior to the beginning of the proceedings.

16 I just want to make sure the respondents
17 and the complainants are allowed the opportunity to
18 fully vet the certified record. We noticed just
19 recently again that some pages are missing. So I just
20 wanted to make sure that that gets handled --

21 THE CHAIRWOMAN: Okay. For the record
22 you can tell us what pages you think are missing or
23 what information you think is missing, and -- but I
24 don't know -- I mean, at this point we've now
25 actually --

1 UNIDENTIFIED SPEAKER: Commissioner, when
2 I spoke to Ms. Martin, I told her that I would work
3 with her to make sure that the record is complete.

4 THE CHAIRWOMAN: Okay. Okay. So she'll
5 make sure that it's complete. If you want to go ahead
6 and tell us what those are -- those things are, that's
7 fine, but --

8 UNIDENTIFIED SPEAKER: At this point
9 (inaudible) record on the matter is closed, so I think
10 that --

11 THE CHAIRWOMAN: It's just a matter of
12 correcting then.

13 UNIDENTIFIED SPEAKER: That's right.

14 THE CHAIRWOMAN: Okay. Okay. So I
15 will -- what I can tell you, then, Ms. Martin, is that
16 I'll assure you that Ms. Rose will make the corrections
17 that you've addressed with her.

18 UNIDENTIFIED SPEAKER: (Inaudible.)

19 THE CHAIRWOMAN: Thank you very much. I
20 appreciate it. Anything else? So if there's no other
21 audience participation, is there any other business?
22 Commissioners?

23 UNIDENTIFIED SPEAKER: Nothing. No.

24 THE CHAIRWOMAN: I have one thing I want
25 to add. Shayla Malone (phonetic) from the Division did

1 forward out to us information about our next commission
2 meeting, which is going to be on -- I think it's
3 June 18th. And it's going to be in Denver.

4 It's not going to be at our normal
5 offices. And we're going to have a public forum. And
6 so I would like to urge all of the commissioners, to
7 the extent that you have networks here in Denver, to
8 get that information out to people. I think that's
9 really important.

10 That's my only other business I think.
11 I'm looking forward to the public forum.

12 UNIDENTIFIED SPEAKER: Madame Chair?

13 THE CHAIRWOMAN: Yeah.

14 UNIDENTIFIED SPEAKER: I would offer a
15 motion to move to executive session.

16 THE CHAIRWOMAN: Great.

17 UNIDENTIFIED SPEAKER: It's
18 appropriate --

19 (Whereupon, the audio recording was
20 concluded.)

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CERTIFICATE

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss.

I, TERESA HART, Registered Professional Reporter and Notary Public for the State of Colorado, do hereby certify that this transcript was taken in shorthand by me from an audio recording and was reduced to typewritten form by computer-aided transcription; that the speakers in this transcript were identified by me to the best of my ability and according to the introductions made; that the foregoing is a true transcript of the proceedings had; that I am not attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in its event.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal this 20th day of June, 2014.

My commission expires: January 15, 2016.

TERESA HART
Registered Professional Reporter
and Notary Public
CALDERWOOD-MACKELPRANG, INC.

EXHIBIT 19

PUBLIC SESSION MINUTES
FIRST (2014-2015) MONTHLY MEETING
Of the
COLORADO CIVIL RIGHTS COMMISSION

Friday, July 25, 2014
Civic Center Plaza Building
1560 Broadway-Conference Room 110D
Denver, CO 80202

Convened: 10:10 a.m.

Public Session

The first 2014-2015 Monthly Executive Session of the Colorado Civil Rights Commission was held on Friday, July 25, 2014, at the Civic Center Plaza Building, Conference Room 110D, 1560 Broadway, Denver, CO 80202 and was convened at 10:10 a.m., Commissioner Raju Jairam, Chair, presiding.

Commissioners present were: Raju Jairam, Chair, Susie Velasquez, Marvin Adams, Diann Rice, Heidi Hess, and Dulce Saenz.

Present from the Civil Rights Division:
Jennifer McPherson, Deputy Director
Shayla Malone, Commission Coordinator

Present from the Colorado Office of the Attorney General:
Counsel for the Commission, Assistant Attorney General Eric Maxfield
Counsel for the Division, Deputy Attorney General Vincent Morscher

Members of the Public present:
Nicolle Martin

CALL TO ORDER

Commissioner Jairam called the meeting to order and asked the Commissioners present to read their names into the record for the purpose of establishing a *quorum*. Attorneys present from the Colorado Office of the Attorney General, staff of the Colorado Civil Rights Division, and members of the public also identified themselves for the record.

APPROVAL OF PUBLIC SESSION MINUTES

June 18, 2014

Commissioner Rice moved to approve the minutes of the Public Session of June 18, 2014, Commissioner Adams seconded, and the motion passed.

June 25, 2014

Commissioner Rice moved to approve the minutes of the Public Session of June 25, 2014 as amended, Commissioner Hess seconded, and the motion passed.

July 15, 2014

Commissioner Rice moved to approve the minutes of the Public Session of July 15, 2014 as amended, Commissioner Velasquez seconded, and the motion passed.

DIRECTOR'S REPORT

Deputy Director McPherson advised the Commission that the Division staff is currently participating in a three day mediation training. The purpose of the training is to give investigators and supervisors training to resolve cases in the beginning stages.

Deputy Director McPherson advised the Commission that the Division has secured a location for the Pueblo office at 301 N. Main Street, Suite 305. John Quintana was selected and hired as a part time office assistant for the Pueblo office and the Division anticipates hiring a strategic partnership associate for a non-permanent nine month roll in which will be focused heavily on outreach in the community.

Deputy McPherson reported that the Division exceeded the 2014 fiscal year HUD contract.

ATTORNEY GENERAL'S REPORT

1. P20130008X; CR2013-0008; Charlie Craig & David Mullins v. Masterpiece Cakeshop, Inc.

Commissioner Rice moved to deny the Motion for Stay, Commissioner Velasquez seconded, and the motion passed.

AUDIENCE PARTICIPATION

Deputy Director McPherson introduced DORA's PIO (Public Information Officer) Rebecca Laurie.

OTHER BUSINESS

None

EXECUTIVE SESSION

Commissioner Rice made the following motion, Commissioner Hess seconded, and the motion passed:

I move that the Commission enter into Executive Session at this time in order to consider the following matters:

- To address the following cases on the July consent agenda, hearing worthy review cases, and settlements: H20140044, E20140029, H20140071, H20140033, E20140133, E20140150, EE20140232, E20140143, H20140075, H20140087, E20140255, and E20130909 which are required to be kept confidential pursuant to Sections 24-34-306(3), and 24-6-402(3)(a)(III), C.R.S.;
- For the purpose of receiving legal advice pursuant to Section 24-6-402(3) (a) (II), C.R.S.

Next Meeting – to be held in Denver, Colorado on August 21, 2014.

ADJOURNMENT
Commission Public Meeting adjourned

EXHIBIT 20

1 STATE OF COLORADO

2 CITY AND COUNTY OF DENVER

3

4 Colorado Civil Rights Commission Meeting

5 Held on July 25, 2014

6 Colorado State Capitol

7 200 East Colfax Avenue, Old Supreme Court Chambers

8

9 In re: CHARLIE CRAIG and DAVID MULLINS v.

10 MASTERPIECE CAKESHOP, INC.

11 Case No: P20130008X, CR2013-0008

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15 This transcript was taken from an audio

16 recording by Katherine A. McNally, Certified

17 Transcriber, CET**D-323.

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P R O C E E D I N G S

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(Commencement of audio at 00:00.0.)

THE CHAIRMAN: Calling the meeting to order.

This is the Friday, July 25th, 2014, meeting of the Colorado Civil Rights Commission.

Would all of those that are present please feed your name into the record?

COMMISSIONER VELASQUEZ: Susie Velasquez, Greeley, Colorado.

COMMISSIONER RICE: Diane Rice, Loveland, Colorado.

MS. McPHERSON: Jennifer McPherson, with the Division.

MS. MALONE: Shayla Malone, with the Division.

MR. MORTURE: Vince Morture (phonetic), Deputy Attorney General, counsel for the Division.

MR. MAXFIELD: Eric Maxfield, First Assistant AG, from the Division.

COMMISSIONER ADAMS: Commissioner Adams, Fountain, Colorado Springs, Colorado.

COMMISSIONER HESS: Commissioner Hess, from Grand Junction, Colorado.

COMMISSIONER SAENZ: Rosa Saenz, from Denver.

1 COMMISSIONER JAIRAM: Raju Jairam, Fort Collins
2 Colorado.

3 THE CHAIRMAN: And --

4 MS. MARTIN: Oh, I'm just observing.

5 THE CHAIRMAN: Yes, ma'am. But you need to tell
6 us who you are, please.

7 MS. MARTIN: Oh, I'm Nicolle Martin.

8 THE CHAIRMAN: Okay. Nicolle Martin with --

9 MS. MARTIN: Counsel for complainants -- I'm
10 sorry. Counsel for respondents and appellants --

11 THE CHAIRMAN: Oh. Okay, (indiscernible).

12 MS. MARTIN: -- (indiscernible) Masterpiece.

13 THE CHAIRMAN: Okay. Thank you.

14 And I guess we do have a quorum.

15 (Conclusion of audio at 01:13.8; commencement of
16 audio at 08:40.0.)

17 THE CHAIRMAN: Okay. Eric.

18 MR. MAXFIELD: So there is a Motion to Stay
19 final agency order filed by respondents in the Craig v.
20 Masterpiece Cakeshop case. There is a complainant's
21 response in option to the Motion for Stay that was
22 filed, I think, yesterday. And (indiscernible) has to
23 take a look at that.

24 Procedurally, the -- either party
25 (indiscernible) a stay of the final agency order from

1 the Commission. And then if that is granted, there'll
2 be a stay in place. If it's denied, then they may also
3 seek a stay from the Court of Appeals. The Court of
4 Appeals could grant or deny the stay during the pendency
5 of the appeal, which was also noticed by Masterpiece,
6 Inc.

7 So if there are questions about the Commission's
8 authority and the reasoning around the possible granting
9 of the stay or denial, I can try to answer those. It
10 is -- and then that's something that I can do here and
11 now to you, you know, in open session, or if you would
12 want to waive attorney/client privilege, or you could
13 ask to go into -- make a motion to go into executive
14 session, and we could have a closed session for attorney
15 advice on the merits of the Motion to Stay.

16 THE CHAIRMAN: My question is, Do we need to
17 respond to this or make a motion today or need a motion
18 today?

19 MR. MAXFIELD: Yes. This -- this ought to
20 receive action today, either a grant or denial of the
21 stay.

22 THE CHAIRMAN: Okay.

23 MALE SPEAKER: I would like to have an
24 opportunity to read this. I don't know about the
25 others.

1 FEMALE SPEAKER: And maybe we can sometime take
2 a short break, and when we finish the public -- and at
3 the beginning of our executive session and a few minutes
4 to read this stuff, because we --

5 MALE SPEAKER: Yes.

6 FEMALE SPEAKER: -- I don't think we've seen it
7 until now.

8 MALE SPEAKER: (Indiscernible) last night.

9 MR. MAXFIELD: One thing that I could offer is
10 that the -- the legal standard identified by both
11 parties in the general sense is the same. So I don't
12 think that there's a contest about that. And so you'll
13 see the elements -- four elements set out clearly by
14 both parties, and for which I think there's agreement.

15 FEMALE SPEAKER: Okay.

16 MALE SPEAKER: And then if we need any advice,
17 then we could go into closed session?

18 MR. MAXFIELD: Yes.

19 THE CHAIRMAN: Okay.

20 MR. MAXFIELD: Yeah.

21 THE CHAIRMAN: So it -- I guess we all finished
22 through the public session, take maybe a 10-, 15-minute
23 break, give everyone have a chance to read this --

24 MALE SPEAKER: Um-hmm.

25 THE CHAIRMAN: -- and then we'll discuss it.

1 MALE SPEAKER: Okay.

2 THE CHAIRMAN: Does that work?

3 FEMALE SPEAKER: Um-hmm. And then if we --
4 before we break up executive session --

5 THE CHAIRMAN: Before -- yeah, if we need to go
6 into executive session (indiscernible).

7 FEMALE SPEAKER: Okay. (Indiscernible) --

8 THE CHAIRMAN: (Indiscernible) merit.

9 FEMALE SPEAKER: -- if we have this on the
10 agenda, we'll (indiscernible) --

11 THE CHAIRMAN: Yes.

12 FEMALE SPEAKER: -- have to go into executive
13 session (indiscernible), okay?

14 THE CHAIRMAN: Is that acceptable?

15 FEMALE SPEAKER: Yes.

16 THE CHAIRMAN: All right. Any audience
17 participation?

18 (Conclusion of audio at 11:48.4; commencement of
19 audio at 17:35.1.)

20 THE CHAIRMAN: Okay. What we have here in front
21 of us is -- anyway, we're here to discuss the
22 Masterpiece Cakeshop, Case (indiscernible). Anyway,
23 here's the agenda.

24 FEMALE SPEAKER: Oh, yeah.

25 THE CHAIRMAN: Oh, here it is. Okay. We're

1 here to discuss Case P2013008X, CR2013-00H, Charlie
2 Craig and David Mullins versus Masterpiece Cakeshop.

3 MALE SPEAKER: Um-hmm.

4 THE CHAIRMAN: There's a motion for a stay of
5 the final Commission -- I mean, the Commission's final
6 order, and then there's a response by the defendant in
7 opposition. And then there's -- we've also been given a
8 notice of appeal regarding a court, the appellate court,
9 I guess.

10 So anyone want to lead off?

11 FEMALE SPEAKER: I'll lead.

12 Mr. Chair, I move that the Commission deny the
13 Motion to Stay in -- for the Commission case.

14 FEMALE SPEAKER: Second.

15 THE CHAIRMAN: Okay. There's a motion on the
16 floor and a second to deny the respondent's motion for a
17 stay of the final order by this Commission.

18 MALE SPEAKER: Um-hmm.

19 THE CHAIRMAN: Okay. Are there any comments or
20 discussions about this before I put it to a vote?

21 FEMALE SPEAKER: Yes, sir.

22 THE CHAIRMAN: Go ahead.

23 FEMALE SPEAKER: I'd like to make a couple
24 comments.

25 First of all, I think for us to grant a stay

1 would be to say that we disagree with our own order,
2 final order. And of the arguments that are made, I
3 think there is -- by virtue of our order, we determined
4 that there is a public -- bless you --

5 FEMALE SPEAKER: Thank you.

6 FEMALE SPEAKER: -- there is a public interest
7 in enforcing this, that clearly the public is hurt by
8 actions such as those taken by Masterpiece Cake.
9 Complying with the order is not harmful or irreparable
10 to Masterpiece Cake. I don't see that any harm is done
11 there.

12 I -- I further believe that if you're going to
13 do business in Colorado, you have to follow the Colorado
14 Antidiscrimination Act, and for us to give a stay in
15 this case would be to say, oh, unless you don't want to.
16 So anyway, I -- I believe that we have to live by our
17 convictions and our orders (indiscernible) the
18 respondent to do so.

19 THE CHAIRMAN: Susan?

20 FEMALE SPEAKER: I would just like to point out,
21 and I agree with the documents of the plaintiffs that --
22 that the document that was in front of us from the --
23 the plaintiffs' response.

24 THE CHAIRMAN: Oh, okay.

25 FEMALE SPEAKER: -- that they have not

1 demonstrated a likelihood of success, because they were
2 rejected three times before. And as Diane pointed out,
3 we made a decision then. And I don't believe that --
4 that they have a likelihood of success.

5 THE CHAIRMAN: Okay. Commissioner Saenz?

6 FEMALE SPEAKER: I --

7 THE CHAIRMAN: No comments?

8 FEMALE SPEAKER: No.

9 THE CHAIRMAN: Commissioner Hess?

10 COMMISSIONER HESS: I agree with what's been
11 said.

12 THE CHAIRMAN: Commissioner Adams?

13 COMMISSIONER ADAMS: I would agree with
14 Commissioner Rice's and (indiscernible) assessment of
15 what has transpired.

16 FEMALE SPEAKER: I have one more comment.

17 THE CHAIRMAN: Go ahead.

18 FEMALE SPEAKER: In regard to the respondent's
19 argument -- endless argument, this is that they -- this
20 argument's been made before, and it -- it holds no
21 water, as far as I'm concerned, whatsoever. You -- and
22 we said this in the hearing, and we need to repeat this
23 over and over, you cannot separate the fact that these
24 men -- their -- their sexual orientation from the action
25 of wanting to celebrate the marriage, anymore than you

1 could a case between races in many years gone past.

2 And the U.S. Supreme Court has found over and
3 over that you cannot discriminate on the basis of race,
4 and sexual orientation is a status absolutely like race
5 or -- so -- and you can't separate the fact that these
6 gentlemen want to marry from the fact that they are
7 homosexual.

8 THE CHAIRMAN: Okay. (Indiscernible.)

9 I have some comments, and that is, you know,
10 Mr. Phillips says that he wants to be respected or his
11 views and religious views to be respected, and I believe
12 that the general public also needs to -- you know, their
13 views need to be respected.

14 The -- the issue here is whether or not the
15 couple that went in to get service were treated with
16 dignity and respect, and the fact of the matter are they
17 were not, and it's also clear that they were turned
18 away. And those have all been established.

19 And I don't believe that the individual's right
20 to practice his religion violates other people's rights
21 to free access, especially when the business is open to
22 the public and serving the public.

23 Now, what Mr. Phillips does in private is his
24 own business. And I agree that, you know, we cannot
25 separate same sex marriage and say that I'm not

1 discriminating against gay couples, because I mean, by
2 the very definition, when two people of the same sex
3 want to get married, it tells me that they are of a
4 certain sexual orientation. So that argument, again,
5 fails.

6 Go ahead.

7 FEMALE SPEAKER: Well, I just want to point out
8 that this -- this case is really not about same sex
9 marriage. It's -- it's about a couple -- it's just
10 about a gay couple that wanted a cake to celebrate a
11 life event in their life.

12 FEMALE SPEAKER: Um-hmm.

13 FEMALE SPEAKER: That doesn't really -- it could
14 have been a civil union. It could have been a -- you
15 know, let's wrap, you know, ribbon around a tree and --
16 and -- and say that we hope, you know, the world gets to
17 be a better place with us in it as a couple. So it's
18 not -- I mean, I think there's some rhetoric that this
19 is a case about same sex marriage. Well, it's really
20 not. It's really about a case about denial of service.

21 FEMALE SPEAKER: You -- yeah, you're exactly
22 right --

23 MALE SPEAKER: Um-hmm.

24 FEMALE SPEAKER: -- Commissioner Hess.

25 I would also like to reiterate what we said in

1 the hearing or the last meeting. Freedom of religion
2 and religion has been used to justify all kinds of
3 discrimination throughout history, whether it be
4 slavery, whether it be the holocaust, whether it be -- I
5 mean, we -- we can list hundreds of situations where
6 freedom of religion has been used to justify
7 discrimination. And to me it is one of the most
8 despicable pieces of rhetoric that people can use to --
9 to use their religion to hurt others. So that's just my
10 personal point of view.

11 THE CHAIRMAN: Okay. Any other comments?

12 Okay. So there's a motion on the floor to deny
13 the respondent's Motion for Stay of our final order.
14 And all those in favor, please signify by saying aye.

15 (A chorus of ayes.)

16 THE CHAIRMAN: Those opposed?

17 Any abstentions?

18 Therefore the Commission denies the respondent's
19 motion for a stay of our final order.

20 (Conclusion of audio at 27:54.1.)

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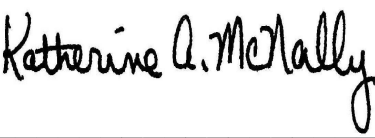
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C E R T I F I C A T E

I, Katherine McNally, Certified
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pages 1 through 12 constitute a full, true, and accurate
transcript, from electronic recording, of the
proceedings had in the foregoing matter, all done to the
best of my skill and ability.

SIGNED and dated this 8th day of August
2014.



KATHERINE A. McNALLY
Certified Electronic Transcriber
CET**D323