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Former Civil Rights Commissioner Diann Rice Speaks Out: 'I Don't Have Any Regrets'

BY CPR NEWS STAFF AND THE ASSOCIATED PRESS JUN 6, 2018

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VOLUME



Mary Torres of Falls Church, Va., left, with her daughter Maria Torres, and Eugene Delgaudio, holds up a rolling pin in support of cake artist Jack Phillips, while outside of the Supreme Court, Tuesday, Dec. 5, 2017.

Jacquelyn Martin/AP

Diann Rice had a clue that something was happening with comments made during her tenure in the Colorado Civil Rights Commission years before they were argued in court. She had seen the legal team backing baker Jack Phillips post soundbites and videos online.

So when the Supreme Court's Monday ruling on the Masterpiece Cakeshop case cited her words?

"I wasn't completely surprised," Rice said.

The former Colorado civil rights commissioner, whose remarks on religion were the basis of a [U.S. Supreme Court ruling for a baker who refused to make a wedding cake for a gay couple](#), insisted she has no religious bias and wouldn't have said anything if she'd known how her remarks would be used.

- [More: GOP Seizes On SCOTUS' Masterpiece Rebuke Of Colorado Civil Rights Commission](#)

Diann Rice acknowledged she made remarks cited by the high court when it ruled Monday in favor of Phillips, a suburban Denver baker. But she told the Associated Press in a telephone interview that she made the comments after Colorado's Civil Rights Commission already had ruled against Phillips and for Charlie Craig and Dave Mullins.

"The attorneys for Masterpiece used my comments to their advantage, obviously," Rice said. "It was used as it was used, and the ruling is what it is."

"I have no religious bias," said Rice, who said she was raised in Presbyterian and other Protestant faiths. "It wasn't that my comments had any influence on the (commission's) decision."

In a telephone interview with CPR News, Rice repeatedly stated that she has an appreciation for faith, but takes no excuses for discrimination.

"My point being that using any excuse — whether its faith or anything else — using any excuse as a justification or excuse for discrimination is not right," she said.

Rice said she is registered as an unaffiliated voter, not as a Democratic or a Republican. She added that she's "not always" a liberal, saying it depends on the issue and the person, and that she can "see both sides of many things."

"I'm not a NRA member, but I understand the people who are proponents of the Second Amendment," Rice said as an example.

The high court found that the commission failed to adequately consider Phillips' religious beliefs when it ruled against him for refusing to make the cake at his Masterpiece Cakeshop.

Justice Anthony Kennedy, who wrote the [majority opinion](#), said anti-discrimination laws "must be applied in a manner that is neutral toward religion" and, while not citing Rice by name, said her remarks and others by the commission showed anti-religious bias as it considered the case.

- **More:** [State Civil Rights Commission Feels GOP Heat As Funding Review Deadline Nears](#)

The court didn't rule on whether people can avoid providing services to same-sex couples because of their religious beliefs.

Rice made the comment at a commission meeting on July 25, 2014, almost two months after the commission had ruled that Phillips had violated the Colorado Anti-Discrimination Act on May 30.

"Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the Holocaust, whether it be — I mean, we — we can list hundreds of situations where freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to — to use their religion to hurt others."

Rice told CPR News she doesn't regret what she said, just that she caused the Civil Rights Commission "undue problems."

"That's my only regret, because I know during the legislative session they had some tough times with reauthorization, and that's too bad," she said. "I did not mean to cause them any trouble."

As for the negative attention the case has drawn to her, Rice isn't afraid to face it. The priority for her is that the case does not significantly roll back gay rights.

"If my comments allowed for the narrow ruling, that only affected one case and don't have precedent for all our LGBTQ rights in Colorado, I'm ok with that," she said. "I'm willing to take the heat if we aren't setting civil rights back."

Rice doesn't expect her infamy to last for long, saying, "Six months from now, nobody will even have an idea (who I am)."

The [Alliance Defending Freedom](#), the conservative Christian law firm that represented Phillips, didn't immediately return a telephone message from the Associated Press seeking comment on Rice's comments Wednesday.

CPR News reporter Ryan Warner contributed to this story.

Masterpiece Cakeshop Colorado Civil Rights Commission discrimination Religion

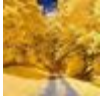
U.S. Supreme Court (SCOTUS)

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Charlotte Ruth Byrne

Really????!!! This guy is the opposite of a nazi! If he were a nazi, he would have gassed the gay couple, until they were dead! Instead, he simply said no, he wouldn't bake their cake. He has the legal right to act according to his conscience. Just like the gay couple has the legal right to take their business elsewhere!

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Gerry Santomassimo

It was a stupid thing to say at the time, and that hasn't changed. Commission members, no matter what their jurisdiction, need to be reminded that they have to be very careful how they word things and more importantly, leave their personal feelings out of it. Stick to the facts in front of you, you'll never go wrong.

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Gov. Hickenlooper On New Cakeshop Lawsuit: 'There Shouldn't Be Bias In Who You Serve'

BY MICHELLE P. FULCHER | MICHELLE.FULCHER@CPR.ORG
AUG 16, 2018

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LISTEN Audio: Gov. Hickenlooper Talks Cakeshop Lawsuit, Growth With Colorado Matters

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Colorado Matters host Ryan Warner, left, interviews Gov. John Hickenlooper in his office at the Capitol, May 16, 2018.

Sam Brasch/CPR News

Lawyers for the Masterpiece Cakeshop owner Jack Phillips **dropped another federal lawsuit** on Gov. John Hickenlooper's desk late Tuesday.

The governor said he sides with the Colorado Civil Rights Commission's decision, and opposes discrimination from business owners to marginalized communities.

Hickenlooper said he believes in religious freedom and freedom of expression, but "just because you don't agree with someone's religion, I don't think means that you should be able to deny them service, or deny them goods. That doesn't seem American. It doesn't seem Coloradan."

"If you're making someone a cake or you're making a bicycle, it's something that you do every day for a broad cross-section of people and it's open to the public, I don't think there should be bias involved in who you choose to serve and who you don't."

In another part of the wide-ranging interview, Hickenlooper said he has already made up his mind on **two sharply different oil and gas proposals** that voters will have to decide on in November. He opposes both.

Secretary of State Wayne Williams is vetting signatures to determine whether they measures will appear on the ballot. One, supported by the oil and gas industry, would require governments to compensate property owners if public policies decrease the value of their holdings.

The other, backed by those who say energy development in populated areas threatens public safety, would increase the minimum distance between drilling rigs and buildings or water supplies.

Hickenlooper said the measure supported by the oil and gas industry goes too far, and would "wreak havoc" on basic functions of government. As for the other ballot issue, he said if the minimum distance between rigs and buildings is increased, mineral-rights owners will likely go to court and demand payment for their lost income.

The state now requires rigs to be at least 500 feet from homes, or 1,000 feet from public buildings like schools and hospitals. The new rule would be at 2,500 feet.

The governor also responded to complaints from Western Colorado about a major economic move he announced this week: Luring the headquarters of **outdoor company VF Corp. to the Denver area** with a \$27 million incentive package. One of VF's subsidiaries, though, already employs 70 people in Steamboat Springs, and those jobs would move to Denver.

Interview Highlights With Gov. John Hickenlooper

On campaigning for a proposed \$6 billion tax hike for transportation



Boxes of signatures gathered by Colorado Rising in support of their effort to establish a 2,500-foot setback between oil wells and occupied structures, playgrounds and waterways.

Grace Hood/CPR News

"I'll go out and try to make sure people understand the facts around that. The voters do get the final word. Part of that having the final word is for me to make sure, or all of us to make sure, we get the real facts out there. And I say, you know, I think it's a good idea."

On VF Moving its HQ to Denver, but cutting 70 jobs in Steamboat Springs:

"When a smaller community like Steamboat loses a large package of jobs, what can the state to rebuild that? We're certainly going to look at every opportunity. We recognize they're going through a hard time.

But they can't blame Denver, and they shouldn't blame the state for making sure those jobs at least stayed in Colorado. They were going to leave Steamboat no matter what. The company had made a decision."

On 'Anti-Growth People':

"I hear them too. They say 'we've grown to fast. I don't want to grow anymore.' Hey, I was here in the 1980s. I got laid off in 1986. That recession lasted nine years here ... I think what we're doing is thoughtful growth. We're trying to grow and make sure we don't slow down or put on the brakes because once you do that it's very hard to get the momentum back."

Read The Full Transcript

Ryan Warner: Governor, thank you for joining us again.

Gov. John Hickenlooper: Glad to be back.

RW: I want to get to some economic development news. On Monday, a major outdoor company announced it's moving its headquarters to Colorado. This is VF Corp. I imagine a lot of people did not know what VF Corp. was before this, but it's the parent of brands, including North Face. VF plans to move 800 jobs to Colorado, starting next year. It'll get up to \$27 million in state tax incentives.

But this deal has made some folks in Northwestern Colorado really unhappy, because one of VF's companies Smartwool, is already in Steamboat Springs. And under this plan, Smartwool and 70 jobs move to Denver. So here's what Routt County's economic development director just wrote to us. "The governor and his administration talk about spreading the wealth and supporting rural Colorado, but families in Routt County are reeling from this news as their jobs and livelihoods are up in the air." What's your response to that?

JH: Well first, you've got to understand that VF Corporation was looking at reconsolidating, moving their headquarters somewhere. So, we were in a very competitive battle with Portland, Oregon. So, those jobs could have come to Denver, or they could have gone to Portland, Oregon. They were not going to stay in Steamboat Springs.

RW: You know that for a fact?

JH: I know that for a fact.

RW: They were not staying there?

JH: We certainly encouraged their executives to keep those jobs there at numerous points during the process. Luis Benitez, who's our Director of Outdoor Recreation, has been out already before we announced, to Steamboat to see what else can be done. We weren't able to persuade them to keep the jobs out there. It's the whole reason they're doing this move, is to get all their different brands together in one place, which, you can see the business purpose of that.

RW: What emerged from that trip to Steamboat? Any ideas about how you might replace some of those jobs?

JH: I think Luis is going to go back out, and certainly Stephanie Copeland, who runs our Office of Economic Development, has ideas as well. When a smaller community like Steamboat loses a large package of jobs, what can the state do to rebuild that? And we're certainly going to look at every opportunity. We recognize they're going through a hard time, but they can't blame Denver. And they shouldn't blame the state for making sure those jobs at least stayed in Colorado. They were going to leave Steamboat no matter what. The company had made a decision.

The better way to look at it, if I was in Steamboat, I think VF Corporation's going to attract dozens and dozens more businesses. And a lot of them aren't going to want to be in the big city, but they're going to want to be somewhere close. And I think those are the kinds of businesses that are more likely to go to Steamboat, or Grand Junction, or Ridgway, or wherever. The outdoor recreation industry favors rural parts of states.

RW: We're seeing some of that in Grand Junction these days-

JH: Yeah, and I think VF-

RW: ... Montrose.

JH: This is a \$32 billion market value company. This is going to be the largest market value company, in terms of an operating company, that we have in Colorado. That's a big deal.

RW: The VF deal isn't the only way that your administration is trying to grow the economy. The state is partnering with the tech industry for a half million dollar campaign to recruit California workers. It's called Pivot to Colorado, and they've placed billboards in Bay area subways saying things like, "Hack your career. Innovation and elevation." And, "Time to reboot." People who go to the website to sign up for more information see a headline that says, "This is a poaching strategy." Why that campaign?

JH: Right now, if you're lucky enough to live in a city or a state where you have rapidly growing technology companies, pretty much everybody is short employees. Our cost of living is way less than Silicon Valley. I mean, way less. And I think that that's the strategy here. And I love it when the tech companies use humor and get a little edgy. We're not the only city that's done this. And the industry's put up most of the money. I think the original \$450,000 came from the industry itself.

RW: You're saying that there's opportunity for Colorado in the high cost of living in California. Yet I think there will be people who hear that and say "You are merely bringing the high cost of living to Colorado." I mean the housing supply here is at a record low, prices at a record high. Voters are going to be asked to raise taxes for roads and schools. Even as Colorado's economy is one of the healthiest in the country, why reach out and recruit more people?

JH: A, you're making a mountain out of a molehill with all respect. We're talking maybe they'll get a dozen, or a couple dozen employees out of, this is not-

RW: Wait, wait. You just talked about what a big deal the VF relocation is.

JH: That is a big deal.

RW: And now I'm making a mountain out of the molehill?

JH: Yeah, you changed the subject and you're talking about this Pivot Colorado.

RW: I'm talking about a whole idea.

JH: That is the mountain you're trying to make out of a molehill. If you're talking about that, I'll answer that. That is a few number of employees at a small group of tech companies, they want to be able to compete and get certain types of key employees that aren't in our normal group. That is not a big deal. In terms of if you're anti-growth people. Some people, I hear them too, they say "We've grown too fast. We don't want to grow anymore." Hey, I was here in the 1980s. I got laid off in 1986. That recession lasted nine years here.

RW: Is it fair to say anti-growth though? Or is it just smart growth, or different growth or thoughtful growth?

JH: I think what we're doing is thoughtful growth. We're trying to grow and make sure that we don't slow down or put on the brakes. Because once you do that it's very, very hard to get the momentum back. Wiser is to, as you grow, invest in your infrastructure so that you can grow without having these extremes of congestion. If you look at Metro Denver and I think in other ways this is true around Colorado but certainly in Metro Denver, we invested in FasTracks, we don't have the same congestion that they have in San Francisco, or Seattle or Los Angeles.

RW: FasTracks is Light Rail.

JH: Yeah the Light Rail out to the suburbs. As that builds out and around more of these stations you get more housing, we will be able to accommodate more growth with less congestion. That being said we're still going to have to invest in affordable housing, I don't deny that. Doesn't mean you want to stop growing.

RW: On the subject of transportation you've said that you back the idea of a new tax for roads. Indeed, the Denver Chamber of Commerce has submitted petitions for a 20 year, \$6 billion tax increase. Will you actively campaign for that?

JH: Yeah I think I'll go out and try to make sure people understand the facts around it. The voters do get the final word. Part of having that final word is for me, to make sure that we get the real facts out there. Yes so I do think I will go out. And I say it, I think it's a good idea.

RW: Another tax has already been approved for the ballot. It would raise \$1.6 billion for education. Colorado voters have historically not approved statewide tax increases. Now there could be two on the same ballot. Wonder if you're at all worried about voter fatigue? Will people just decide, eh, none of the above?

JH: It's possible but I think Colorado voters care about really seeing, 'Here's the taxes I'm going to be paying and what do I get for it and is that something I care about?' Making sure that our teachers are properly paid, that we have the right sized classrooms, that we're able to continue to, and expand, the funding we have for kids that don't go on to college, to make sure that there's more vocational training.

RW: That would be envisioned in this tax.

JH: Yeah.

RW: Why don't we stick to the subject of the ballot? There are two major proposals related to oil and gas coming from distinctly different points of view. They await clearance from the Secretary of State to be on the ballot. The first is Initiative 108. It would require governments to compensate property owners if the value of their property drops because of a law or regulation. Supporters say people's property values shouldn't be damaged if for instance a local government limits oil and gas development. Where do you stand on this?

JH: Well we've had a couple long meetings with the Colorado Municipal League. They're the group that represents all the towns and cities in the entire state. I have never seen them so worked up about a specific issue. They really believe, and I think I'm led to side with them, that this would fundamentally weaken their ability just to do the basic functions of government.

RW: Beyond oil and gas regulation?

JH: Oh, completely. This goes way beyond. I mean this is a very broad reaching piece of constitutional change that I think would wreak havoc. My inclination is to come out and say, no, this is not a good idea.

RW: And yet virtually every month that we've spoken, Governor, you've talked about the right people have to their mineral rights.

JH: Yes.

RW: And that laws that further restrict where one can drill is a taking. So, isn't this in that spirit?

JH: Yeah, but it's much broader. Again, that's the problem.

RW: The other proposal would require that oil and gas wells be at least 2500 feet from buildings. The state's current requirement is 500 feet from homes, 1,000 feet from like big public buildings, schools, hospitals. You have consistently opposed increasing setbacks beyond where they've already been increased. Is that still the case?

JH: Yes. I think 2500 feet would be ruled by the courts to be a taking by the state of Colorado, and we would have to pay financial damages to all those lease holders. Many of them retired senior citizens.

RW: I'm thinking of that Dionne Warwick song, Déjà vu, right now.

JH: Déjà vu all over again.

RW: Yeah, because a few years back you help negotiate a deal to keep dueling oil and gas measures off the ballot. But here at the tail end of your time in office this battle rages on. It seems like this was a nut you just weren't able to crack as governor.

JH: What do you mean crack? You're talking about eggshells here. When there is a natural dynamic tension between local communities and oil and gas extraction companies, there's no absolute solution. All you can do is the state's job is to guarantee that the oil and gas industry operates at absolute safety, the maximum safety standards, their activities are not in any way jeopardizing people's health.

RW: But in that previous iteration when there were those dueling ballot measures, you did play a mediating role. Could you have done that more here?

JH: At a certain point, in Colorado people want to be able to vote.

RW: You're hearing our regular conversation with Colorado's governor, John Hickenlooper. When we come back: his response to being sued, this week, over religious freedom.

A Lakewood baker, at the center of a US Supreme Court ruling this year, is in the news again. Baker Jack Phillips is suing the governor, the state attorney general, and Colorado's Civil Rights Commission-- saying "Colorado has been on a crusade to crush him because officials despise what he believes." The suit came down just before our regular interview with the governor at the Capitol. Let's get back to that now.

The case that reached the US Supreme Court was sparked by a gay couple requesting a wedding cake. More recently though the lawsuit says Phillips was asked to make a cake that was blue on the outside and pink on the inside to celebrate a gender transition, and he refused. So once again the state's Civil Rights Commission thinks there's reason to investigate. Phillips' lawsuit says the new investigation amounts to religious persecution. I wonder if I could get your comment?

JH: I believe, and I think almost everyone in Colorado believes, in freedom of religion and freedom of expression, but just because you don't agree with someone's religion, I don't think means that you should be able to deny them service, or deny them goods. That doesn't seem American. It doesn't seem Coloradan.

RW: Or if not their religion maybe their homosexuality, or their gender, or something like that.

JH: Right, exactly.

RW: When the Supreme Court ruled in the wedding cake case, known as The Masterpiece Decision, Justice Anthony Kennedy based the ruling on what he said was religious hostility by the Civil Rights Commission. Kennedy wrote, "The commission's treatment of his a case has some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection." His being Jack Phillips. Do you think all of the people who come before the Civil Rights Commission get a fair shake?

JH: I don't have enough information to give you an exact answer there, but certainly that's the goal. Obviously, the

Supreme Court, it seemed to me that they were more concerned about the tone in some of the conversations of how the commission got to their ruling. So maybe this case will, maybe that tone is not there, or maybe this was a little more, without any of the emotion.

RW: Don't artists have a right to say, "I don't want to make that expression."

JH: Again this is what the Supreme Court has to decide. But if you're making someone a cake, or you're making a bicycle, let's say, something that you do every day for a broad cross section of people, and it's open to the public. I don't think there should be bias involved of who you chose to serve and who you don't.

RW: Should you be forced to make a cake with a swastika on it?

JH: Again, I'm not sure how that is worked out in terms of the courts. I'm not a lawyer. That's certainly not a religious belief, but it is certainly, under many categories, considered a hate message.

RW: All right, a different topic. In 2013, your corrections chief, Tom Clemens, was killed by a former inmate, and you've established a couple of awards in his honor. This year, one of them went to a program that makes it easier for veterans to get professional licenses and credentials, so that they can more quickly become architects, engineers, nurses. Why did you want to highlight that work in particular?

JH: Almost every veteran made significant sacrifices while they were in the service. And I think doing everything we can to make sure that they can get as fair a shot as possible at building a dream, their version of the American dream. We owe it to our veterans to bend over backwards to give them, to accelerate their success. We should be trying to do it.

RW: There was talk about you making a decision this summer whether to run for president. I'm so sick of this question. I wonder if you're as sick of it as I am?

JH: Well I don't get, I'm not as sick as I am about Marijuana. Every, if I'm talking to somebody.

RW: Not from using it but being asked about it I'm guessing?

JH: I'll tell you the one question I'm most sick of is people asking me "How's Colorado's experiment in Marijuana?" That's the worst. This is a close second.

RW: And the answer?

JH: Yeah, we're still talking about it and plugging away.

RW: Governor, thanks for being with us.

JH: Always a pleasure.

About Michelle P. Fulcher

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Michelle Fulcher is a producer for Colorado Matters, which airs on CPR News. She has reported at a Denver business weekly, at the Colorado Springs Gazette and The Denver Post where she served as a state and local government reporter, an assigning editor, city editor and national/international editor.

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Dan Locke

Wow. James Gottry got it right: <https://www.dailywire.com/.../gottry-what-persecution...>

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Dan Shaffer

What a joke... "I care about religious freedom, except I don't."

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Clifford Farris

This is a little overdrawn, but tolerance for each other's points of view and feelings goes a long way to reducing tensions and letting us live together. Attacking someone with whom you don't agree is not it. Calling down the law is even worse.

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Clifford Farris

Bias is only allowed in one direction. Sincere beliefs decently applied shall not qualify. Only bias from rabid finatics is allowed. It doesn't matter how many lives and businesses you destroy, that bias is still not allowed and the government will drop tons of bricks on you to make sure. You shall be obliterated.

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Frank Ohrtman

"we would have to pay financial damages to all those lease holders. Many of them retired senior citizens"
Fact check:

1. What is the Governor's source for this info? Colorado Oil and Gas lobbyists? A search of publicly available databases maintained by State of CO?
2. How many is "many" and what percentage of all lease holders are those "senior citizens"? Be honest Gov, the majority of those impacted leases are held by deep pocketed oil and gas firms paying a 1% severance tax (compare to North Dakota at 10%) to the state. They've been getting a free ride from Day One and now they want payola f... [See More](#)

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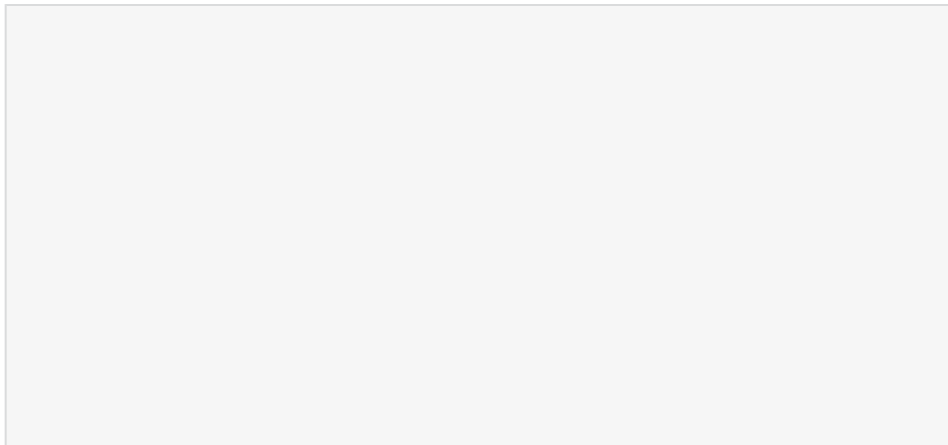
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EXHIBIT 23

Supporters Rally For Gay Couple After Wedding Cake Ruling

June 5, 2018 at 11:32 am

Filed Under: [Charlie Craig](#), [civil rights](#), [Dave Mullins](#), [Gay Rights](#), [Gay Wedding Cake](#), [Jack Phillips](#), [Jefferson County](#), [John Hickenlooper](#), [Lakewood](#), [Local TV](#), [Masterpiece Cakeshop](#), [Supreme Court](#)

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DENVER (CBS4)– Dozens of supporters rallied behind the gay [couple](#) on the steps of the state Capitol after the Supreme Court ruling in favor of a baker from Lakewood.



DENVER, CO – JUNE 4: Christopher Savin pumps his fist as he holds a Colorado pride flag during a rally in support of David Mullins and Charlie Craig after the United States Supreme Court ruled in favor of Jack Phillips, owner of Masterpiece Cakeshop, who refused to make a wedding cake for the same sex couple in 2012. Supporters gathered at the Colorado State Capitol on Monday, June 4, 2018. (Photo by AAron Ontiveroz/The Denver Post via Getty Images)

It was a case that pitted gay rights against religious interests, brought by a Jack Phillips, a Christian baker in Lakewood who refused to make a [wedding cake](#) for two gay men.

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Jack Phillips speaks to members of the media in front of the U.S. Supreme Court Dec. 5, 2017. (credit: Alex Wong/Getty Images)

Phillips said his cakes are artistic expression and that creating a cake celebrating gay [marriage](#) violates his religious beliefs.



(credit: CBS)

Story Archive: [Masterpiece Cakeshop v. Colorado Civil Rights Commission](#)

It started back when Charlie Craig and David Mullins went into Masterpiece Cakeshop in 2012 and asked for a cake for their wedding reception. Phillips refused.



(L-R) Charlie Craig, Dave Mullins and his mother Debbie Munn stand before to supporters before entering the Supreme Court building Dec. 5, 2017. (credit: CBS)

Craig and Mullins said Phillips discriminated against them and violated their civil rights.

The Supreme Court heard oral arguments in the case in December. In their decision posted on Monday, the justices ruled the Colorado Civil Rights Commission didn't maintain religious neutrality when it ruled against Phillips.



Jack Phillips (credit: CBS4)

"We've never disagreed with his religious convictions, we just think when you open your doors to the public you have to serve everyone equal," said Craig.



David Mullins and Charlie Craig at the rally on Monday (credit: CBS)

At the rally, supporters carried signs reading "Dissent is patriotic" and rainbow flags. They said the decision does very little in the fight for equal rights in this country.

"Just that fact this question is open, that this is continually being argued.. I'm feeling it, very, very personally," said one rally goer Kelsey Green.



(credit: CBS)

Gov. John Hickenlooper was at the rally. He said the decision doesn't change Colorado laws against discrimination.



(credit: CBS)

"Today is no different than yesterday. Nobody has a license to discriminate," said Hickenlooper.

The owner of the cake shop was not available for public comment after the decision was announced. There is a sign on the bake shop stating that he is out of town until Thursday.



(credit: CBS)

Comments





Skier Who Tried To 'Jump The Crowd' At Copper Pleads Guilty

The skier who tried to jump the crowd at the annual Slopesoakers pond-skimming event at Copper Mountain has pleaded guilty in the case.



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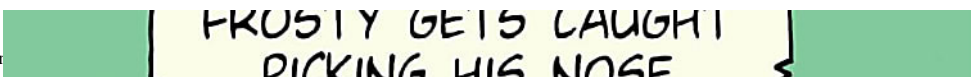
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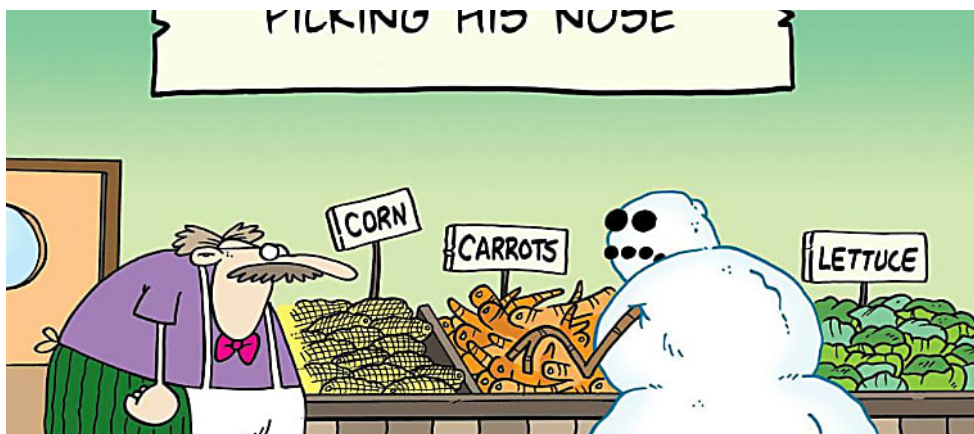


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EXHIBIT 24



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

REQUEST FOR INFORMATION

Please submit the following specific, written information and/or documentation by the deadline indicated. Your failure to do so may result in our issuing a finding based on the available evidence.

Please be advised that you are expected to provide a complete response to each question. If you, or your representative, believe that a question is impermissible, is not relevant, or is overly broad in scope, do not simply object and/or decline to answer. Rather, contact the assigned investigator to discuss your concerns. Failure to do so will be viewed as a refusal to cooperate. The investigator is always willing to discuss the scope of the request, and in most instances, can narrow, modify and/or clarify it to ensure that only information essential to the specific facts and allegations of your case is required.

SUBPOENA POWER NOTICE: You should be aware that the State of Colorado's Anti-Discrimination statute grants the Director of the Colorado Civil Rights Division the authority to subpoena witnesses and to compel the production of books, papers and records relevant to the charge [C.R.S. 24-34-306(2)(a)]. Such subpoena is enforceable in the district court in which the alleged discriminatory practice occurred. Subpoena authority is exercised only when, in the judgment of the Director, the Respondent's failure to voluntarily cooperate makes it necessary.

1. Written Position Statement in response to the Charge of Discrimination to include:
 - a. a specific response to the action complained of and the specific and detailed sequence of events that led to the alleged denial of the goods, services, benefits, or privileges offered.
 - b. General nature of your business or organization and the service it provides.
 - c. Your response should contain the name, job/position title; the comparative protected class information (e.g. if the Charging Party is



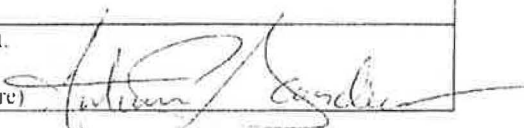
- alleging racial discrimination, indicate race) of the official(s) who made the business decision which is the basis of this complaint.
- d. Also, identify by job/position title and any other employee(s) who was/were involved in this business decision and provide the protected class information for these individuals.
 - e. Provide supporting documentation substantiating the reason(s) for the business decision.
2. Provide written statements from any individual who has personal, direct knowledge of either the issues raised in the administrative complaint; and/or the reason(s) for Charging Party's asserted denial of the goods, services, benefits or privileges offered. *For each witness*, give their full and complete name (correct spelling or more fully identify if needed), organization position/title, if applicable, mailing address, telephone number and protected class identification:
 - a. *If a person named above is no longer a member/employee*, provide the above requested identifying information, the affiliation separation date and a brief reason for the separation.
 3. Copies of any documents, records, reports, policies, etc. relied upon in making the decision(s) in question including, but not limited policies/procedures concerning the reason for allegedly denying the Charging Party goods, services, benefits or privileges offered. *If not available in written form*, please provide a written explanation of how such situations have been handled in the past.
 4. Provide any other information/documentation/witnesses you deem relevant to the merits of this complaint or which you believe will support your position.
 5. Note if the Charging Party is currently welcome at your place of business or to become affiliated with your organization? If not, why not? If yes, but only if certain conditions are met or only under certain conditions, what are those conditions?
 6. Provide a list of any individuals you have denied goods, services, benefits, or privileges to in the past. Provide the protected class information for the individuals listed and briefly state the reason for each denial.



COLORADO DIVISION

JUL 20 2017

OF CIVIL RIGHTS

CHARGE OF DISCRIMINATION		CCRD Charge No. CP2018011310
The Privacy Act of 1974 affects this form. See Privacy Act Statement before completing this form.		
COLORADO CIVIL RIGHTS DIVISION		
Name <i>(Charging Party)</i> Autumn Scardina		(Area Code) Telephone (818) 205-5560
Street Address 7779 Everett Way	City, State, and Zip Code Arvada, CO 80005	County Jefferson
Name of Place of Public Accommodation <i>(Respondent)</i> Masterpiece Cakeshop Incorporated		(Area Code) Telephone (303) 763-5754
Street Address 3355 S. Wadsworth Blvd	City, State, and Zip Code Lakewood, CO 80227	County Jefferson
Discrimination Based on: Sex (Female); Transgender (Gender Identity)	Date Most Recent Discrimination Occurred June 26, 2017	
<p>I. Jurisdiction: The Colorado Civil Rights Division has jurisdiction over the subject matter of this charge; that each named Respondent is subject to the jurisdiction of the Colorado Civil Rights Division and is covered by the provisions of the Colorado Revised Statutes (C.R.S. 1973, 24-34-301, et. seq.), as reenacted.</p> <p>II. Personal Harm: That on or about June 26, 2017, I was denied full and equal enjoyment of a place of public accommodation based on my sex (female) and/or transgender (gender identity).</p> <p>III. Respondent's Position: N/A</p> <p>IV. Discrimination Statement: I believe I was unlawfully discriminated against because: of my protected class (es) in violation of the Colorado Anti-Discrimination Act (CADA). 1.) On or about June 26, 2017, I was denied full and equal enjoyment of a place of public accommodation. Specifically, the Respondent refused to prepare my order for a cake with pink interior and blue exterior, which I disclosed was intended for the celebration of my transition from male to female. Furthermore, the Respondent indicated to me that to prepare such a cake would be against their religious beliefs. 2.) I believe I was discriminated against because of my protected class (es).</p> <p>V. WHEREFORE: The Charging Party prays that the Colorado Civil Rights Division grant such relief as may exist within the Division's power and which the Division may deem necessary and proper.</p>		
I declare under penalty of perjury that the foregoing is true and correct.		
Date 7/20/17	Charging Party/Complainant (Signature) 	

Statement of Discrimination

First Date of Occurrence

Why you think the incident or action taken was discriminatory (e.g. "This incident shows that I was denied service because of my age").

On June 26, 2017, I contacted Masterpiece Cakeshop to request that they prepare a birthday cake to celebrate my upcoming birthday. They asked what I wanted the cake to look like, and I explained I was celebrating my birthday on July 6, 2017 and that it would also be the 7th year anniversary of my transition from male to female. When I explained I am a transexual and that I wanted my birthday cake to celebrate my transition by having a blue exterior and a pink interior, they told me they will not make the cake based on their religious beliefs. I was stunned and asked for the woman's name. The phone was disconnected. I called back and explained we got disconnected and believe I was hung up on. I called again and asked that they give me the employees name, and I was hung up on again.

Was anyone treated more favorably than you? Who? Provide information related to their protected classes (e.g., if you are alleging race discrimination, what is the person's race? If age discrimination, what was the person's age?)

I believe so. I cannot be sure because I am not a part of all their sales, but the woman on the phone did not object to my request for a birthday cake until I told her I was celebrating my transition from male to female. I believe that other people who request birthday cakes get to select the color and theme of the cake. I believe that I was not allowed to order a birthday cake because I requested that its color and theme celebrate my transition from male to female. The woman on the phone told me they do not make cakes celebrating gender changes.

EXHIBIT 25



September 19, 2017

Ms. Aubrey Elenis
Colorado Civil Rights Division
1560 Broadway Street, Suite 1050
Denver, CO 80202

Case Number: CP2018011310

Re: Response to Request for Information

Dear Ms. Elenis,

Respondent, Masterpiece Cakeshop, Ltd., submits the following response to your Request for Information:

1. Written Position Statement in response to the Charge of Discrimination.

Nature of Respondent's Business

Respondent is a small cake shop in Lakewood, Colorado, owned and operated by Jack Phillips ("Jack"). Jack's love for art and design began at an early age. Discovering that he could blend his skills as a pastry chef, sculptor, and painter, he spent nearly two decades in bakeries owned by others before opening Masterpiece Cakeshop twenty-four years ago. He carefully chose Masterpiece's name: it would not be just a bakery, but an art gallery of cakes.¹ With this in mind, Jack created a Masterpiece logo depicting an artist's paint palate with a paintbrush and whisk. And for over a decade, a large picture has hung in the shop depicting Jack painting at an easel. Since long before this Charge was filed, Jack has been an artist using cake as his canvas with Masterpiece as his studio.

Jack is also a man of deep faith who strives to honor God in all aspects of his life, including how he treats people and runs his business. Jack welcomes homeless people into his store, offers them refreshments, and develops friendships with them. He provides a safe place at the cake shop for drug and alcohol abusers to share a cup of coffee, discuss their problems, and receive encouragement to change.² He hosts Bible studies there. And because of his faith, Jack pays his employees above the market rate and helps them with financial and personal needs outside of work. He even closes the cake shop on Sundays so that he and his employees can attend religious services. These decisions make little financial sense, but Jack's bottom line has never been just about dollars and cents. He aims to love God and love other people through his work.

¹ See Attachment A (collage of Jack's artistic cakes).

² Jack declines to serve baked goods containing alcohol for this reason in part.

His Christian faith also teaches him to serve everyone, and he does. Jack welcomes people from all walks of life, including individuals of all races, faiths, gender identities, and sexual orientations and offers his artistic talent to create elaborately designed custom cakes for anyone. He eagerly seeks to serve people who are different from him. But Jack cannot design custom cakes that express ideas or celebrate events at odds with his religious beliefs for any customer. In other words, his decisions on whether to design a specific custom cake never focus on *who* the customer is, but on *what* the custom cake will express or celebrate. These limitations on Jack's custom work have no bearing on his premade baked items, which he sells to everyone, no questions asked.³

There are many custom cakes that Jack will not create. For example, he will not design cakes that celebrate Halloween; express anti-family themes (such as a cake glorifying divorce); contain hateful, vulgar, or profane messages (such as a cake disparaging gays, lesbians, or transsexuals); or promote atheism, racism, indecency, or any other message that violates his religious beliefs. Jack also declines to speak on some subjects altogether—like sex-changes or gender transitions, as relevant here. Jack has chosen not to address this subject for a number of reasons: (1) Jack cannot promote particular viewpoints on this subject due to his religious beliefs;⁴ (2) Jack finds particular viewpoints on the subject offensive and objectionable;⁵ and (3) Jack seeks to avoid creating artistic expression concerning controversial subjects because they pose distractions and may alienate segments of his diverse clientele. So for all these reasons, he has decided not to create any custom cakes that address the topic of sex-changes or gender transitions.

Response to the Charge

As you are aware, Respondent and the Colorado Civil Rights Commission are involved in ongoing litigation before the United States Supreme Court. Specifically, on June 26, 2017, the Court granted Respondent's petition for a writ of certiorari to answer an important question: whether applying the Colorado Anti-Discrimination Act ("CADA") to compel a cake artist to create objectionable expression violates the Free Speech or Free Exercise Clauses of the First Amendment. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111).

On that same day, the cake shop was flooded with telephone calls in response to the Court's decision to hear Jack's case. Some came from members of the press and others came from people wishing to comment on the day's news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party's among them—ranged in content and sincerity.

Ordinarily, Jack answers the telephone because he has received numerous hateful calls—including death threats—and prank custom cake requests in the last few years since news of his court case spread. He does this because he wants to protect his family from hearing hateful

³ Jack also creates and sells pre-made cupcakes, cookies, brownies, cakes, candles, and coffee.

⁴ For example, because of his religious beliefs, Jack cannot create custom cakes promoting the idea that a person's sex is anything other than an immutable God-given biological reality. At the same time, due to those same beliefs, he cannot create custom cakes denigrating a person for any reason, including because of their professed gender identity.

⁵ See *supra* Note 4.

comments and to prevent them from having to deal with phony custom cake requests. But on the day that the Supreme Court decided to hear Jack’s case, Jack needed help.

In the hours after the press reported that the Supreme Court had decided to hear Jack’s case, the Charging Party, who appears to be a Denver-based attorney⁶ involved in LGBT advocacy,⁷ called the cake shop to request a custom cake. Debra Phillips (“Debi”), Jack’s wife, answered the telephone. Once Debi learned that the Charging Party was requesting a custom cake, she solicited some essential details, as the cake shop does for every customer that requests a custom cake. For example, Debi asked about when the cake was needed, the requested size, flavors, and other essential details. At no time, however, did Debi ask about any personal characteristic of the Charging Party.

As the Charging Party admits, the Party requested that the cake be designed with a blue exterior with a pink interior to celebrate a sex-change from male to female.⁸ But because of Jack’s unwillingness to create artistic expression that addresses or promotes messages and viewpoints on the subject of sex-changes or gender transitions—whether celebrating or denigrating them—for any customer, Debi politely told the Charging Party that the cake shop could not fulfill the request. When the Charging Party pressed further, asking Debi to repeat her response so that someone else could hear, Debi asked that the Charging Party hold on the line while she went to get Jack. Debi did not know that someone else was on the telephone line. When Jack came to the telephone, the line was disconnected.

The Charging Party immediately called back. This time Jack’s daughter, Lisa Eldfrick (“Lisa”), answered the telephone. Like her mom, Lisa came to understand that the Charging Party was requesting a custom cake concerning a sex-change or gender transition. But Lisa knew that the cake shop does not create artistic expression addressing that subject for any customer. So she politely indicated that, although the Charging Party is welcome to purchase any of the cake shop’s premade items or obtain a different custom cake, the cake shop could not fulfill this particular custom cake request. Not satisfied, the Charging Party pressed further. Lisa then politely repeated the cake shop’s position and asked if the Charging Party had any further requests. The Charging Party—now miffed and derisive—pressed even more. Once Lisa realized that the Charging Party would not accept her answer and only sought to continue criticizing the cake shop’s policy, she politely ended the telephone call. Like her mom, Lisa never asked about any personal characteristic of the Charging Party.

During all the telephone interactions between Debi, Lisa, and the Charging Party, neither Debi nor Lisa asked the Charging Party about or discussed the Party’s sex or gender identity. Debi and Lisa never saw the Charging Party or did any research about the Charging Party; Debi and Lisa only spoke to the Charging Party over the telephone. In making its decision to decline Charging Party’s request, Respondent never made any decision based on the Charging Party’s sex or gender identity.

⁶ <http://www.scardinalaw.com/About/Autumn-Scardina.shtml>

⁷ <http://www.scardinalaw.com/Employment-Disputes.shtml>

⁸ Charging Party Statement; *see* Attachment B (witness statement of Debra Phillips).

About a month later, the cake shop received the Charge (Case No. CP2018011310) in the mail. Jack, Debi, and Lisa then learned that the Charging Party believed the custom cake request to be connected to the Charging Party's birthday. This, however, was not clear to Debi and Lisa on the phone calls. Both Debi and Lisa understood that the caller was requesting a custom cake to celebrate a sex-change or gender transition. And if the Charging Party was, in fact, requesting a cake concerning a sex-change or gender transition, regardless of the event it was connected to, the cake shop cannot fulfill that request because it does not create artistic expression that addresses that subject for any customer.

Employment & Protected Class Information

- Jack is a heterosexual male and a Christian. He is a co-owner of Masterpiece Cakeshop, Ltd. Jack is the primary cake artist and makes the final business decisions and policies for the cake shop.
- Debi is a heterosexual female and a Christian. She is a co-owner of Masterpiece Cakeshop, Ltd. and serves as a secretary and service representative for the cake shop.
- Lisa is a heterosexual female and a Christian. She is a service representative for Masterpiece Cakeshop, Ltd.

Supporting Documents

Respondent does not maintain written documents or records that detail the policies concerning the decisions described herein.

2. Written Statements

See Attachments B, C, & D.

3. Copies of Documents

Respondent does not maintain written documents or records that detail the policies concerning the decisions described herein.

4. Other Information

Respondent and its agents did not treat the Charging Party differently from how it treats other customers. Thus Respondent did not violate CADA. Respondent offered the Charging Party the same artistic services that it offers to every other customer. Respondent did not inquire about the Charging Party's sex or gender identity and never made any decision based off of that sex or gender identity. Once Respondent learned that the Charging Party was requesting a custom cake that it will not create for any customer, Respondent politely told the Charging Party that it could not fulfill the request. Respondent then reaffirmed its willingness to provide the Charging Party

any goods or artistic services it offers to other customers. This is how Respondent always treats customers who request a custom cake that it does not create.

Not satisfied with equal treatment, the Charging Party requests better treatment and access to more goods and artistic services than any other customer receives. Yet Respondent cannot give the Charging Party preferred treatment; otherwise, it would risk opening itself up to a CADA violation.

The Division has already affirmed that CADA permits other cake artists to decline to create cakes that convey messages that the cake artist deems offensive or objectionable. *See, e.g., Jack v. Le Bakery Sensual, Inc.*, No. P20140070X (Colo. Div. of Civ. Rights Mar. 24, 2015) (finding no probable cause where a cake artist declined to create a cake with a religious message that the cake artist deemed offensive); *Jack v. Gateaux, Ltd.*, No. P20140071X (Colo. Div. of Civ. Rights Mar. 24, 2015) (same); *Jack v. Azucar Bakery*, No. P20140069X (Colo. Div. of Civ. Rights Mar. 24, 2015) (same). The message that the Charging Party's requested cake would communicate is a message that Jack considers objectionable. Thus, consistent with the Division's own precedent, Respondent did not violate CADA.

On top of that, the Constitution protects Respondent's right to control the content of its artistic expression. *See Turner Broad. Sys., Inc. v. FCC*, 522 U.S. 622, 641 (1994) (plurality opinion) (explaining that individuals and businesses have the right to determine for themselves "the ideas and beliefs deserving of expression, consideration, and adherence"); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 576 (1995) (discussing principles of expressive autonomy); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) ("The First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster ... an idea they find morally objectionable."). This right applies both to individuals and "business corporations generally." *Hurley*, 515 U.S. at 574. Thus, a cake artist who serves all people, like Jack does, cannot be forced to create objectionable artistic expression.

If that were not enough, the Constitution also protects Respondent's and its owners' right to freely exercise their religion. Indeed, the scope of protected religious exercise extends beyond "belief and profession" to "the performance of (or abstention from) physical acts' that are 'engaged in for religious reasons'" and even to "[b]usiness practices" that are "compelled or limited by the tenets of a religious doctrine." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770 (2014) (quoting *Emp't Div. Dep't of Human Res. v. Smith*, 494 U.S. 872, 877 (1990)). Respondent cannot create custom cakes that celebrate or promote the idea that biological sex is anything other than an immutable God-given biological reality. Communicating that message would violate Respondent's religious beliefs. Applying CADA to force Respondent to create religiously objectionable artistic expression, then, would violate Respondent's and its owners' free exercise rights.

As discussed above, the Division has already recognized that a cake artist does not violate CADA when the cake artist declines to create a cake with a message that he or she considers offensive or objectionable. When the government denies that same protection to a cake artist who has a religious reason for his conduct, its actions must overcome strict scrutiny. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993). Here, however, the

government cannot show a narrowly tailored compelling interest in forcing Respondent and its owners to violate their sincerely held religious beliefs by creating objectionable artistic expression.

5. The Charging Party is Welcome at Masterpiece Cakeshop

The Charging Party remains welcome in Respondent's store and to all goods and artistic services that Respondent offers. Indeed, the Charging Party will receive the same treatment as every other customer who telephones Respondent or comes through its door.

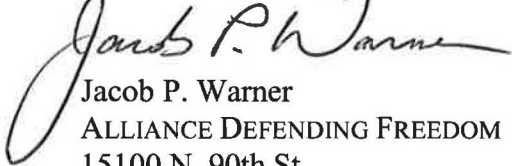
6. List of Individuals for whom Respondent Could Not Fulfill Custom Cake Requests in the Past

- Respondent declines to create approximately 2 to 5 custom cakes per week because it cannot fulfill the request within the time provided. Respondent has no information concerning the protected characteristics of these requestors.
- In the past year, Respondent has declined to create a cake promoting white supremacy because the cake would promote an objectionable message. Respondent has no information concerning the protected characteristics of this requestor.
- In the past couple years, Respondent has declined to create multiple cakes denigrating gays and lesbians because the cakes would promote an objectionable message. Respondent has no information concerning the protected characteristics of these requestors.
- During the past few years, Respondent has declined to create custom wedding cakes for all requestors because of its unwillingness to create artistic expression that celebrates conceptions of marriage that violate Respondent's sincerely held religious beliefs. Respondent has no information concerning the protected characteristics of these requestors.
- In 2012, before Respondent stopped offering to create custom wedding cakes, it declined to create a custom wedding cake to celebrate a same-sex wedding for Charlie Craig and David Mullins. Respondent could not create custom artistic expression to celebrate a conception of marriage that violates its religious beliefs. At that time, same-sex marriage was illegal in Colorado. Craig and Mullins are homosexual males.
- Before withdrawing from the wedding cake industry, Respondent also declined to create custom wedding cakes for other same-sex weddings. Respondent has no information concerning the protected characteristics of these requestors.
- In the more distant past, Respondent declined to create a divorce cake because of its objectionable anti-family theme. Respondent has no information concerning the protected characteristics of this requestor.

- Respondent cannot remember every custom cake request it has declined to create since 1993. Respondent has no information concerning the protected characteristics, or identities, of requestors not previously mentioned who have requested objectionable custom cakes during this time.

Respectfully submitted this 19th day of September, 2017.

Alliance Defending Freedom



Jacob P. Warner

ALLIANCE DEFENDING FREEDOM

15100 N. 90th St.

Scottsdale, AZ 85260

(480) 444-0020

jwarner@adflegal.org

Counsel for Respondent

Attachment A – Collage of Jack’s Custom Cakes













Attachment B – Witness Statement of Debra Phillips

Date: 09/19/2017

I am Debra Phillips, a co-owner of Masterpiece Cakeshop, Ltd. I also serve as a secretary and service representative at the cake shop. This statement reflects my best recollection of the circumstances referred to in the Charge.

On June 26, 2017, the cake shop received an unusually large number of phone calls in response to the U.S. Supreme Court’s decision to review a high-profile case involving the cake shop. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111). Some calls came from members of the press and others came from people wishing to comment on the day’s news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party’s among them—ranged in content and sincerity.

Ordinarily my husband, Jack Phillips, answers the telephone calls because the cake shop has received numerous hateful calls—including death threats—and prank requests for custom cakes in the last few years after news of Jack’s court case spread. But he needed my help on that day due to the large volume of calls in response to the Supreme Court’s decision to hear our case. In the hours after news of the Supreme Court’s decision broke, I received a telephone call from a person—whom I believe to be the Charging Party—asking for a custom cake. I asked the person to give some details about the cake (e.g., when the cake was needed, the requested size, flavors, and other essential details), as we do whenever someone expresses interest in ordering a custom cake.

The person indicated that the requested cake would need to be designed to celebrate a sex-change or gender transition. Specifically, as best I can recall, I think that the person requested a custom cake with a blue exterior and pink interior to celebrate a sex-change from male to female. But I knew that the cake shop does not create artistic expression that addresses or promotes messages and viewpoints on the subject of sex-changes or gender transitions for any customer. So I politely told the person that the cake shop could not fulfill the request. The person pressed further, asking that I repeat the cake shop’s position for someone else to hear, at which time I asked the person to hold on the line while I went to get Jack. I did not know that someone else was on the telephone line. Jack came to the telephone, but the phone was disconnected.

I did not hang up the telephone while the person was on the line. I never asked about any of the person’s personal characteristics. Nor were the person’s personal characteristics considered when I disclosed the cake shop’s policy. I also did not ask what the cake was for. I treated the person just like every other person who calls and requests a custom cake.

/s/ Debra Phillips

Debra Phillips
Masterpiece Cakeshop, Ltd.
3355 S. Wadsworth Blvd., H-117
Lakewood, CO 80227
(303) 763-5754

Attachment C – Witness Statement of Lisa Eldfrick

Date: 09/19/2017

I am Lisa Eldfrick and serve as a service representative at Masterpiece Cakeshop Ltd. This statement reflects my best recollection of the circumstances referred to in the Charge.

On June 26, 2017, the cake shop received an unusually large number of phone calls in response to the U.S. Supreme Court's decision to review a high-profile case involving the cake shop. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111). Some calls came from members of the press and others came from people wishing to comment on the day's news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party's among them—ranged in content and sincerity.

Ordinarily my father, Jack Phillips, answers the telephone calls because the cake shop has received numerous hateful calls—including death threats—and prank requests for custom cakes in the last few years after news of Jack's court case spread. But he needed my help on that day due to the large volume of calls in response to the Supreme Court deciding to hear our case. In the hours after news of the Supreme Court's decision broke, I received a telephone call from a person—whom I believe to be the Charging Party—asking for a custom cake. I believed this person was the same person who had talked to my mom moments before. The person desired a custom cake designed to celebrate a sex-change or gender transition from male to female.

But I knew that the cake shop does not create artistic expression that addresses or promotes messages and viewpoints on the subject of sex-changes or gender transitions for any customer. So I politely told the person that the cake shop could not fulfill the request. Not satisfied, the person pressed further. I repeated the cake shop's position and asked if the person had any other requests. The person—now miffed and derisive—pressed more. Once I realized that the person would not accept the cake shop's answer and only sought to continue criticizing the cake shop's policy, I politely ended the telephone call.

I never asked about any of the person's personal characteristics. Nor were the person's personal characteristics considered when I disclosed the cake shop's policy. I also did not ask what the cake was for. I treated the person just like every other person who calls and requests a custom cake.

/s/ Lisa Eldfrick

Lisa Eldfrick

Masterpiece Cakeshop, Ltd.

3355 S. Wadsworth Blvd., H-117

Lakewood, CO 80227

(303) 763-5754

Attachment D – Witness Statement of Jack Phillips

I am Jack Phillips, an artist and co-owner of Masterpiece Cakeshop, Ltd. I carefully chose Masterpiece's name to reflect my vision for the cake shop: it would not be just a bakery, but an art gallery of cakes. Accordingly, I have developed skills as a pastry chef, sculptor, and painter, to design and create the best custom cakes possible for my customers over the last twenty-four years. Each custom cake I design and create communicates a message. So my decisions to create or not to create cakes are very important to me. Although I serve everyone, I cannot design and create cakes that promote every event or express every message. I am the primary cake artist and make the final decisions and policies for the cake shop. This statement reflects my best recollection of the circumstances referred to in the Charge.

On June 26, 2017, the cake shop received an unusually large number of phone calls in response to the U.S. Supreme Court's decision to review a high-profile case involving the cake shop. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111). Some calls came from members of the press and others came from people wishing to comment on the day's news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party's among them—ranged in content and sincerity.

Ordinarily I answer the telephone because I have received numerous hateful calls—including death threats—and prank requests for custom cakes at the cake shop in the last few years after news of my court case spread. But I could not handle all the calls on the day the Supreme Court decided to hear my case. So in the hours after news of the Supreme Court's decision broke, my wife, Debra Phillips, received a telephone call from a person—whom she believes to be the Charging Party—asking for a custom cake. She asked me to come to the telephone and talk with the caller. When I picked up the phone, the line was disconnected. I never talked to the caller. Nor did I know any of the personal characteristics of the caller.

My Christian faith teaches me to serve everyone, and I do. I welcome people from all walks of life, including individuals of all races, faiths, gender identities, and sexual orientations and offer my artistic talent to create custom cakes for anyone. But I cannot create custom cakes that celebrate Halloween; express anti-family themes (such as a cake glorifying divorce); contain hateful, vulgar, or profane messages (such as a cake disparaging gays, lesbians, or transsexuals); or promote atheism, racism, indecency, or any other message that violates my religious beliefs. I also decline to speak on some subjects altogether—like sex-changes or gender transitions, as relevant here. I have chosen not to address this subject for a number of reasons: (1) I cannot promote particular viewpoints on this subject due to my religious beliefs;¹ (2) I find particular viewpoints on the subject offensive;² and (3) I seek to avoid creating artistic expression concerning controversial subjects because they pose distractions and may alienate segments of my diverse clientele. So for all these reasons, I have decided not to create any custom cakes that address the topic of sex-changes or gender transitions.

/s/ Jack Phillips
Jack Phillips

¹ For example, because of my religious beliefs, I cannot promote the idea that a person's sex is anything other than an immutable God-given biological reality. At the same time, due to those same beliefs, I cannot promote ideas that denigrate any person, including because of their gender identity.

² See *supra* Note 1.

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Lakewood, CO 80227
(303) 763-5754

EXHIBIT 26



Autumn Scardina, Esq.
autumn@scardinalaw.com

November 6, 2017

SENT VIA FACSIMILE AND USPS

COLORADO DIVISION

Ms. Aubrey Elenis
Colorado Civil Rights Division
1560 Broadway Street, Suite 1050
Denver, CO 80202
FAX: 303-894-7830

NOV 07 2017

OF CIVIL RIGHTS

RE: Case Number CP2018011310

Dear Ms. Elenis:

Thank you for affording my client the opportunity to rebut to the Response to Request for Information letter dated September 19, 2017 from Alliance Defending Freedom on behalf of Masterpiece Cakeshop, Ltd. (hereinafter "Masterpiece").

1. Rebuttal to Written Position Statement in Response to the Charge of Discrimination:

Ms. Scardina does not dispute the nature of Masterpieces business. She takes no issue with his religious beliefs nor does she dispute that the business serves a noble and useful purpose to the community in providing a "safe place at the cake shop for drug and alcohol abusers to share a cup of coffee". Rather, she agrees that the business provides valuable and beneficial services to the community and merely wishes to be able to access those services to the same degree and scope as the general public without regard to her gender identity.

While Mr. Phillips alleges that he "welcomes people from all walks of life, including individuals of all races, faiths, gender identities, and sexual orientations", the facts surrounding this case demonstrate that is simply not true. Specifically, Mr. Phillips refused to offer his services to create a custom birthday cake for Ms. Scardina upon learning that she transitioned genders from male-to-female.

In *Tesmer v. Colorado High School Activities Association*, 140 P.3d 249, 254 (Colo. App. 2006), the Colorado Court of Appeals concluded that to prevail on a discrimination claim under CADA, plaintiffs must prove that, "but for" their membership in an enumerated class, they would not have been denied the full privileges of a place of public accommodation. The division explained that plaintiffs need not establish that their membership in the enumerated class was the "sole" cause of the denial of services. *Id.* Rather, it is sufficient that they show that the discriminatory action was based in whole or in part on their membership in the protected class. *Id.*; *Craig v. Masterpiece Cakeshop Inc.* 2015 COA 115.

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The facts at issue demonstrate that but for Ms. Scardina's gender identity, she would not have been denied the full privileges of the place of public accommodation. Importantly, as the attached supporting affidavits explain, Ms. Scardina did not request that Masterpiece make any statements regarding "sex-changes or gender transitions". She merely requested that Masterpiece help her celebrate her birthday by preparing a custom cake, a task that Masterpiece admittedly performs. At no time did Ms. Scardina request that Masterpiece make any representation or statement concerning her gender or "sex-changes". Rather, she merely requested that they prepare a birthday cake using a blue colored cake and pink frosting. It was not until, and only because of Ms. Scardina's gender identity, that Masterpiece refused to provide her services. Such a decision is aberrant to Colorado law and discriminatory in purpose, intent, and effect.

While Masterpiece is free to decline to create cakes for any number of reasons, it is prohibited by Colorado Law from discriminating against individuals on the basis of gender identity. C.R.S. 1973 24-34-301, et seq. Masterpiece routinely provides custom cakes that celebrate birthdays. Masterpiece's website has an entire section dedicated to "Birthday" cakes¹ and at least two of the pictures of cakes provided by Masterpiece appear to be cakes prepared to celebrate birthdays. Furthermore, Masterpiece's website boasts that "custom designs are his specialty; if you can think it up, Jack can make it into a cake!"²

When Ms. Scardina requested a custom birthday cake, Masterpiece appeared happy to comply and began working with Ms. Scardina to complete the order. Ms. Scardina inquired about Masterpiece's ability to create a cake using different colors for the outside and inside of the cake and Masterpiece agreed they could accommodate that request. Ms. Scardina then requested that the cake have blue frosting with pink cake, to which Masterpiece had no objection. It was not until and only upon Ms. Scardina's disclosure that she is a transgender woman that Masterpiece refused to provide services to Ms. Scardina. Such conduct is the very definition of discriminatory conduct.

Masterpiece is willing to prepare and create birthday cakes for cisgender individuals and boasts that they are able to create custom cakes. Masterpiece does not deny that they provide custom birthday cakes to the general public and boasts that they can create any cake it's customer's can think of. Masterpiece did not object to the design of pink frosting with blue cake nor did they object to the cakes message until Ms. Scardina disclosed her gender identity. There is nothing inherently offensive or inappropriate about a cake with pink frosting and blue cake. Masterpiece admits that there is no company policy or general term of service that prohibits preparing cakes with pink frosting and blue cake to customers.³ Masterpiece does not appear to

¹ <http://masterpiececakes.com/birthday/>

² <http://masterpiececakes.com/>

³ Nor does Masterpiece appear to allege that cakes with pink frosting and blue cake are offensive to his religious beliefs. While Masterpiece claims to be a "man of deep faith" and a "Christian", he provides no evidence to suggest that such a faith prohibits him from preparing cakes with pink frosting and blue cake. Ms. Scardina performed an



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take issue with or decline to sell cakes with pink frosting and blue cakes in general. Rather, Masterpiece's objection and unwillingness to provide services to Ms. Scardina rests entirely on her gender identity, and is therefore discriminatory on the basis of her gender identity.

Ms. Scardina did not request that Masterpiece make any statement regarding her transition nor did she request that the cake celebrate a "sex change from male to female". Rather, she requested a custom birthday cake to celebrate her birth with friends and family. Masterpiece was willing to provide such a service and only objected upon learning of Ms. Scardina's gender identity. There is no viewpoint or statement inherent in a cake with blue interior and pink exterior independent of Ms. Scardina's gender identity and Masterpiece does not generally prohibit the same.

Masterpiece's reliance on the Divisions decision in *Jack v. Le Bakery Sensual, Inc.*⁴ is inapposite because the requested cake could not be considered objectionable absent Ms. Scardina's gender identity. In *Le Bakery Sensual*, the Division found that a baker did not discriminate against a Christian patron on the basis of his creed when it refused his requests to create two bible-shaped cakes inscribed with derogatory messages about gays, including "Homosexuality is a detestable sin. Leviticus 18:2." The Division found that the bakeries did not refuse the patron's request because of his creed, but rather because of the offensive nature of the requested message. Importantly, there was no evidence that the bakeries based their decisions on the patron's religion, and evidence had established that all three regularly created cakes with Christian themes. Conversely, Masterpiece admits that its decision to Ms. Scardina's requested birthday cake was because of its opposition to her gender identity, which is tantamount to discrimination on the basis of sexual orientation. Unlike the request in *Le Bakery Sensual, Inc.*, there is nothing inherently offensive about the cake Ms. Scardina requested. Furthermore, Masterpiece expressed a willingness and ability to prepare a cake with blue exterior and pink interior and did not object to the request until Ms. Scardina indicated her gender identity.

The Constitution does not protect Masterpiece's discriminatory conduct. Simply put, discrimination by a commercial entity is entitled to no constitutional protection. *Roberts v. United States Jaycees* (1984) 468 U.S. 609. The Anti-Discrimination Act as applied in this context deals with commercial conduct not speech. While Masterpiece argues that baking pastries and cakes is "speech" or "expressive conduct" and therefore protected by the First Amendment of the United States Constitution, commercial entities like Masterpiece are not entitled to special exemptions from anti-discrimination laws merely because they characterize their business ventures as expression or speech. *Citizen Publ'g Co v. United States*, (1969) 394 U.S. 131, 139-40

exhaustive search of all versions of the New Testament but was not able to find any biblical passages that pertain to the creation of cakes with pink frosting and blue cake

⁴ Jack v. Azucar Bakery, Charge No. P20140069X, at 2 (Colo. Civil Rights Div. Mar. 25, 2015), available at <http://perma.cc/5K6D-VV8U>



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(holding that although media organizations are entitled to the highest levels of First Amendment protection, they are subject to restraints on certain business or commercial practices in their sales policies.); *Arcara v. Cloud Books, Inc.* (1986) 478 U.S. 697.

As the United States Supreme Court held in *Sorrell v. IMS Health Inc.*⁵ “restrictions on protected expression are distinct from restrictions on economic activity or, more generally, on nonexpressive conduct.” The Constitution does not guarantee a right to choose customers without restraint from the State. A shopkeeper has no Constitutional right to deal only with persons of his or her choosing. *Roberts v. United States Jaycees* (1996) 468 U.S. 609; *Hearths of Atlanta Motel, Inc. v. United States* (1964) 379 U.S. 241.

Masterpiece does not have a Constitution’s right to discriminate based on religious belief. In fact, similar arguments have been dismissed by the United States Supreme Court as “patently frivolous”. *Newman v. Piggie Park Enters.*, 390 U.S. 400, 402 (1968); *Bob Jones Univ. v. United States* 461 U.S. 226 (1990)(holding that the right to free exercise of religion does not require exceptions to laws aimed at eradicating racial discrimination.); *Norwood v. Harrison* 413 U.S. 455 (1973).

In short, despite the denials of the same, the evidence clearly shows that Masterpiece and its agents treated Ms. Scardina differently from how it treats other customers. While other customers are allowed to purchase custom made birthday cakes, Ms. Scardina was denied such services based entirely on her gender identity. While Masterpiece boasts that “if you can think it up; Jack can make it a cake,” it refused to make the cake Ms. Scardina thought of because of her gender identity. While Masterpiece has no general policies prohibiting the use of pink frosting and blue cake and was willing to prepare such a cake for Ms. Scardina until she disclosed her gender identity, it refuses to provide such a cake to her specifically because of her gender identity. This key distinction appears to be missed by Masterpiece in its response to the charge.

Sincerely,

/s/ Autumn Scardina

Autumn Scardina, Esq.

SCARDINA LAW

⁵ 564 U.S. 552, 567 (2011)

ATTACHMENT A – WITNESS STATEMENTS

WITNESS 1:

Todd Scardina

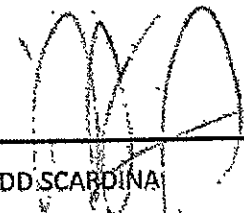
301 S. Ogden Street, Denver, CO 80209

(720) 838-3717

I, Todd Scardina, hereby submit the following statement in support of the Rebuttal Statement in Case Number CP2017011310, Scardina V. Masterpiece Cakeshop:

1. I am the younger brother to the claimant in this matter, Autumn Scardina.
2. My sister and I are both attorneys in Colorado and partners at the law firm named Scardina Law, LLC.
3. On June 26, 2017, the following events occurred:
 - a. In the afternoon, I was driving my car with Ms. Scardina in the front passenger seat. My sister reminded me that her birthday was coming up on July 6, 2017 and indicated that she would like to celebrate her birthday with a custom cake.
 - b. She indicated she would like Masterpiece Cakeshop to prepare the cake and I observed her google their information from her smartphone.
 - c. At first, I could only overhear Ms. Scardina's portion of the telephone call as the phone was not on speakerphone. The initial conversation was as follows:
 - i. Ms. Scardina inquired about whether Masterpiece Cakeshop prepared custom birthday cakes.
 - ii. Ms. Scardina explained that her birthday was coming up on July 6, 2017 and asked if they could prepare it on time.
 - iii. Ms. Scardina indicated that she would need a cake that would serve approximately 6-8 people.
 - iv. Ms. Scardina began to discuss the design for the cake and requested that the cake have pink interior and blue exterior.
 - v. Ms. Scardina then explained the design was to celebrate her birthday which coincided with the day she came out as transgender.
 - vi. Up through this point in the conversation, my sister's demeanor was calm, friendly, and polite.
 - vii. At this point in the conversation, I observed my sister's demeanor change. She appeared not to believe what was being said on the phone and indicated to me and the person on the phone that she would put the phone on speaker for me to hear. She then put the call on her phone's speakerphone.
 - d. The following portions of the conversation were on speakerphone and observed directly by me:
 - i. Ms. Scardina asked for the person at Masterpiece Cakeshop to confirm that she was refusing to make the cake as requested. The individual from Masterpiece

- Cakeshop responded by indicating that "they do not make cakes to celebrate sex-changes".
- ii. Ms. Scardina responded by explaining it is not a cake to celebrate sex-changes but a custom birthday cake that would celebrate both the date of her birth and the date she came out as transgender.
 - iii. Masterpiece Cakeshop said "we don't make cakes for that" and the phone went dead.
- e. I then observed Ms. Scardina call Masterpiece Cakeshop immediately thereafter. This call was placed on speakerphone and I witnessed the following conversation:
- i. Ms. Scardina indicated that she had called and the phone was disconnected.
 - ii. Ms. Scardina requested the individual's name, as she appeared upset that she had been disconnected previously. The individual refused to provide her name.
 - iii. Ms. Scardina explained again that she was calling to order a birthday cake and that she wanted it to be blue on the outside and pink on the inside because her birthday was the same day as she came out as transgender.
 - iv. Masterpiece Cakeshop again declined to take the order stating that it would violate their religious beliefs. Ms. Scardina asked how a blue cake with pink interior would offend anyone's religion, and the call was terminated by Masterpiece Cakeshop.
- f. My sister was very upset with the interaction. She was emotionally distraught and frustrated with the lacking respect and service from Masterpiece Cakeshop.



TODD SCARDINA 11/6/2017

WITNESS 2:

Autumn Scardina

7779 Everett Way, Arvada, CO 80005

(818) 205-5560

(720) 838-3717

I, Autumn Scardina, hereby submit the following statement in support of the Rebuttal Statement in Case Number CP2017011310, Scardina V. Masterpiece Cakeshop:

1. I am the claimant in this matter.
2. My birthday is July 6, 1978.
3. On July 6, 2010, I came out as transgender.
4. On June 26, 2017, the following events occurred:
 - a. In the afternoon, I was a passenger in my brother's car.
 - b. I had wanted to celebrate my birthday with a custom cake.
 - c. I had heard about Masterpiece Cakeshop and wanted to see if they would make a custom cake for my birthday.
 - d. I googled Masterpiece Cakeshop's information from my smartphone and called to inquire about a custom birthday cake.
 - e. The individual identified herself as someone associated with Masterpiece Cakeshop and asked how she could help me.
 - f. I began by asking if they made custom birthday cakes. The individual responded that they did prepare custom birthday cakes.
 - g. They asked me when my birthday was, and I explained it was on July 6, 2017 and I inquired if that would give them enough time. They indicated that would be fine.
 - h. They then asked how big of a cake I would need.
 - i. I explained that it would probably need to serve 6-8 people.
 - j. I then explained that I wanted a cake with blue exterior and pink interior. I asked if they could prepare a cake with blue frosting and pink cake.
 - k. They indicated that they could prepare such a cake.
 - l. I thanked them and explained that the design was a reflection of the fact that I transitioned from male-to-female and that I had come out as transgender on my birthday.
 - m. At this point, Masterpiece indicated they would not be able to prepare my cake. The person indicated that they did not prepare such cakes and I believe she mentioned her religious beliefs.
 - n. I started to become upset and indicated I would put the phone on speakerphone so my brother, Todd Scardina, could hear her portion of the conversation.
 - o. I then asked her to confirm that she was refusing to prepare the cake for me.
 - p. She indicated they do not prepare cakes for "sex changes." I explained it was for my birthday, not a sex change, and she stated that Masterpiece Cakeshop said "we don't make cakes for that" and the phone went dead.
 - q. I call Masterpiece Cakeshop immediately thereafter.

- r. This call was placed on speakerphone.
- s. I indicated that I had just called and the phone was disconnected.
- t. I requested the individuals name. The individual refused to provide her name.
- u. I explained again that I was calling to order a birthday cake and that I wanted it to be blue on the outside and pink on the inside because my birthday was the same day as the day I came out as transgender.
- v. Masterpiece Cakeshop again declined to take my order, stating that it would violate their religious beliefs.
- w. I asked how a blue cake with pink interior would offend anyone's religion, and the call was terminated by Masterpiece Cakeshop.



Autumn Scardina

FAX COVER SHEET

TO	Wesley Fry
COMPANY	
FAXNUMBER	13038947830
FROM	Scardina Law
DATE	2017-11-07 00:04:10 GMT
RE	Case Number: CP2017011310, Scardina v. Masterpiece Cakeshop

COVER MESSAGE

Please see attached. Original to follow



Autumn Scardina, Esq.
autumn@scardinalaw.com

November 6, 2017

SENT VIA FACSIMILE AND USPS

Ms. Aubrey Elenis
Colorado Civil Rights Division
1560 Broadway Street, Suite 1050
Denver, CO 80202
FAX: 303-894-7830

RE: Case Number CP2018011310

Dear Ms. Elenis:

Thank you for affording my client the opportunity to rebut to the Response to Request for Information letter dated September 19, 2017 from Alliance Defending Freedom on behalf of Masterpiece Cakeshop, Ltd. (hereinafter "Masterpiece").

1. Rebuttal to Written Position Statement in Response to the Charge of Discrimination:

Ms. Scardina does not dispute the nature of Masterpieces business. She takes no issue with his religious beliefs nor does she dispute that the business serves a noble and useful purpose to the community in providing a "safe place at the cake shop for drug and alcohol abusers to share a cup of coffee". Rather, she agrees that the business provides valuable and beneficial services to the community and merely wishes to be able to access those services to the same degree and scope as the general public without regard to her gender identity.

While Mr. Phillips alleges that he "welcomes people from all walks of life, including individuals of all races, faiths, gender identities, and sexual orientations", the facts surrounding this case demonstrate that is simply not true. Specifically, Mr. Phillips refused to offer his services to create a custom birthday cake for Ms. Scardina upon learning that she transitioned genders from male-to-female.

In *Tesmer v. Colorado High School Activities Association*, 140 P.3d 249, 254 (Colo. App. 2006), the Colorado Court of Appeals concluded that to prevail on a discrimination claim under CADA, plaintiffs must prove that, "but for" their membership in an enumerated class, they would not have been denied the full privileges of a place of public accommodation. The division explained that plaintiffs need **not** establish that their membership in the enumerated class was the "sole" cause of the denial of services. *Id.* Rather, it is sufficient that they show that the discriminatory action was based in whole or in part on their membership in the protected class. *Id.*; *Craig v. Masterpiece Cakeshop Inc.* 2015 COA 115.

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Autumn Scardina, Esq.
autumn@scardinalaw.com

The facts at issue demonstrate that but for Ms. Scardina's gender identity, she would not have been denied the full privileges of the place of public accommodation. Importantly, as the attached supporting affidavits explain, Ms. Scardina did not request that Masterpiece make any statements regarding "sex-changes or gender transitions". She merely requested that Masterpiece help her celebrate her birthday by preparing a custom cake, a task that Masterpiece admittedly performs. At no time did Ms. Scardina request that Masterpiece make any representation or statement concerning her gender or "sex-changes". Rather, she merely requested that they prepare a birthday cake using a blue colored cake and pink frosting. It was not until, and only because of Ms. Scardina's gender identity, that Masterpiece refused to provide her services. Such a decision is aberrant to Colorado law and discriminatory in purpose, intent, and effect.

While Masterpiece is free to decline to create cakes for any number of reasons, it is prohibited by Colorado Law from discriminating against individuals on the basis of gender identity. C.R.S. 1973 24-34-301, et seq. Masterpiece routinely provides custom cakes that celebrate birthdays. Masterpiece's website has an entire section dedicated to "Birthday" cakes¹ and at least two of the pictures of cakes provided by Masterpiece appear to be cakes prepared to celebrate birthdays. Furthermore, Masterpiece's website boasts that "custom designs are his specialty; if you can think it up, Jack can make it into a cake!"²

When Ms. Scardina requested a custom birthday cake, Masterpiece appeared happy to comply and began working with Ms. Scardina to complete the order. Ms. Scardina inquired about Masterpiece's ability to create a cake using different colors for the outside and inside of the cake and Masterpiece agreed they could accommodate that request. Ms. Scardina then requested that the cake have blue frosting with pink cake, to which Masterpiece had no objection. It was not until and only upon Ms. Scardina's disclosure that she is a transgender woman that Masterpiece refused to provide services to Ms. Scardina. Such conduct is the very definition of discriminatory conduct.

Masterpiece is willing to prepare and create birthday cakes for cisgender individuals and boasts that they are able to create custom cakes. Masterpiece does not deny that they provide custom birthday cakes to the general public and boasts that they can create any cake it's customer's can think of. Masterpiece did not object to the design of pink frosting with blue cake nor did they object to the cakes message until Ms. Scardina disclosed her gender identity. There is nothing inherently offensive or inappropriate about a cake with pink frosting and blue cake. Masterpiece admits that there is no company policy or general term of service that prohibits preparing cakes with pink frosting and blue cake to customers.³ Masterpiece does not appear to

¹ <http://masterpiececakes.com/birthday/>

² <http://masterpiececakes.com/>

³ Nor does Masterpiece appear to allege that cakes with pink frosting and blue cake are offensive to his religious beliefs. While Masterpiece claims to be a "man of deep faith" and a "Christian", he provides no evidence to suggest that such a faith prohibits him from preparing cakes with pink frosting and blue cake. Ms. Scardina performed an



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autumn@scardinalaw.com

take issue with or decline to sell cakes with pink frosting and blue cakes in general. Rather, Masterpiece's objection and unwillingness to provide services to Ms. Scardina rests entirely on her gender identity, and is therefore discriminatory on the basis of her gender identity.

Ms. Scardina did not request that Masterpiece make any statement regarding her transition nor did she request that the cake celebrate a "sex change from male to female". Rather, she requested a custom birthday cake to celebrate her birth with friends and family. Masterpiece was willing to provide such a service and only objected upon learning of Ms. Scardina's gender identity. There is no viewpoint or statement inherent in a cake with blue interior and pink exterior independent of Ms. Scardina's gender identity and Masterpiece does not generally prohibit the same.

Masterpiece's reliance on the Divisions decision in *Jack v. Le Bakery Sensual, Inc.*⁴ is inapposite because the requested cake could not be considered objectionable absent Ms. Scardina's gender identity. In *Le Bakery Sensual*, the Division found that a baker did not discriminate against a Christian patron on the basis of his creed when it refused his requests to create two bible-shaped cakes inscribed with derogatory messages about gays, including "Homosexuality is a detestable sin. Leviticus 18:2." The Division found that the bakeries did not refuse the patron's request because of his creed, but rather because of the offensive nature of the requested message. Importantly, there was no evidence that the bakeries based their decisions on the patron's religion, and evidence had established that all three regularly created cakes with Christian themes. Conversely, Masterpiece admits that its decision to Ms. Scardina's requested birthday cake was because of its opposition to her gender identity, which is tantamount to discrimination on the basis of sexual orientation. Unlike the request in *Le Bakery Sensual, Inc.*, there is nothing inherently offensive about the cake Ms. Scardina requested. Furthermore, Masterpiece expressed a willingness and ability to prepare a cake with blue exterior and pink interior and did not object to the request until Ms. Scardina indicated her gender identity.

The Constitution does not protect Masterpiece's discriminatory conduct. Simply put, discrimination by a commercial entity is entitled to no constitutional protection. *Roberts v. United States Jaycees* (1984) 468 U.S. 609. The Anti-Discrimination Act as applied in this context deals with commercial conduct not speech. While Masterpiece argues that baking pastries and cakes is "speech" or "expressive conduct" and therefore protected by the First Amendment of the United States Constitution, commercial entities like Masterpiece are not entitled to special exemptions from anti-discrimination laws merely because they characterize their business ventures as expression or speech. *Citizen Publ'g Co v. United States*, (1969) 394 U.S. 131, 139-40

exhaustive search of all versions of the New Testament but was not able to find any biblical passages that pertain to the creation of cakes with pink frosting and blue cake.

⁴ *Jack v. Azucar Bakery*, Charge No. P20140069X, at 2 (Colo. Civil Rights Div. Mar. 25, 2015), available at <http://perma.cc/5K6D-VV8U>

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(holding that although media organizations are entitled to the highest levels of First Amendment protection, they are subject to restraints on certain business or commercial practices in their sales policies.); *Arcara v. Cloud books, Inc.* (1986) 478 U.S. 697.

As the United States Supreme Court held in *Sorrell v. IMS Health Inc.*⁵ “restrictions on protected expression are distinct from restrictions on economic activity or, more generally, on nonexpressive conduct.” The Constitution does not guarantee a right to choose customers without restraint from the State. A shopkeeper has no Constitutional right to deal only with persons of his or her choosing. *Roberts v. United States Jaycees* (1996) 468 U.S. 609; *Hearths of Atlanta Motel, Inc. v. United States* (1964) 379 U.S. 241.

Masterpiece does not have a Constitution’s right to discriminate based on religious belief. In fact, similar arguments have been dismissed by the United States Supreme Court as “patently frivolous”. *Newman v. Piggie Park Enters*, 390 U.S. 400, 402 (1968); *Bob Jones Univ. v. United States* 461 U.S. 226 (1990)(holding that the right to free exercise of religion does not require exceptions to laws aimed at eradicating racial discrimination.); *Norwood v. Harrison* 413 U.S. 455 (1973).

In short, despite the denials of the same, the evidence clearly shows that Masterpiece and its agents treated Ms. Scardina differently from how it treats other customers. While other customers are allowed to purchase custom made birthday cakes, Ms. Scardina was denied such services based entirely on her gender identity. While Masterpiece boasts that “if you can think it up; Jack can make it a cake,” it refused to make the cake Ms. Scardina thought of because of her gender identity. While Masterpiece has no general policies prohibiting the use of pink frosting and blue cake and was willing to prepare such a cake for Ms. Scardina until she disclosed her gender identity, it refuses to provide such a cake to her specifically because of her gender identity. This key distinction appears to be missed by Masterpiece in its response to the charge.

Sincerely,

/s/ Autumn Scardina

Autumn Scardina, Esq.

SCARDINA LAW

⁵ 564 U.S. 552, 567 (2011)

EXHIBIT 27



COLORADO

Department of
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 825
Denver, CO 80202

Charge No. CP2018011310

Autumn Scardina
7779 Everett Way
Arvada, CO 80005

Complainant

Masterpiece Cakeshop Incorporated
3355 S. Wadsworth Blvd
Lakewood, CO 80227

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is sufficient evidence to support the Complainant's claim of discrimination. As such, a **Probable Cause** determination is hereby issued.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Complainant alleges that on or about June 26, 2017, she was denied full and equal enjoyment of a place of public accommodation based on her sex (female) and/or transgender status (gender identify).

The Respondent denies the allegation of discrimination and contends that it will not design custom cakes that express ideas or celebrate events at odds with its owner and staff's religious beliefs.

The legal framework under which civil rights matters are examined is as follows: The Charging Party bears the burden of proving that discrimination has occurred. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the burden of explaining, with



sufficient clarity, a non-discriminatory justification for the action taken. This is in response to the specifically alleged action named in the charge. In addition, the Respondent has the burden to produce documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a non-discriminatory reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate reason is merely a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

“Unlawful discrimination” means treatment that is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through a preponderance of the evidence in the record, adequately shows that the Respondent's reason is pretext (i.e., is not to be believed), and that the Charging Party's protected status was the main reason for the adverse action taken. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. See Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997); Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery that provides cakes and baked goods to the public, and operates within the state of Colorado.

On or about June 26, 2017, the Complainant contacted the Respondent to order a cake and spoke with Debi Phillips (“D. Phillips”) (female), Co-Owner. The Complainant contends that she requested a custom birthday cake. D. Phillips acknowledges that the Complainant called and requested a custom cake, but asserts that based on their conversation, it was not clear that she was requesting a birthday cake. D. Phillips states that she solicited details about the Complainant's wishes for the cake, including the date it was needed, the size, and desired flavors. The Complainant responded that she would need the cake by July 6, 2017, needed it to serve 6-8 people, and wanted the cake to have a blue exterior and a pink interior. The Complainant asserts that she “explained that the design was a reflection of the fact that [she] transitioned from male-to-female and that [she] had come out as transgender on [her] birthday.” D. Phillips states that after the Complainant informed her that the cake was “to celebrate a sex-change from male to female,” she instructed the Complainant that the Respondent would not make the requested cake. At this point, the phone call ended.

Shortly thereafter, the Complainant called the Respondent again and spoke with Lisa Eldfrick (“Eldfrick”) (female), Service Representative. The Complainant states that she told the person who answered, Eldfrick, that she had just called and was disconnected. She asserts that she told Eldfrick that she “was calling to order a birthday cake and that [she] wanted it to be blue on the outside and pink on the inside because [her] birthday was the same day as the day [she] came out as transgender.” Eldfrick asserts that she informed the Complainant that the Respondent would not fulfill this request. The evidence indicates that the Complainant questioned the Respondent’s policies and that Eldfrick ended the phone call without responding to the Complainant’s inquiries.

Jack Phillips (male), Owner, who admittedly makes all final business decisions for the Respondent, affirms this position, contending that the Respondent will not create custom cakes that address the topic of sex-changes or gender transitions. He contends that he will not support a message that “promote[s] the idea that a person’s sex is anything other than an immutable God-given biological reality.”

The Respondent asserts that it declines to make more than two to five custom cakes per week, due to time constraints. The Respondent also states that it refuses to make custom cakes for other expressions that it deems to be objectionable.

Denial of Full and Equal Enjoyment of a Place of Public Accommodation/Sex/Transgender Status:

To prevail on a claim of discriminatory denial of full and equal enjoyment of goods, services, benefits or privileges of a place of public accommodation, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods or services from the Respondent; (3) the Charging Party was otherwise a qualified recipient of the services of the Respondent; 4) the Respondent denied the Charging Party the full and equal enjoyment of its services; and 5) the circumstances give rise to an inference of unlawful discrimination based on a protected class.

The Complainant is a member of protected class based on her sex (female) and transgender status (gender identity). On or about June 26, 2017, the Complainant sought goods and service from the Respondent by requesting a custom cake. The Complainant was a qualified recipient of the services by the Respondent. An employee of the Respondent initially indicated that she was willing to assist the Complainant with this request, however, when the Complainant requested a blue exterior and a pink interior, explaining that the design reflected the Complainant’s gender transition from male to female, the Respondent refused to provide the requested service to the Complainant. The Respondent asserts that it will not provide the service of creating cakes that “promote the idea that a person’s sex is anything other than an immutable God-given biological reality.” The evidence thus

demonstrates that the refusal to provide service to the Complainant was based on the Complainant's transgender status. A claim of discriminatory denial of full and equal enjoyment of a place of public accommodation has been established. As asserted by the Supreme Court, "It is unexceptional that Colorado law can protect gay persons, just as it can protect other classes of individuals, in acquiring whatever products and services they choose on the same terms and conditions are offered to other members of the public." Masterpiece Cakeshop v. Colorado Civil Rights Commission, 584 U.S. ____ (2018).

Based on the evidence contained above, I determine that the Respondents have violated C.R.S. 24-34-602, as re-enacted, in respect to the Complainant's claim that the Respondents denied her equal enjoyment of a place of public accommodation.

In accordance with C.R.S. 24-34-306(2)(b)(II), as re-enacted, the Parties hereby are ordered by the Director to proceed to attempt amicable resolution of these charges by compulsory mediation. The Parties will be contacted by the agency to schedule this process.

On Behalf of the Colorado Civil Rights Division


Aubrey Elenis, Director
Or Authorized Designee

6-28-2018
Date

Certificate of Mailing

This is to certify that on July 2, 2018 a true and exact copy of the Closing Action of the above-referenced charge was deposited in the U.S. mail, postage prepaid, addressed to the parties and or representatives listed below:

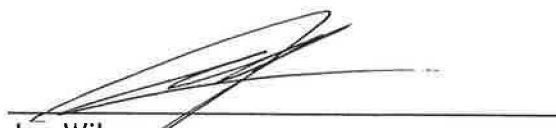
CCRD Case number CP2018011310

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3355 S. Wadsworth Blvd. H-117
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Jacob Warner, Esq.
Alliance for Defending Freedom
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Scottsdale, AZ 85260



Jon Wilson
Colorado Department of Regulatory Agencies
Colorado Civil Rights Division
1560 Broadway, Suite 825
Denver, CO 80202

EXHIBIT 28

STATE OF COLORADO COLORADO CIVIL RIGHTS COMMISSION	▲ COURT USE ONLY ▲
AUTUMN SCARDINA, Complainant, v. MASTERPIECE CAKESHOP INCORPORATED and JACK PHILLIPS, Respondents.	
Charge No. CP2018011310 Case Number: CR 2018_____	
NOTICE OF HEARING AND FORMAL COMPLAINT	

YOU ARE HEREBY NOTIFIED pursuant to § 24-34-306(4) C.R.S., that a hearing will be held before an Administrative Law Judge at 9:00 a.m. on **Monday February 4, 2019** on the fourth floor at the Office of Administrative Courts, 1525 Sherman Street, Denver, Colorado 80203, to determine whether Respondents violated § 24-34-601 *et seq.*, C.R.S. (2018) by denying Complainant Autumn Scardina (Scardina) the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations at its place of public accommodation because of Scardina’s sexual orientation (transgender status).

Pursuant to the authority set forth in §§ 24-34-305(1)(d) and 24-34-306(4), C.R.S. (2018), the Colorado Civil Rights Commission (Commission), having determined that the circumstances warrant a hearing, hereby charges and alleges as follows:

1. Respondent, Masterpiece Cakeshop Incorporated (Masterpiece or “the bakery”), is a bakery that engages in sales of goods and services to the public. Masterpiece is a place of public accommodation as defined by § 24-34-601(1), C.R.S., and is therefore subject to the jurisdiction of the Commission.

2. Respondent, Jack Phillips (Phillips) is the owner and operator of Masterpiece, and is a person as defined by §24-34-301(5)(a), C.R.S. As Masterpiece’s owner, Phillips is responsible for providing the full and equal enjoyment of its goods and services to the public regardless of protected class, and is therefore subject to the jurisdiction of the Commission.

3. Timeliness and all other jurisdictional and procedural requirements of title 24, article 34, parts 3 and 4 have been satisfied.

4. Upon information and belief, on June 26, 2017, Scardina contacted Masterpiece by telephone to order a cake to celebrate her birthday. Scardina asked if the bakery sold made-to-order birthday cakes. The individual on the phone answered in the affirmative and asked for the date of her birthday. Scardina responded that it was on July 6th and asked if that would be enough time to make the cake. Masterpiece's representative indicated that that the bakery could accommodate that timing.

5. Upon information and belief, Scardina requested a cake with a blue exterior and a pink interior, and indicated that she would need a cake big enough to serve 6-8 people.

6. Upon information and belief, Masterpiece's representative stated that the bakery would make the cake as requested by Scardina. Scardina then mentioned that the design was a reflection of the fact that she had transitioned from male to female and that she had come out as transgender on her birthday. Masterpiece's representative then stated that the bakery would not make the cake as requested by Scardina because it does not make cakes to celebrate a sex-change and terminated the call.

7. Upon information and belief, Scardina called Masterpiece back and spoke to a different individual about the exchange that took place during her initial call and confirmed that the cake she had ordered was to celebrate her birthday. Masterpiece's representative responded that the bakery would not make a cake for Scardina and terminated the call.

8. On July 20, 2017, Scardina filed a charge of discrimination with the Colorado Civil Rights Division alleging that Respondents discriminated against her in a place of public accommodation based on her sex (female) and/or sexual orientation (transgender status).

9. During the Colorado Civil Rights Division's investigation of the charge, Phillips affirmed his employees' decision to not fulfill Scardina's order, and cited his religious beliefs as the reason why the bakery would not do so.

10. Upon information and belief, the bakery sells made-to-order birthday cakes to non-transgendered individuals.

11. On June 28, 2018, following the investigation, the Division Director's authorized designee found probable cause for crediting the allegations of the charge

that Masterpiece discriminated against Scardina in a place of public accommodation based on her sexual orientation (transgender status).

12. As required by § 24-34-306(2)(b)(II), C.R.S. (2018), the Division Director's authorized designee ordered the parties to attempt amicable resolution of the charge by compulsory mediation.

13. Upon information and belief, efforts to resolve the matter amicably through the ordered mediation have been unsuccessful.

14. On October 2, 2018, the Commission voted to notice this matter for a hearing and to file this formal complaint.

15. The Commission alleges that Masterpiece denied service to Scardina based on her sexual orientation (transgender status), as defined by § 24-34-301(7), C.R.S. (2018), in a violation of § 24-34-601(2)(a), C.R.S. (2018).

16. The Commission further alleges that Masterpiece is not a place that is principally used for religious purposes, as contemplated by § 24-34-601(1), C.R.S. (2018).

The Commission seeks the following relief:

1. That Masterpiece and Phillips be ordered to allow Scardina and all customers that seek goods and services from the bakery, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and/or accommodations of this place of public accommodation, regardless of their sexual orientation.

2. That Masterpiece and Phillips be ordered to cease and desist their practices of discriminating against persons based on their sexual orientation and to immediately discontinue their policy and practice of refusing to provide goods and services to persons due to their sexual orientation.

3. That Masterpiece and Phillips be ordered to adopt a corrective policy which will allow Scardina and other similarly situated persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided by the bakery regardless of their sexual orientation.

4. That Masterpiece and Phillips be ordered to report to the Commission all remedial action taken to eliminate the discriminatory practices until such time as it has been established that all discriminatory practices have ceased.

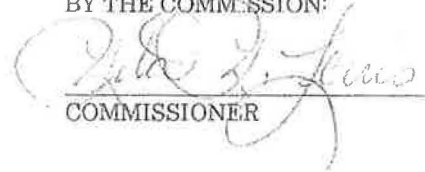
5. That Masterpiece and Phillips be ordered not to retaliate against Scardina in any way.

6. That Masterpiece and Phillips be ordered to provide any other relief which may be available to Scardina by virtue of operation of law and any other relief the Commission deems just and proper.

Masterpiece and Phillips may file a verified answer prior to the date of the hearing. The hearing will be conducted pursuant to sections 24-34-306 and 24-4-105, C.R.S. (2018). Failure to answer the complaint at hearing may result in entry of default judgment against Masterpiece and Phillips.

Dated this 9th day of October, 2018.

BY THE COMMISSION:



Handwritten signature of the Commissioner, appearing to be "John H. Lewis", written over a horizontal line.

COMMISSIONER

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **NOTICE OF HEARING AND FORMAL COMPLAINT** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 9 day of October, 2018 addressed as follows:

Autumn Scardina
7779 Everett Way
Arvada, CO 80005

John McHugh
Reilly Pozner LLP
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Denver, CO 80203

Masterpiece Cakeshop, Incorporated
3355 S. Wadsworth Blvd., H-117
Lakewood, CO 80227

Jacob Warner, Esq.
Alliance Defending Freedom
15100 N. 90th St.
Scottsdale, AZ 85260

By interdepartmental mailing services, copies were sent to:

Matthew Azer
Director/Chief ALJ
Office of Administrative Courts
1525 Sherman St, 4th Floor
Denver, CO 80203

Michelle Brissette Miller
First Assistant Attorney General
Employment/Personnel & Civil Rights Unit
Civil Litigation & Employment Law Section
1300 Broadway, 10th Floor
Denver, CO 80203

By Hand Delivery for filing on October 9, 2018:

Office of Administrative Courts
1525 Sherman St, 4th Floor
Denver, CO 80203

Adriana Camona

EXHIBIT 29

Colorado Civil Rights Commission

Colorado Civil Rights Division

2017 ANNUAL REPORT



Hon. John W. Hickenlooper, Governor

Marguerite Salazar, Executive Director, Department of Regulatory Agencies

Aubrey Elenis, Director, Colorado Civil Rights Division

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LETTER FROM THE DIRECTOR



Aubrey Elenis, Esq.

Dear Coloradans,

As Director of the Colorado Civil Rights Division, I am excited to share this report with you which highlights the work of Division and the Commission during the 2016-2017 fiscal year.

This year, the Division launched a new online filing and case management system, CaseConnect, which allows parties to file intake information and submit evidence. Parties are able to communicate with staff through this system and can check on the status of their case throughout the investigative process. The Division is pleased to be able to offer parties an additional method of communication, and provide updates in a more efficient and expeditious manner. Over half of the discrimination complaints that the Division receives are now submitted through CaseConnect.

The Division has also seen an increase in the number of discrimination complaints filed this fiscal year. In order to address discrimination complaints in a more timely manner, the Division made available additional staff for the Division's Alternative Dispute Resolution (ADR) program. Through the ADR program, the Division provides parties the option to utilize its neutral professional mediators to facilitate discussions and negotiations as they attempt to resolve the charge and dispute before the investigation process commences. Parties can save time, resources, and unwanted stress by participating in good faith to reach a mutually acceptable solution through the ADR process.

The Division is dedicated to serving all Coloradans, and I encourage you to learn more about the Division and the Commission in this annual report, and by visiting our website: <https://www.colorado.gov/dora/civil-rights>

Regards,

A handwritten signature in black ink that reads "Aubrey Elenis". The signature is written in a cursive, flowing style.

Aubrey Elenis, Director

LETTER FROM THE COMMISSION

Dear Coloradans,

We are pleased to present this annual report outlining the work and accomplishments of the Commission and the Civil Rights Division during the 2016-2017 state fiscal year. In this report for fiscal year 2016-17, you will find information regarding the powers and duties of the Commission, the Division's intake, investigation and Alternative Dispute Resolution (ADR) processes, as well as highlights and statistics regarding cases investigated, types of allegations filed, and case outcomes.

The Colorado Civil Rights Commission is a seven member volunteer board appointed by the Governor and confirmed by the Colorado State Senate. The Commission is tasked with eliminating unfair or discriminatory practices through education and outreach and partnering with other agencies and organizations to plan and provide education programs on anti-discrimination laws. The Commission also reviews appeals submitted by Complainants in which a No Probable Cause determination has been issued in their case. In addition, the Commission decides whether or not a case should be set for hearing before an Administrative Law Judge when a Probable Cause decision is issued, and the parties are unable to resolve the case through conciliation, which is a process offered through the Division's Alternative Dispute Resolution program.

We are committed to partnering with communities across Colorado to proactively advance equal rights in the most cost effective manner and least disruptive to the regulated community. We encourage you to attend our monthly meetings held in Denver and around the state so that you can hear about the current activities of the Commission and the Division and participate in discussions regarding the civil rights issues in your local communities. We also encourage you to visit our website, <https://www.colorado.gov/dora/civil-rights>, to learn more about the Colorado Anti-Discrimination Act, its enforcement, and as well as current news and events.

We are privileged to serve on the Commission and we are committed to enforcing the state's anti-discrimination laws in the areas of employment, housing, and places of public accommodation with support from the Colorado Civil Rights Division, the Department of Regulatory Agencies, and the Attorney General's office. Thank you for the opportunity to engage in this important work.

Respectfully,

The Colorado Civil Rights Commission

MEET THE COMMISSION



Anthony Aragon
Democrat,
Representing State or
Local Government
Entities, Denver

Term expires: 3/16/19



Ulysses J. Chaney
Republican,
Representing
state/local
government entities,
Colorado Springs

Resigned: 2/1/17



Dr. Miquel Elias
Republican,
Representing Commun-
ity at Large, Pueblo

Term expires: 3/13/20



Carol Fabrizio
Unaffiliated,
Representing
Business, Denver

Term expires: 3/16/19



Heidi Hess
Democrat,
Representing
Community at Large,
Clifton

Resigned: 1/9/18



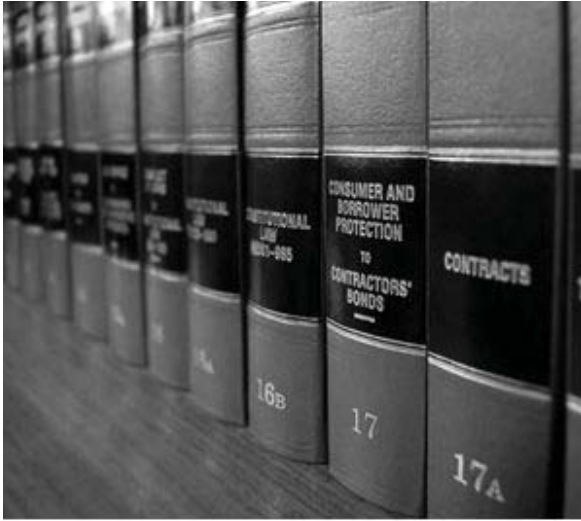
Rita Lewis
Democrat,
Representing Small
Business, Denver

Term expires: 3/16/19



Jessica Pocock
Unaffiliated,
Representing
Community at Large,
Colorado Springs

Term expires: 3/13/20



CCRC & CCRD OVERVIEW

Civil Rights Commission

The Colorado Civil Rights Commission (Commission) -- is a seven-member, bipartisan panel appointed by the Governor of Colorado pursuant to the Colorado Anti-Discrimination Act.

It has members representing various political parties, the community at large, as well as businesses, and groups that have been historically discriminated against. The members come from all regions of the State of Colorado.

Functions of the Civil Rights Commission

The mission of the Commission is to review appeals of cases investigated and dismissed by the Civil Rights Division; reach out to various communities to provide awareness of civil rights issues and protections; conduct hearings involving illegal discriminatory practices; initiate investigations regarding discrimination issues with broad public policy implications; advise the Governor and General Assembly regarding policies and legislation that address discrimination; and adopt and amend rules and regulations that provide standards and guidelines regarding the State statutes prohibiting discrimination.

Civil Rights Division

The Colorado Civil Rights Division (Division) is a neutral, fact-finding, administrative agency that provides civil rights education to the community, provides mediation and alternative dispute resolution services to resolve civil rights claims, and conducts investigations of charges of discrimination alleging violations of the Colorado Anti-Discrimination Act in the areas of employment, housing, and in places of public accommodation.

Civil Rights Division's Investigative Process

After a complaint is filed, an investigation is initiated. The investigation involves the collection of documentary evidence, witness interviews, and any other evidence relevant to resolving the complaint.

Once the investigation is completed, the Division Director or her designee issues a decision as to whether sufficient evidence exists to support the allegations of discrimination. If the decision is that no discrimination occurred, a Complainant may appeal the decision to the Commission.

If the Division finds that discrimination occurred, the statute requires that the Division attempt to settle the matter with the parties through a mandatory mediation conference. If mediation is unsuccessful, the Commission determines whether to set the case for an adjudicatory administrative hearing.

Civil Rights Division's Mediation Process

In order to resolve matters at the earliest possible stage in a case, the Division offers an Alternative Dispute Resolution (mediation) program early in an investigation, which can identify viable options for the early constructive resolution of cases.

Civil Rights Division's Training/Legal Advice Offerings

Because the Division is a neutral agency, it cannot provide legal advice or provide an opinion on a claim that may be brought before the Division. However, the Division and Commission engage in outreach and education to inform Coloradans of issues in civil rights and discrimination law.

The Division offers training programs to businesses and housing providers to help them ensure that they comply with the Colorado Anti-Discrimination Act (CADA). The Division also partners with other organizations and through independent outreach efforts to better serve the communities of Colorado.

The Division is increasingly providing internet-based access to all educational materials and has reached thousands of individuals and numerous communities to provide awareness of the anti-discrimination laws in Colorado. As statutory revisions are made affecting pertinent civil rights laws, updates are made to the brochures, teaching programs, and the Division's website that reflect those changes.

How does the CCRD & CCRC Help Serve Coloradans?

The mission of the Division and Commission is to promote equal treatment of all people in Colorado and foster a more open and receptive environment in which to conduct business, live, and work.

We are dedicated to promoting fair and inclusive communities through the enforcement of the civil rights laws, mediation, education, and outreach.



ENFORCEMENT

Case Processing

The primary mission of the Colorado Civil Rights Division (CCRD) is to enforce the anti-discrimination laws in the areas of employment, housing, and public accommodations under Title 24, Article 34, Parts 3-7, of the Colorado Revised Statutes. The Division investigates matters that come to its attention from Complainants in the public or which the Commission files with the Division on its own motion. The Division also works in conjunction with, and maintains work-share agreements with its federal counterparts, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). To avoid duplication of effort and provide more efficient customer service to the public, the Division investigates matters that are filed with both EEOC and HUD (“dual filing”), as well as cases that have jurisdiction exclusive to Colorado law. The staff of the Division strives to provide the best customer service to the public, as well as to all parties in a case, by the fairest and most transparent methods possible.



Charges Filed with CCRD

Cases are filed with the Division by Complainants alleging discrimination based on a protected class. A “protected class” is a characteristic of a person which cannot be targeted for discrimination. The specific Colorado Anti-Discrimination law falls under Title 24 of the Colorado Revised Statutes. As shown on the next page, discrimination charges based on retaliation, disability, and sex continue to be the highest in Fiscal Year 2016-2017, followed by race, age and national origin. Retaliation is an adverse action taken against someone who has opposed discrimination or participated in the investigation of a discrimination complaint or has engaged in other protected activity, such as requesting a reasonable accommodation for a disability.

Fiscal Year	Employment	Housing	Public Accommodation	Total Charges Filed
FY14-15	766	112	85	963
FY15-16	737	154	98	989
FY16-17	903	159	76	1138

PROTECTED CLASSES IN COLORADO

Housing, Employment, and Public Accommodations (PA)

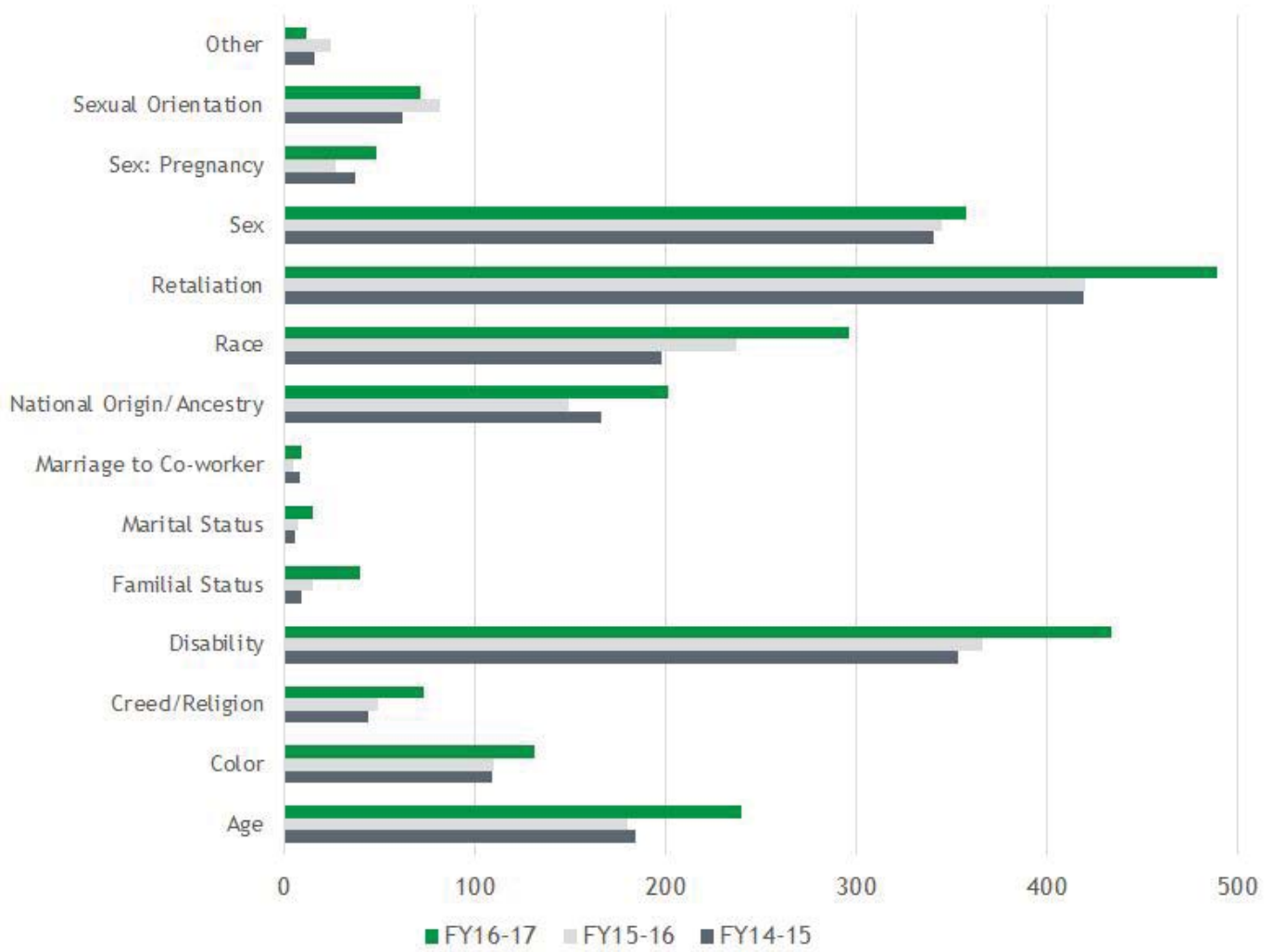
Age (employment only)	National Origin/Ancestry
Color	Race
Creed	Religion (employment and housing only)
Disability	Retaliation (for engaging in protected activity)
Familial status (housing only)	Sex
Marital status (housing and PA only)	Sexual Orientation/Transgender
Marriage to Co-worker (employment only)	

Basis of Charges Filed FY15-FY17

Basis*	FY14-15	FY15-16	FY16-17
Age	184	180	240
Color	109	110	131
Creed/Religion	44	49	73
Disability	353	366	433
Familial Status	9	15	40
Marital Status	6	7	15
Marriage to Co-worker	8	5	9
National Origin/Ancestry	166	149	201
Race	198	237	296
Retaliation	419	420	489
Sex	340	345	357
Sex: Pregnancy	37	27	48
Sexual Orientation	62	82	71
Other	16	24	12

* May be more than one basis per case

Charges Filed by Major Protected Class



Charges Filed by Allegation Type



Charges Filed by County FY16-17

[Consider including 1-2 sentences introducing the chart here.]

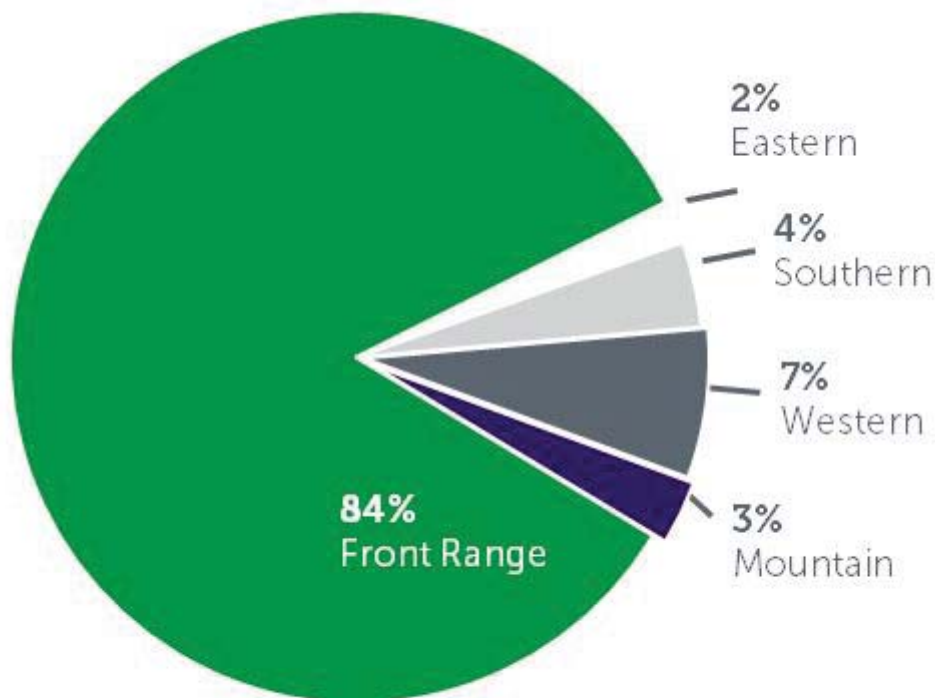
County	Employment	Housing	Public Accommodations	Total
Adams	73	6	1	80
Alamosa	2	0	2	4
Arapahoe	151	12	21	184
Archuleta	2	0	1	3
Baca	0	0	0	0
Bent	0	0	0	0
Boulder	59	4	7	70
Broomfield	12	2	2	16
Chaffee	2	0	0	2
Cheyenne	1	0	0	1
Clear Creek	0	0	0	0
Costilla	0	0	0	0
Conejos	0	0	0	0
Crowley	1	0	0	1
Custer	3	0	0	3
Delta	5	0	1	6
Denver	193	29	38	261
Douglas	35	3	5	43
Eagle	2	0	0	2
Elbert	1	0	0	1
El Paso	49	19	9	77
Fremont	8	0	0	8
Garfield	17	0	0	17
Gilpin	1	0	2	3
Grand	1	0	0	0
Gunnison	3	1	1	5
Hinsdale	0	0	0	0

Huerfano	1	0	0	1
Jackson	2	0	0	0
Jefferson	75	7	10	92
Kiowa	0	0	0	0
Kit Carson	1	0	0	1
La Plata	5	1	0	5
Lake	0	0	0	0
Larimer	45	7	2	54
Las Animas	3	0	1	4
Lincoln	0	0	0	0
Logan	11	1	2	14
Mesa	22	1	1	24
Mineral	0	0	0	0
Moffat	2	0	0	2
Montezuma	2	0	0	2
Montrose	8	0	1	9
Morgan	7	0	0	7
Otero	3	0	0	3
Ouray	1	1	0	2
Park	0	2	0	2
Phillips	0	0	0	0
Pitkin	1	0	0	1
Prowers	2	0	0	2
Pueblo	21	0	5	26
Rio Blanco	0	0	0	0
Rio Grande	4	0	0	4
Routt	3	0	0	3
Saguache	0	0	0	0
San Miguel	2	0	1	3
Sedgwick	0	0	0	0
Summit	4	0	0	4
Teller	5	0	0	5
Washington	0	0	0	0

Weld	34	2	1	37
Yuma	2	0	0	2

*some county data missing from online filings

Charges Filed by Region



INVESTIGATIONS & FINDINGS

When a formal complaint is filed alleging discrimination, the Division’s investigative staff conducts a neutral investigation. Evidence is gathered from both parties in the case, witnesses are interviewed, and documents and records are requested. The investigation under Colorado law provides a transparent process to allow the parties the opportunity to provide information and evidence that corroborates their allegations and which refutes the allegations of the opposing party.

After the investigation, the Division Director or her designee makes a determination as to whether there is sufficient evidence to support a finding of “probable cause” that discrimination has occurred. If the Director finds probable cause, the parties are required to attempt to resolve the matter through a mandatory mediation process (also called “Conciliation”). If the Director finds that there is “no probable cause” to believe that discrimination has occurred, the Complainant has the right to appeal that determination to the Commission. In employment cases, if the case is dismissed, the Complainant may file a legal complaint in civil court; however, in housing cases, the Complainant may file in civil court at any time without needing to exhaust administrative remedies prior to filing in court. If the Director finds probable cause in an employment case and the case is not settled in conciliation, the Commission then decides whether the matter will be noticed for hearing before an Administrative Law Judge. In housing cases, if the Director finds probable cause and the case is not settled in conciliation, the statute requires that the case be set for hearing.

The below chart provides statistics concerning the number of “Probable Cause” and “No Probable Cause” determinations issued by the Director in the past three years.

Findings of CCRD

Area of Jurisdiction	FY14-15		FY15-16		FY16-17	
	Probable Cause	No Probable Cause	Probable Cause	No Probable Cause	Probable Cause	No Probable Cause
Employment	18	449	16	271	16	383
Housing	3	93	15	81	14	121
Public Accommodation	1	55	2	55	2	66

Appeals

As explained, when the Director finds no probable cause in a case, the Complainant may appeal the decision to the Commission within ten days. The Commission will review the matter taking into consideration the argument and evidence that proves existing evidence was misinterpreted or new evidence presented that was not available during the investigation process. The following are the number of appeals filed with the Commission in the past three fiscal years.

Fiscal Year	Employment	Housing	Public Accommodation	Total
FY14-15	51	14	13	78
FY15-16	47	16	25	88
FY16-17	63	23	16	102

Cases Completed

Cases are closed under a number of circumstances, including: probable cause/no probable cause finding, successful mediation, closed after hearing, lack of jurisdiction, right to sue issued, and withdrawal or administrative closure. The Division strives to address as many cases as quickly as possible so that the parties are served by the process and matters can be resolved. The following chart demonstrates the number of cases that the Division closed in the past three fiscal years.

Fiscal Year	Employment	Housing	Public Accommodation	Total
FY14-15	644	122	67	833
FY15-16	563	118	62	743
FY16-17	751	183	91	1025

EMPLOYMENT CASES

Below are summaries of cases in which allegations of retaliation and discrimination based on age were made and in which the Division's examination of evidence supported the allegations asserted. Retaliation occurs when someone is subject to adverse action by a Respondent for engaging in protected civil rights related activity, for example, complaining of discriminatory conduct, participating in a civil rights related investigation, or requesting a reasonable accommodation for a disability.



Significant Employment Cases

The Division found Probable Cause that the Complainant, a derrick hand for a drilling contractor, was retaliated against when he complained of discrimination. The Complainant alleged that a co-worker pointed a BB gun at him and called him "bitch" and "nigger." The evidence demonstrates that the Complainant reported the allegations of discrimination to his supervisor. The evidence shows that Complainant was discharged within a few days of reporting the allegations of discrimination to his supervisor. The Respondent asserted that it offered to re-assign the Complainant to another work site, however, the Complainant refused, and because he did not want to be reassigned to another work site, was discharged. The evidence demonstrated that the Respondent's assertions were pre-textual and that the Complainant was discharged based on retaliation because he complained that he was being discriminated against based on his race.

The Complainant, age 61, was employed by the Respondent, a construction company, as a laborer. He worked for the Respondent for approximately one year when he was assigned to a new work crew and a new manager. The Complainant alleged that on a daily basis, the new manager would "yell" at workers and tell them they were not working fast enough, and would disparage older workers, suggesting that "they weren't good for anything." The Respondent conceded that it had received several complaints about this manager for allegedly telling older employees that they were "pieces of dirt, lazy, and not worth a shit," wanted to fire them, and planned on hiring younger employees to replace them. Interviews conducted with other employees confirmed the Complainant's allegations of harassment based on his age. While the Respondent removed the manager from this particular work crew, remedial action by an employer does not negate a claim of harassment when the harasser is a supervisor or manager.

HOUSING CASES

Allegations of discrimination based on familial status and race were supported by evidence obtained in two cases filed with the Division during the 2016-2017 fiscal year. Familial status is a protected class specifically in housing. Familial status refers to having a child or children under the age of 18 in the household. It also includes individuals in the process of adopting or obtaining custody of children under the age of 18, as well as pregnant women.

Significant Housing Cases

The Complainant rented an apartment from the Respondent landlords and signed another lease after living at the property for a year. Prior to her lease expiring, she expressed interest in renewing the lease for another year, and the landlords agreed to renew it without a rent increase. The Complainant alleges that she later informed her landlords that she was pregnant. The Respondent landlords agree that they told the Complainant that they had concerns about the Complainant living in the apartment with an infant, as they were concerned the infant would cry, which could lead to noise complaints from her neighbors. The landlords then informed the Complainant they would be raising her rent when her lease expired, and even though the Complainant agreed to pay the increase, the Respondents refused to renew her lease, stating that they planned to renovate the unit and possibly move into the unit themselves. The evidence demonstrated that the landlords did not move into the unit or renovate it, and instead, posted the unit for rent approximately 2 weeks after the Complainant moved out. The evidence demonstrated that none of the other tenants' leases were non-renewed, and none of the other tenants experienced rent increases as did the Complainant. The evidence obtained found that the landlords' reasoning for the non-renewal of the Complainant's lease was pretextual. The Division issued a Probable Cause determination that the Complainant was denied housing based on her familial status.

The Complainant filed a charge of discrimination with the Division alleging that she was denied housing based on her race/color (African American/Black). She rented an apartment from the Respondent owner for over a year without incident. The Respondent owner retained the services of a new property management company, who threatened the Complainant with eviction for allegedly smoking marijuana on the property and for damage to the property allegedly made by her children. The Complainant asserted that she does not smoke marijuana. Neighbors of the Complainant who are not African American/Black were interviewed, who confirmed that they did smoke marijuana. The evidence obtained during the investigation demonstrated that the Respondent property management company did not take steps to determine where the marijuana smoke was coming from, and assumed that it came from the Complainant's unit. The Respondent reported that the Complainant's lease was not renewed for several incidents involving the Complainant's children, such as breaking windows and throwing rocks at residents. The Respondent maintained that local law enforcement was called to address these incidents. The Division contacted the local law enforcement agency and records from the agency revealed that the reports involving broken windows at the property and rocks thrown at residents did not involve the Complainant or her children, but the children of other residents at the property not of the Complainant's protected class.

The evidence demonstrated that these residents did not receive Demands for Compliance or Possession, and that their leases were renewed upon request. The Complainant's lease was not renewed, despite her request to do so. The evidence obtained during the investigation demonstrated that the Complainant was denied housing based on her race/color (African American/Black).

PUBLIC ACCOMMODATION CASES

Colorado's laws also protect against discrimination in places of Public Accommodation, such as a library or a theatre. The law prohibits the denial of full and equal enjoyment of goods, services, facilities, privileges, and advantages in a place of public accommodation to any person of a protected class. A "place of public accommodation" is any place of business engaged in sales to the public and any place offering services to the public. Other examples include stores, restaurants, hotels, hospitals, parks, museums, sporting or recreational facilities, campsites, hospitals, and educational institutions (does not include churches, synagogues, mosques, or other places that are principally used for religious purposes).

NO place of public accommodation may post a sign which states or implies, "We reserve the right to refuse service to anyone."

Significant Public Accommodation Cases

The Complainant asserted that he was denied services due to his disability (hearing impairment). The evidence demonstrated that he attempted to obtain services from a company that provides services and technologies related to vehicle operation. The Complainant requested that a sign language interpreter be present to relay how to operate the technology that was being installed in his vehicle. The Respondent refused to provide an interpreter, forcing the Complainant to communicate in writing, even though American Sign Language is his first language, not English. The evidence demonstrated that communicating through writing was not effective for the Complainant, and that the Respondent had the resources to provide an interpreter, but refused to do so. The Division issued a Probable Cause finding in the case.

The Complainant filed a charge with the Division alleging that she was harassed based on her sex, female. The Complainant was a guest at the Respondent hotel. The Complainant asserted that a male valet carried her luggage to her room. The Complainant reported that the valet led her to a condominium instead of her room, and asked her if she would like to "hang out" and noted that the walls of the condominium were "soundproof." The Complainant states that she declined the invitation and was able to escape the situation when another person walked by. The Complainant avers that later in the evening the valet called her room and asked her if he could come up to her room and drink with her. She



declined. She states that she later saw the valet standing outside of her door, waiting for her to come out of her room. The Complainant contends that she felt unsafe and immediately checked out of the hotel. She went to the front desk and asked for a refund, which was provided. The front desk staff asked her why she was not satisfied with her stay, and she reported her concerns about the valet's behavior. The evidence shows that the Respondent immediately conducted its own investigation into the Complainant's allegations, and promptly terminated the employment of the valet. The Division determined that the Respondent had not discriminated against the Complainant based on her sex, as the Respondent took reasonable care to prevent and promptly correct any adverse treatment based on the Complainant's sex.

ALTERNATIVE DISPUTE RESOLUTION

In order to encourage parties in a case to consider potential resolutions of matters under investigation, the Division offers Alternative Dispute Resolution (ADR) as a time and cost savings alternative to investigation and litigation. This mediation program is provided at no cost to the parties. The process benefits the parties in that it allows open discussion and resolution of a matter at its lowest possible level. Prior to the initiation of an investigation, the Division provides the parties the opportunity to participate in voluntary mediation. This is a formal meeting held between the parties where a Division mediator acts as a neutral intermediary to assist the parties in reaching a compromise. As previously discussed, the ADR unit also conducts compulsory mediation as required by statute after probable cause is found in a case.

Fiscal Year	Mediations			Conciliations			Total		
	Number of Mediations Held	Mediations Resulting in Settlements	Value of Mediated Settlements	Number of Conciliations Held	Conciliations Resulting in Settlements	Value of Conciliated Settlements	Total Held	Total Resulting in Settlements	Total Value
FY14-15	92	44	\$ 542,685	22	10	\$256,250	114	54	\$798,935
FY15-16	114	69	\$949,029	28	17	\$169,021	142	86	\$1,118,050
FY16-17	128	50	\$2,663,406	39	11	\$206,850	167	61	\$ 2,870,256



The Division makes it a priority to provide parties with the opportunity to settle cases as often as possible. In many cases it proves to be a beneficial resolution. The parties are able to be heard as well as feel empowered to address a situation or improve relationships. Above are some statistics that demonstrate the work and outcomes of the program.

To improve customer service, reduce resources expended, and increase benefit to the parties in a case, the Division strives to decrease the time it takes to conduct mediations and conciliations. In this fiscal year, the Division was able to conduct 88% of its formal mediations within 45 days or less of the date the request for mediation was made.

OUTREACH & EDUCATION

Public education is a key part of the Commission’s and Division’s mission. Through the outreach and education program, we can raise public awareness of civil rights issues and knowledge of the laws prohibiting discrimination in employment, housing and places of public accommodations in Colorado.

In addition to the monthly educational training in Anti-Discrimination in Employment and Fair Housing provided in the main office in Denver, outreach members of the staff travel around the state providing educational presentations to businesses and individuals. In Fiscal Year 2016-2017, in addition to its regular training classes offered in Denver, the Division conducted training and outreach events in Longmont, Greeley, Fort Collins, Cortez, Colorado Springs, Grand Junction, Cañon City, Black Hawk, Aurora, Pueblo, Durango, Gunnison, Montrose, Boulder and Westminster.



The Division partners with other organizations to provide outreach, and leverages valuable resources by working with various organizations including city councils, academic institutions, non-profit organizations, and other government agencies thereby providing a greater ability to educate the public regarding anti-discrimination laws.

The Division also maintains a website at <https://www.colorado.gov/dora/civil-rights> where the public can learn about the Division and Commission, enroll in upcoming trainings, obtain information about anti-discrimination laws and rules, and download forms to file a complaint of discrimination. Members of the public are always encouraged to let us know how the website is assisting them with their needs.

Training & Outreach Events

Fiscal Year	Number of Trainings	No. of Trainings as Part of a Settlement	Number of Outreach Events	Total Trainings and Outreach
FY14-15	47	2	21	68
FY15-16	47	5	19	66
FY16-17	45	5	26	71

BUDGET

The Civil Rights Division is funded by the State of Colorado's General Fund. The Division's work is also supported by contractual agreements with the U.S. Department of Housing and Urban Development and the U.S. Equal Employment Opportunity Commission. Under the agreements, when Colorado and the federal government share jurisdiction, the Division conducts investigations on behalf of the federal government, avoiding duplicative effort and allowing for a more effective use of resources.

Budget FY 2016-2017 for FTEs

Source	Amount	Full-Time Employees
State General Funds	\$1,804,280	21.2
Grant Funds	\$672,138	6
Total	\$ 2,476,418	27.2

HISTORY OF CIVIL RIGHTS IN COLORADO

1876

The Colorado Constitution was ratified after 100 Black men demanded and were given the right to vote.

1885

The Colorado General Assembly passed the Public Accommodations Act prohibiting discrimination on the basis of race or color.

1893

Colorado expanded its laws and granted women the right to vote.

1917

Discriminatory advertising was added to the prohibitions contained in the 1895 Public Accommodations Act.

1951

The General Assembly passed the Colorado Anti-Discrimination Act creating the Fair Employment Practices Division, attached to the state's Industrial Commission, forerunner of the Colorado Department of Labor and Employment. The Division's mission was to research and provide education regarding employment discrimination and conduct hearings regarding job discrimination cases involving public employers; However, the fledgling agency was given no compliance or enforcement powers.

1955

Lawmakers gave the agency independence when they renamed it the Colorado Anti-Discrimination Commission, detached it from the Industrial Commission, and gave it enforcement authority over public agencies.

1957

The General Assembly repealed an existing statute that prohibited interracial marriage and made the Commission a full-fledged agency when they added private employers with six or more employees to its jurisdiction, and charged the Commission with enforcing the 1895 Public Accommodations Act.

1959

Colorado passed the nation's first state fair housing law to cover both publicly assisted and privately financed housing and added it to the Commission's jurisdiction.

1965

The Colorado legislature renamed the agency the Colorado Civil Rights Commission.

1969

Sex was added as a protected status under Colorado's fair housing law.

1973

Marital status was added as a protected status under Colorado's fair housing law.

1977

Physical disability was added as a protected status under Colorado's anti-discrimination laws.

1979

The Colorado Civil Rights Commission passed its first Sunset Review and was placed under the Department of Regulatory Agencies. The legislature also consolidated all of the state's civil rights laws into a single set of statutes and imposed a time limit (180 days) on the agency's jurisdiction.

1986

The General Assembly amended the state's fair employment statutes to include age (40-69 years) as a protected status.

1989

A second Sunset Review left the Commission and the Division stronger when legislators amended the statutes as follows:

- granted the Director subpoena power in the investigation of housing cases,
- granted Commission power to award back pay in employment cases and actual costs to obtain comparable housing in housing cases,
- added mental disability and marriage to a co-worker as protected classes in employment,
- required complainants to exhaust administrative remedies before filing a civil action in employment cases,
- made retaliation for testifying in a discrimination charge illegal, and
- made mediation mandatory after a finding of probable cause.

1990

Legislators amended Colorado's fair housing statutes to meet the federal requirement for "substantial equivalency," as follows:

- prohibited discrimination based on familial status (families with children under age 18),
- required builders of new multi-family dwellings to meet seven specific accessibility standards,
- required landlords to make "reasonable modifications" for persons with disabilities, including permitting disabled tenants to make structural changes at their own expense,
- gave parties to housing discrimination cases the option of having their case decided in a civil action rather than a hearing before an administrative law judge,
- gave courts or the Commission power to assess fines and award actual and compensatory damages in housing cases,
- gave title companies, attorneys, and title insurance agents power to remove illegal covenants based on race or religion,
- added mental disability as a protected status under Colorado's fair housing law.
- In employment cases, the legislature prohibited any lawful off-premises activity as a condition of employment illegal, with sole recourse through civil suits (dubbed the "smoker's rights" bill).

1991

The legislature gave the Director subpoena power in employment cases.

1992

Legislators fine-tuned the State's fair housing law to meet certain federal equivalency requirements as follows:

- prohibited "blockbusting" and discriminating in the terms and conditions of real estate loans, and
- excluded persons currently involved in illegal use of or addiction to a controlled substance from the definition of mental disability.

1993

The time limit for processing charges was extended from 180 days to 270 days, with the provision of a 180-day right-to-sue request.

1999

Colorado Civil Rights Division's third legislative Sunset Review left the agency with two new statutory mandates:

- gave jurisdiction to the agency for workplace harassment cases without economic loss,
- authorization to intervene in intergroup conflicts and offer voluntary dispute resolution services.

2000

The U.S. Courts of Appeals for the 10th Circuit in *Barzanji v. Sealy Mattress Co.*, issued an opinion in a case that was initially filed with the Division, which placed additional limitations on the concept of “continuing violations” and reaffirmed that the date of notification of adverse employment action is the correct date of record for purposes of measuring jurisdictional filing deadlines.

2007

The legislature added sexual orientation, including transgender status, as a protected class in employment cases.

2008

The legislature added sexual orientation, including transgender status, as a protected class in housing and public accommodation cases, but exclude churches and other religious organizations from jurisdiction under the public accommodation statute.

2009

The Colorado Civil Rights Division’s fourth legislative Sunset Review left the agency in place with three new statutory mandates:

- gave jurisdiction to the agency for claims involving terms and conditions of employment;
- allowed the Civil Rights Commission to initiate complaints; and
- extended the Division’s subpoena authority.

2013

The state legislature passed the Colorado Job Protection and Civil Rights Enforcement Act of 2013 which was signed by the Governor on May 6, 2013. Effective January 1, 2015, the Act expands the remedies a plaintiff may claim in a lawsuit in which intentional employment discrimination is proven to include attorneys’ fees, compensatory and punitive damages, and front pay. Additionally, effective January 1, 2015 the Act permits age claims to be made by employees whose age is 40 years and over, with no ceiling as to the maximum age an individual may be in order to bring a claim of age discrimination.

2016

The state legislature passed the Pregnancy Workers Fairness Act of 2016, which was signed by the Governor on June 1, 2016 and went into effect August 10, 2016. This Act requires employers to provide reasonable accommodations to pregnant workers and applicants, as well as conditions related to pregnancy, such as recovery from childbirth. If an employee/applicant requests an accommodation related to pregnancy/childbirth, the employer must engage in an interactive process with the employee/applicant and provide reasonable accommodations to perform the essential functions of the position unless the accommodation would pose an undue hardship on the employer’s business.