



## *The Masterpiece Cakeshop Case*

### “Frequently Asked Questions”

#### **1. Why are Jack Phillips and Masterpiece Cakeshop going to the Supreme Court?**

In 2012, two men entered Jack Phillips’s shop, Masterpiece Cakeshop, and asked Jack to design a wedding cake for their same-sex marriage. Because of his religious conviction that marriage is the union of one man and one woman, Jack told the couple that he’d gladly sell them anything in his store or create a cake for them for another occasion, but designing a custom cake to celebrate a same-sex marriage was not something he could do.

The couple filed a complaint with the Colorado Civil Rights Commission, and in 2014, the Commission determined that Phillips’s decision to live by his conscience was unlawful and ordered him (1) to design wedding cakes that celebrate same-sex marriages if he continues to create any wedding cakes, (2) to teach his staff, which includes his family members, that he was wrong to operate his business consistently with his religious beliefs, and (3) to file quarterly reports with the government for two years telling state officials every time he declines an order and explaining the reasons why. This order forced Jack out of the wedding industry, which has cost him about 40% of his business and left him struggling to keep his family business afloat. The Colorado Court of Appeals upheld the Commission’s ruling in 2015.

Jack is asking the Supreme Court to rule that the government oversteps its authority when it compels artists to use their expressive talents to celebrate events or express ideas that they do not support.

#### **2. How does Jack decide whom he will serve?**

Jack will serve any individual who walks through the doors of Masterpiece Cakeshop. Any customer is welcome to buy any of the premade items available for purchase or to order custom cakes. But Jack won’t create custom cakes that celebrate events or express messages that conflict with his faith. For that reason, he won’t design custom wedding cakes that celebrate same-sex marriages. Nor will he create cakes that celebrate Halloween, contain anti-American or anti-family themes, or promote atheism, racism, or indecency.

#### **3. Why does Jack call himself a “cake artist”?**

Jack is a cake artist because he combines his knowledge as a pastry chef with his skills as an artist to create elaborate custom cakes that celebrate his clients’ life events or express ideas important to them. While Jack uses edible materials instead of canvas or clay, his work in designing, shaping, and adorning custom cakes for his clients is much like the work of a sculptor and painter. Jack’s shop has been called an “art gallery of cakes.

#### **4. How can a tolerant society best protect everyone's rights?**

The First Amendment forbids the government from forcing creative professionals to express messages, produce art, or celebrate events against their will. The First Amendment also promises that we all are free to peacefully live and work consistently with our religious beliefs. A tolerant society preserves these cherished freedoms—not only for Jack but also for others—and also protects the right of “we the people” to hold a diversity of opinions and to determine for ourselves the ideas worthy of expression, adherence, and celebration.

#### **5. If Jack wins, what is the significance?**

It is impossible to predict how broad or narrow the Supreme Court's decision will be if it rules in Jack's favor. But it is our hope that the Court's ruling will ensure that the government cannot compel creative professionals to create art or other expression that conflicts with their deepest convictions.

#### **6. If Jack loses, what is the significance?**

We all have beliefs that we hold dear. For some people like Jack, those beliefs are religious. For others, those beliefs relate to issues like politics or matters central to their identity. If Jack is forced to create custom artwork that celebrates events in conflict with his core convictions, others will be similarly compelled to create various forms of expression that violate their conscience. So for example, the government could force a Muslim singer to perform at a Christian religious event or order a Democrat speechwriter to draft speeches for a Republican candidate. But no one should want to live in a world like that.

#### **7. Isn't what Jack did just like refusing to serve African-Americans at a lunch counter in the Jim Crow South?**

That comparison is both absurd and offensive. It serves only to shut down an honest debate about this case. Jack serves everyone, including people who identify as LGBT. But even though he serves everyone, he cannot create custom cakes that celebrate events or express ideas that conflict with his religious beliefs. He shouldn't be punished for reasonably exercising his artistic and religious freedom in this way.

Jack declines requests to create cakes that express indecency, racism, or other messages that conflict with his beliefs. In each of those situations, his decision focuses on what his art will express and not on the identity of the customer. In contrast, businesses in the Jim Crow South refused to work with African Americans in any capacity simply because of their skin color. What those business owners did was part of a systemic effort to suppress and exclude an entire race from public life.

Marriage between a man and a woman is a belief that has spanned cultures, races, and civilizations. The U.S. Supreme Court found Jim Crow and opposition to interracial marriage to be based on nothing but invidious discrimination and odious notions of white supremacy. But the Supreme Court recognized as recently as 2015 that people of good will are on both sides of the same-sex-marriage issue.

#### **8. Why is Jack imposing his beliefs on others?**

He's not, and he doesn't want others to impose their beliefs on him.

The real threat we're facing is a government that seeks to ruin some citizens – personally and professionally – for peacefully living according to their beliefs.

### **9. Isn't tolerance a good thing? What's wrong with forcing Jack to be tolerant?**

Tolerance doesn't require uniformity. Tolerance allows individuals the freedom to create their art and live their lives peacefully according to their convictions.

Supporters of same-sex marriage enjoy the freedom to live according to their beliefs about marriage. All Jack is asking for is the same freedom. Tolerance is a two-way street.

### **10. Businesses should be required to serve everyone. If business owners are allowed to turn away customers, won't that prevent individuals from getting services they need**

Jack does serve everyone, including people who identify as LGBT. But he cannot create custom cakes that celebrate events or express ideas in conflict with his beliefs. This includes wedding cakes that celebrate same-sex marriages.

Allowing Jack to live by his convictions doesn't keep same-sex couples from obtaining custom wedding cakes to celebrate their unions. In fact, there are at least forty-two cake artists in the Denver area (where Jack is located) who offer design cakes for same-sex weddings, and one of them is located less than a quarter mile from Jack's shop.

### **11. Aren't you elevating Jack's First Amendment rights over the rights of LGBT people guaranteed by nondiscrimination laws?**

Jack doesn't violate any proper understanding of nondiscrimination laws. He serves all people, but declines some requests for custom cakes that conflict with his faith. That is not a form of unlawful discrimination, but a legitimate exercise of his artistic and religious freedom.

Even if a state like Colorado declares Jack's actions to be unlawful discrimination, the First Amendment is our nation's preeminent civil rights law. No state or local nondiscrimination law can trump the artistic and religious freedom that the First Amendment guarantees. In fact, the Supreme Court has repeatedly recognized that nondiscrimination laws cannot trump the First Amendment's promise of expressive freedom.

First Amendment rights protect everyone, including people who identify as LGBT. The same principles that ensure Jack doesn't have to create art that violates his beliefs about marriage guarantee that an LGBT individual cannot be forced to make art that he or she considers objectionable.

### **12. Jesus said "love your neighbors," so wouldn't He have baked the cake?**

Like Jack, Jesus would have served everyone. But surely Jesus wouldn't help celebrate an event that conflicts with His plan for marriage.

Of course, this case is not about what Jesus would do or even about what you would do. It's about whether artists and other creative professionals are free to decide for themselves—or whether the government will dictate—which events they will celebrate or which ideas they will express through their art.