

**Case No. 23-002
Supreme Court**

MASTERPIECE CAKESHOP v. MULLINS

Parties: **Appellant – Masterpiece Cakeshop**
 Respondents – David Mullins and Charlie Craig

Issues:

1. Whether applying Wisconsin's Public Accommodations Law to compel the petitioner to create expression that violates his sincerely held religious beliefs about marriage violates the Free Speech Clause of the First Amendment.

2. Whether applying Wisconsin's Public Accommodations Law to compel the petitioner to create expression that violates his sincerely held religious beliefs about marriage violates the Free Exercise Clause of the First Amendment.

Facts:

In July 2019, David Mullins and Charlie Craig visited Masterpiece Cakeshop, a bakery located in Hudson, Wisconsin. Craig and Mullins requested that the bakery, owned by Jack Phillips, bake a wedding cake for them to use at their wedding reception. Craig and Mullins planned to marry in Saint Paul, Minnesota and then have a reception in Hudson, Wisconsin with family and friends. At the time they intended to get married both states, Wisconsin and Minnesota, recognized same-sex marriage.

Phillips declined to sell a cake to the couple, telling them that he did not provide wedding cakes for same-sex weddings due to his religious beliefs. Phillips, however, did inform Mullins and Craig that he was willing to make and sell them any other baked goods. He just would not provide them with a wedding cake.

Mullins and Craig left the bakery without discussing the details of the wedding cake any further. Craig's mother, Deborah Munn, called Phillips the following day. Phillips told her that he did not create wedding cakes for same-sex marriages, because of his religious beliefs.

In September of 2019, Craig and Mullins filed discrimination charges with the Wisconsin Equal Rights Division ("Division"), alleging discrimination based on sexual orientation in violation of Wisconsin Public Accommodation Law (WPAL). The WPAL

prohibits places of public accommodation, including businesses like Masterpiece Cakeshop, from refusing full and equal service because of factors such as race, creed, sex or sexual orientation, and prohibits the giving of preferential treatment to one class of people over another. The Division, after an investigation, issued a determination stating there was probable cause to believe discrimination occurred. In particular, the Division found there was probable cause to believe the Company denied Mullins and Craig full and equal service at a place of public accommodation in violation of the WPAL.

At a subsequent hearing an Administrative Law Judge ("ALJ") agreed there was probable cause to believe prohibited discrimination occurred and, after considering the undisputed material facts regarding the merits of the allegations, concluded there had in fact been discrimination that violated WPAL. The ALJ concluded Phillips holds sincere religious beliefs and believes he can honor God through his artistic talents including cake baking and decorating. However, the ALJ nonetheless denied the company's motion for summary judgment and granted summary judgment to Craig and Mullins. The ALJ ordered Phillips to (1) create wedding cakes celebrating same-sex marriages if he creates similar cakes for one-man-one-woman marriages, (2) retrain his staff to do likewise, and (3) report to the Division every order he declines to fill for any reason for the next two years.

Phillips timely petitioned the Wisconsin Labor & Industry Review Commission ("Commission") to review the ALJ's decision. After a hearing the Commission issued an Order affirming the ALJ's decision. The Commission's Order required Masterpiece to take remedial measures to ensure the company's compliance with WPAL. These remedial measures included comprehensive staff training and an alteration to the company's policies. The Commission's Order also required Masterpiece to file quarterly compliance reports for two years with the Division describing the remedial measures taken and documenting all customers denied service and the reasons for the denial.

Phillips and Masterpiece appealed the Commission's Order to the Wisconsin Circuit Court which affirmed the Commission's Order.

They then appealed to the Wisconsin Court of Appeals, which affirmed the Circuit Court's decision. The Court of Appeals held the Company's refusal to serve Mullins and Craig constituted discrimination because of sexual orientation, and that the First Amendment does not exempt businesses open to the public from antidiscrimination laws. The Court of Appeals rejected the argument that refusing to provide the cake did not constitute discrimination under Wisconsin law because the Company was

willing to provide other baked goods to Mullins and Craig. The Court of Appeals was not persuaded by the argument that the bakery's opposition to marriage for same-sex couples justified the refusal to provide service to the couple.

Phillips/Masterpiece argued at the appellate court that the alleged discrimination was not "because of" the couple's sexual orientation, so the refusal to provide service was not a violation of WPAL. The appellate court rejected that argument. The Court of Appeals reasoned that because same-sex marriage is closely correlated with Mullins' and Craig's sexual orientation the refusal to provide the requested cake constituted sexual orientation discrimination under Wisconsin law. The Court concluded the fact the Company was willing to provide other goods to the couple did not cure its discriminatory refusal to provide a wedding cake and noted the bakery provides wedding cakes to the general public.

The Court of Appeals distinguished a recent Wisconsin case involving a baker's refusal to create a particular cake. The would-be purchaser in that case requested two bible-shaped cakes inscribed with derogatory messages about gays, including the words, "Homosexuality is a detestable sin" and a citation to a bible verse. In that case, the refusal to create the requested cake was not a violation of Wisconsin law, the Court of Appeals stated, because the patron's request was refused not because of the patron's creed (a protected class under WPAL), but because of the offensive nature of the requested message.

The Court of Appeals also rejected Phillips' argument that the Commission's Order compelled him to speak in such a way as to violate the First Amendment. The Court reasoned that the WPAL does not target speech, but instead targets discriminatory conduct. Furthermore, neither WPAL nor the ALJ or Commission's Orders require the Company to express any particular message. Instead, the Company merely is required to treat same-sex couples the same as opposite-sex couples. Even if state law requires particular conduct (selling a cake), such conduct is not sufficiently expressive to warrant First Amendment protections.

The Court of Appeals concluded a reasonable observer would not view the Company's provision of a cake to a customer in compliance with a non-discrimination mandate as endorsing marriage for same-sex couples.

Finally, the Court of Appeals dismissed the Company's free exercise claim. The Court reasoned the Act was a neutral law of general applicability and did not target any particular religion. As such, the Court held the fact that the Company objected on

religious grounds to compliance with WPAL's nondiscrimination mandate presented no free exercise issue.

Phillips and Masterpiece appealed the decision to the Wisconsin Supreme Court.

Authorities:

The following is a brief summary of some things you should think about and keep in mind when you read the cases and as you prepare your briefs and arguments. You are not limited to these points. Instead, they are just good starter questions to think about. You will also notice some cases are available on the YIG website. These cases represent some of the materials you can use to begin your research. Other case citations are below but are not included in this packet—you will need to seek out these case materials to complete your briefs and oral arguments (denoted by **)

Summary:

Is Masterpiece entitled to refuse to accommodate requests by a mixed-race couple seeking to be married, if the message the baker is asked to convey conflicts with his religious views that mixed-race marriages are inconsistent with his religious beliefs?

Would a religiously-based pro bono legal services provider, such as Catholic Legal Services, be required to take a case related to a same-sex marriage? Or a divorce case or an assisted reproduction case?

Is there is a difference in terms of the type of speech? Baking a cake versus writing a song? Or creating a sign for a protest?

Cases and Related Materials:

Employment Division v. Smith, 494 U.S. 872 (1990)

West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943)

United States v. O'Brien, 391 U.S. 367 (1968)

**Boy Scouts v. Dale, 530 U.S. 640, 659 (2000)

**US Constitution, Amendment I