

Commonwealth of Kentucky
Supreme Court

File No. 2017-SC-00278

LEXINGTON-FAYETTE URBAN COUNTY
HUMAN RIGHTS COMMISSION

APPELLANT

v. On appeal from
Kentucky Court of Appeals
No. 2015-CA-00745

HANDS ON ORIGINALS, INC.

APPELLEE

**BRIEF OF CENTER FOR RELIGIOUS EXPRESSION
AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE**

Stanton L. Cave, Esq.
LAW OFFICE OF STAN CAVE
P.O. Box 910457
Lexington, KY 40591-0457
Telephone: (859) 309-3000
Facsimile: (859) 309-3001
Email: stan.cave@stancavelaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2018, true and accurate copies of this brief were served by first-class U.S. Mail, postage prepaid, on the Honorable James D. Ishmael, Jr., Fayette Circuit Court Judge, 120 North Limestone, Lexington, KY 40507; Edward E. Dove, Esq., 201 W. Short St., Ste. 300, Lexington, KY 40507; Bryan H. Beauman, Esq., Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Ste. 1500, Lexington, KY 40507.



Stanton L. Cave, Esq.

STATEMENT OF POINTS AND AUTHORITIES

IDENTITY AND INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION 1

Masterpiece Cakeshop v. Colorado Civil Rights Commission,
 Case No. 16-111..... 1

ARGUMENT 3

I. The parties and many of the *amici* opposing Masterpiece Cakeshop
 advance a view of antidiscrimination laws that supports Hands On. 3

 A. The parties’ arguments in Masterpiece Cakeshop 3

Craig v. Masterpiece Cakeshop, Inc.,
 370 P.3d 272, 282 n.8 (Colo. App. 2015).....3

 Brief for Petitioners at 36, *Masterpiece Cakeshop v.*
 Colorado Civil Rights Commission
 (U.S. No. 16-111).....4

 Brief for Respondents Charlie Craig and
 David Mullins at 26, *Masterpiece Cakeshop*
 v. Colorado Civil Rights Commission
 (U.S. No. 16-111)..... 5

 Transcript of Oral Argument at 76, *Masterpiece*
 Cakeshop v. Colorado Civil Rights Commission
 (U.S. No. 16-111)..... 5

 Brief for Respondent Colorado Civil Rights
 Commission at 17, *Masterpiece Cakeshop v.*
 Colorado Civil Rights Commission (U.S. No. 16-111)..... 6, 7

 B. *Amici*’s arguments against Masterpiece Cakeshop 7

 Brief of Massachusetts et al. as *Amici Curiae*
 in support of Respondents at 28,
 Masterpiece Cakeshop v. Colorado Civil
 Rights Commission (U.S. No. 16-111) 8

 Brief of 211 Members of Congress as
 Amici Curiae in support of Respondents at 23 n.6,
 Masterpiece Cakeshop v. Colorado Civil Rights
 Commission (U.S. No. 16-111) 8

	Brief of Floyd Abrams et al. as <i>Amici Curiae</i> in support of Respondents at 6, <i>Masterpiece Cakeshop v. Colorado Civil Rights Commission</i> (U.S. No. 16-111).....	9
C.	Others’ arguments in and about different cases	9
	<i>State v. Arlene’s Flowers, Inc.</i> , 389 P.3d 543 (Wash. 2017).....	9, 10
	John Corvino, <i>Why Print Shops Shouldn’t Be Forced to Make LGBTQ Pride T-Shirts</i> , Slate, May 15, 2017.....	10
II.	Other courts and many of the <i>amici</i> opposing Masterpiece Cakeshop candidly admit that compelling a person to write, print, create, or disseminate words or symbols threatens freedom of speech under the First Amendment.....	11
A.	Other courts’ arguments about compelled speech	11
	<i>Klein v. Oregon Bureau of Labor and Industry</i> , --- P.3d ---, 289 Or. App. 507, 2017 WL 6613356 (2017)...	11, 12
B.	<i>Amici’s</i> arguments against Masterpiece Cakeshop.....	13
	<i>State v. Arlene’s Flowers, Inc.</i> , 389 P.3d 543, 559 n.13 (Wash. 2017) (quoting <i>Anderson v. City of Hermosa Beach</i> , 621 F.3d 1051, 1061 (9th Cir. 2010)).....	12
	Brief of First Amendment Scholars as <i>Amici Curiae</i> in support of Respondents at 28, <i>Masterpiece Cakeshop v. Colorado Civil Rights Commission</i> (U.S. No. 16-111).....	13
	Brief for Freedom of Speech Scholars as <i>Amici Curiae</i> supporting Respondents at 8, <i>Masterpiece Cakeshop v. Colorado Civil Rights Commission</i> (U.S. No. 16-111).....	13
	<i>Amici Curiae</i> Brief of the National League of Cities in support of Respondents at 1, 27, <i>Masterpiece Cakeshop v. Colorado Civil Rights Commission</i> (U.S. No. 16-111).....	14
	CONCLUSION.....	14

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus Center for Religious Expression (“CRE”) is a nonprofit legal organization that defends the freedom of people of faith to speak, or decline to speak, consistent with their sincerely held religious beliefs. CRE is interested in this case because it does not believe that people should be forced to write, print, speak, or otherwise express messages that they cannot in good conscience support.

CRE has represented and continues to serve as legal counsel for Crosswater Canyon, Inc. and Answers in Genesis, Inc., two nonprofit entities incorporated in the Commonwealth of Kentucky, as well as Ark Encounter, LLC, a company conducting its primary business in the Commonwealth. Additionally, many other clients and supporters of CRE reside in Kentucky. CRE is concerned about the effect that this case might have on its clients’ free speech rights.

INTRODUCTION

The parties litigate this case in the shadow of the United States Supreme Court’s coming ruling in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, Case No. 16-111, a case that involves a cake artist named Jack Phillips and his business, Masterpiece Cakeshop. When a same-sex couple asked Mr. Phillips to design a custom wedding cake to celebrate their marriage, he declined the request because he could not in good conscience create a custom cake to celebrate an event that conflicts with his religious beliefs. But he told the couple that he would sell them other items in his shop or make them cakes for other occasions. Despite that offer, the two men filed discrimination complaints against Mr. Phillips, accusing him of discrimination based on sexual orientation. In response, Mr. Phillips invoked his First Amendment rights of religious and artistic freedom. Rejecting those defenses, the Colorado Civil Rights Commission ruled

against him, and now the United States Supreme Court is set to weigh in on the controversy.

Although that decision might inform the outcome of this case, it likely will not control this Court's ruling. Even if Masterpiece Cakeshop does not prevail in its case, Appellee, Hands On Originals ("Hands On"), should win this case. To see that this is true, the Court need look no further than the arguments advanced by the parties opposing Masterpiece Cakeshop before the Supreme Court.

As to the threshold question in this case, whether Hands On violated Lexington's antidiscrimination law, the parties opposing Masterpiece Cakeshop—*i.e.*, the Colorado Civil Rights Commission and the same-sex couple represented by the American Civil Liberties Union ("ACLU")—advance legal arguments that plainly exonerate Hands On of any wrongdoing. The basic principle that they advance is that creative professionals do not violate antidiscrimination laws when they decline to write, print, create, or disseminate a specific message (particularly one in the form of words) no matter who requests it. Not just the Colorado Civil Rights Commission and the ACLU but 20 states, 211 members of Congress, and many scholars that oppose Masterpiece Cakeshop as *amici* in that case also support this common-sense interpretation of antidiscrimination laws. In addition, prominent LGBT advocates and litigants in other cases like *Masterpiece Cakeshop* espouse that same position. As a result, because Hands On will not print the message that was requested of it for anyone, regardless of whether they are heterosexual or homosexual, a loud chorus of diverse groups and individuals agree that Hands On did not violate Lexington's antidiscrimination law.

Even if this Court disagrees and finds that Hands On contravened Lexington's

law, a similarly diverse group of advocates and courts have distinguished the First Amendment compelled speech question at issue in this case from the one at issue in *Masterpiece Cakeshop* and similar cases. The bottom line, according to those advocates and courts, is that regardless of the force of the compelled speech arguments in *Masterpiece Cakeshop*, requiring someone to write, print, create, or disseminate words or symbols that they disagree with raises weighty First Amendment issues under the Free Speech Clause. Therefore, even if the United States Supreme Court rules that the State of Colorado can compel Mr. Phillips to design a custom wedding cake in violation of his faith, it does not follow that the Lexington-Fayette Urban County Human Rights Commission can force Hands On to print words and symbols that express messages in violation of its sincerely held religious beliefs. In other words, regardless of the outcome in *Masterpiece Cakeshop*, the First Amendment erects a firm barrier against the compelled printing of words and symbols.

ARGUMENT

I. The parties and many of the *amici* opposing *Masterpiece Cakeshop* advance a view of antidiscrimination laws that supports Hands On.

A. The parties' arguments in *Masterpiece Cakeshop*

In *Masterpiece Cakeshop*, the Colorado Civil Rights Commission and the ACLU argue for a construction of antidiscrimination laws that favors Hands On in this case. To understand their arguments, it is important to know that during the pendency of the *Masterpiece Cakeshop* case, a man named William Jack went into three cake shops in Colorado and requested cakes in the shape of a Bible depicting an image of two grooms with words explicitly opposing same-sex marriage on religious grounds. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 282 n.8 (Colo. App. 2015). After each of

those shops rejected Mr. Jack's request, he filed complaints with the State arguing that those businesses discriminated against him because of his creed (that is, his religion). *See id.* The State "found that the bakeries did not refuse [Mr. Jack's] request because of his creed, but rather because of the offensive nature of the requested message," and so the government dismissed Mr. Jack's complaints. *Id.*

In their brief with the Supreme Court, Mr. Phillips and Masterpiece Cakeshop argued that the State's decision to exonerate those three cake shops shows that the government is engaged in viewpoint discrimination—by treating those who do not want to express support for same-sex marriage worse than those who do not want to criticize same-sex marriage. Here is what Mr. Phillips and his shop said in their brief:

Even though [the antidiscrimination law] forbids discrimination based on religion, the Commission has allowed three cake artists to refuse a religious customer's request to create custom cakes with religious messages *criticizing* same-sex marriage. In sharp contrast, though, the Commission has harshly punished Phillips for declining to express ideas *supporting* same-sex marriage. Such blatant viewpoint discrimination requires strict-scrutiny review.

Brief for Petitioners at 36, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111) (citations omitted), *available at* <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. The Colorado Civil Rights Commission and the ACLU, in response, argued that no viewpoint discrimination occurred because the State's decision not to punish the other three cake shops is a proper application of antidiscrimination law. After all, they recognized, if a business owner declines to write or otherwise create a message that he or she will not create for anyone, that is not unlawful discrimination.

The ACLU stated the argument this way: "The Anti-Discrimination Act does not

prohibit businesses from adopting policies that apply equally to all customers (for example, ‘*We won’t write this message for anyone*’). It simply prohibits refusing service because of a customer’s protected characteristic (‘We’ll sell this cake to anyone except Mormons’).” Brief for Respondents Charlie Craig and David Mullins at 26, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111) (emphasis added), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

The ACLU echoed that principle repeatedly throughout the case. For example, when referring to the other three cake shops, the ACLU wrote: “Because the bakeries would have refused to produce the cakes Mr. Jack requested for anyone—whether Christian, Muslim, agnostic, or atheist—the [State] found that they did not discriminate against Mr. Jack ‘because of’ his religion. That is a correct application of the statute” *Id.* at 25-26. And at oral argument, when Justice Ginsburg asked the ACLU’s attorney whether the antidiscrimination law would require a cake shop to write “God bless the union of Craig and Mullins” on a wedding cake, the attorney said that if the shop’s owner “would not put that message on any other cake, then he doesn’t have to put it on that cake.” Transcript of Oral Argument at 76, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

The Colorado Civil Rights Commission took the same position. In the “Summary of the Argument” section of its brief, the commission affirmed that businesses may decline requests to create any message or design so long as they do not make that message or design for other customers outside the protected class:

[B]usinesses do not violate public accommodations laws when, relying upon general terms of service, they decline to sell products with particular designs to all of their customers. Businesses trigger those laws only when they refuse to sell a product to customers because of their protected characteristics, despite selling the same product to others.

Brief for Respondent Colorado Civil Rights Commission at 17, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. Of particular note for this case, the commission made clear that business owners do not violate antidiscrimination laws when they “*decline* to sell [products] with ‘pro-gay’ designs or inscriptions.” *Id.* at 35. What a business owner may not do is “deny a product or service based on a customer’s sexual orientation, when he will sell the same product or service to others.” *Id.*

Later in its brief, the commission explained how these principles apply to the three cake shops who declined the religious messages opposing same-sex marriage:

These scenarios [involving the three cake shops] do not demonstrate viewpoint discrimination. They demonstrate how public accommodations laws operate. A business may refuse service for many reasons, including the specific design of a requested product. But it may not refuse service based on a customer’s identity. The three bakeries . . . would have refused to sell a cake with an anti-gay inscription to anyone—a Jewish person, a customer of a different race, or a heterosexual couple.

Phillips likewise has the right to decline an order for a cake with an “anti-family,” “hateful,” “or [sic] “vulgar” message, a right he claims to have exercised in the past. What Phillips may not do is make a cake of a particular design for anyone *but* same-sex couples (or African-Americans, Muslims, or women). . . .

Id. at 48-49 (citation omitted). The commission made the same points when criticizing the arguments raised by the United States in support of Masterpiece Cakeshop:

The United States, in describing how public accommodations laws operate, makes the same error as Phillips. It claims that, under the

Commission’s interpretation of the Act, a graphic designer would have to create fliers for “neo-Nazi[s]” and the “Westboro Baptist Church.” But even if those groups had protected characteristics, the graphic designer could refuse to sell fliers advertising their hateful messages and activities—so long as the designer would refuse to sell the same fliers to other customers.

Id. at 49 n.10 (citation omitted).

The commission reaffirmed all of this at oral argument. Justice Alito asked about the inequity in treatment between Masterpiece Cakeshop and the three other cake shops. Transcript at 58-59. In response, the commission’s attorney said that the facts of those three cases “are that someone walked into a bakery and wanted a particular cake with particular messages on it that that bakery wouldn’t have sold to any other customer. Mr. Phillips would not be required to sell a cake to a gay couple that he wouldn’t sell to his other customers.” *Id.* at 59-60. And later, when responding to another hypothetical from Justice Sotomayor, the commission’s attorney argued that if a business owners is asked for “a product he wouldn’t sell to any other customer, he would not have to sell it to this customer.” *Id.* at 61-62.

All of these arguments directly bear on the threshold statutory question presented here—whether Hands On engaged in unlawful discrimination by declining to print a message that it would not have printed for anyone. The unambiguous and repeated arguments of the ACLU and the Colorado Civil Rights Commission plainly support the Court of Appeals’ conclusion that what Hands On did here does not amount to illegal discrimination.

B. *Amici*’s arguments against Masterpiece Cakeshop

This interpretation of antidiscrimination law was also advanced by many of the *amici curiae* that supported the Colorado Civil Rights Commission (and thus opposed

Masterpiece Cakeshop). For example, the 20 States that supported the commission in that case had this to say about the three cake shops that declined the messages opposing same-sex marriage:

Like all public accommodations laws, Colorado’s law prohibits businesses from refusing to serve potential customers “*because of*” certain characteristics, like their race, sex, or sexual orientation. Colo. Rev. Stat. § 24-24-601(2)(a) (emphasis added). The Colorado Civil Rights Commission found that the bakers who declined to make the anti-LGBTQ cakes in the case Petitioners cite would have refused to make similar cakes for anyone; the refusal was not “because of” the identity of the customer.

Brief of Massachusetts et al. as *Amici Curiae* in support of Respondents at 28, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. Put differently, those states argued that cake shops may “refuse to sell a cake to a customer because they f[i]nd the particular *cake* itself offensive,” but they may not refuse if they find “the sale offensive because of the identity of the *customer* requesting the cake.” *Id.* at 28-29.

The 211 members of Congress who opposed Masterpiece Cakeshop said much of the same in their *amicus* brief:

[B]usinesses are free to adopt neutral and generally applicable terms-of-service policies. For example, a business could adopt a terms-of-service policy refusing to sell products containing hate speech. State, local and federal nondiscrimination laws simply require that if a business does adopt a terms-of-service policy that policy must apply to everyone equally.

Brief of 211 Members of Congress as *Amici Curiae* in support of Respondents at 23 n.6, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

Additionally, eight First Amendment scholars who opposed Masterpiece Cakeshop—a group led by well-known First Amendment advocate Floyd Abrams—recognized that antidiscrimination law “does not compel a baker to inscribe a cake with a unique message he has not produced and would not produce for any other customer—say, ‘God Bless This Gay Wedding.’” Brief of Floyd Abrams et al. as *Amici Curiae* in support of Respondents at 6, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. Likewise, those scholars said, antidiscrimination law “does not compel a jeweler to create a swastika pendant if she is unwilling to make that pendant for any other buyer.” *Id.* All these arguments, when applied to the facts of this case, lead to the inescapable conclusion that Hands On did not violate Lexington’s antidiscrimination law.

C. Others’ arguments in and about different cases

Similar views have been espoused in cases other than *Masterpiece Cakeshop*. For instance, *State v. Arlene’s Flowers, Inc.*, 389 P.3d 543 (Wash. 2017), which is a case similar to *Masterpiece Cakeshop*, involves a lawsuit against a 72-year-old florist who declined a longtime customer’s request to design floral arrangement for his same-sex wedding. During oral argument in that case, the court asked the attorney representing the same-sex couple whether a creative professional who records advertisements for a living may refuse to speak a message about same-sex marriage. Video of Oral Argument at 48:47, *State v. Arlene’s Flowers, Inc.*, 389 P.3d 543 (Wash. 2017), available at <https://www.youtube.com/watch?v=bOV2--oey6o>. In response, the attorney said that if that creative professional’s “policy is, ‘I refuse to film ads to support causes that I don’t believe in,’ and he follows that policy consistently without regard to a protected

category—sexual orientation, race, etc.—that would not be a violation” of the antidiscrimination law. *Id.* at 49:36-49:53. When pressed further, the attorney clarified: “If [that person] would refuse to say those words *regardless of who asks him*, whether the person is straight or gay, it’s not discrimination based on sexual orientation.” *Id.* at 50:34-50-41 (emphasis added).

Similar statements have been made in and about this very case against Hands On. In fact, the Director of the Lexington-Fayette Urban County Human Rights Commission testified under oath in this case that if a “company does not approve of [a] message that is a valid non-discriminatory reason to refuse the work.” Exhibit C at 32-34, 47-48 (Raymond Sexton Deposition). Additionally, LGBT advocate and scholar John Corvino, author of the recently published book *Debating Religious Liberty and Discrimination*, endorsed that view. He wrote that Hands On “was not refusing to sell the very same items to LGBTQ individuals . . . that it sells to other customers; it was refusing to sell a particular design”—“to write a message”—that it would not write for anyone. John Corvino, *Why Print Shops Shouldn’t Be Forced to Make LGBTQ Pride T-Shirts*, Slate, May 15, 2017, <http://slate.me/2rYHCwB>. For that reason, Professor Corvino has publicly stated that the Court of Appeals “was correct” in concluding that Hands On was not “guilty of sexual orientation discrimination.” *Id.* This Court should agree and affirm that decision.

II. Other courts and many of the *amici* opposing Masterpiece Cakeshop candidly admit that compelling a person to write, print, create, or disseminate words or symbols threatens freedom of speech under the First Amendment.

A. Other courts' arguments about compelled speech

A number of courts that have rejected compelled speech claims of creative professions sued under antidiscrimination laws have nonetheless recognized that the issue would have been different if the case involved words or symbols, as this case does.

One of those cases is *Klein v. Oregon Bureau of Labor and Industry*, --- P.3d ---, 289 Or. App. 507, 2017 WL 6613356 (2017), which, similar to *Masterpiece Cakeshop*, involves a cake shop owned by Aaron and Melissa Klein that was sued for declining to design a wedding cake that would celebrate a same-sex marriage. The court rejected the compelled speech claim in that case, but thought that the outcome might be different had the case involved words or other forms of “pure speech”:

We believe . . . that it is plausible that the United States Supreme Court would hold the First Amendment to be implicated by applying a public accommodations law to require the creation of pure speech or art. If [the government's] order can be understood to compel the Kleins to create pure “expression” that they would not otherwise create, it is possible that the Court would regard [the government's] order as a regulation of content, thus subject to strict scrutiny, the test for regulating fully protected expression.

Id. at *13. More simply stated, the court said that “if the ultimate effect of [the government's] order is to compel [someone] to create something akin to pure speech, then [the] order may be subject to strict scrutiny.” *Id.* at *14. But the court emphasized that “this is not a situation where the Kleins were asked to articulate, host, or accommodate a specific message that they found offensive.” *Id.* at *16. Critically, then, the court went on to write:

It would be a different case if [the government's] order had awarded damages against the Kleins for refusing to decorate a cake with a specific message requested by a customer ("God Bless This Marriage," for example) that they found offensive or contrary to their beliefs. *Cf. Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 282 n. 8 (Colo. App. 2015), *cert. den.*, No. 15SC738, 2016 WL 1645027 (Colo. Apr. 25, 2016), *cert. granted sub. nom. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, — U.S. —, 137 S.Ct. 2290, 198 L.Ed.2d 723 (2017) (distinguishing the refusal to create a custom wedding cake for a same-sex couple from the refusal to decorate a cake with a specific message, such as "Homosexuality is a detestable sin. Leviticus 18:2.").

Id. Thus, that court explicitly distinguished a request for an artistic product like a wedding cake from a request for specific words.

Similarly, the Colorado appellate court in *Masterpiece Cakeshop*, in the opinion now under review by the U.S. Supreme Court, "recognize[d] that a wedding cake, in some circumstances, may convey a particularized message celebrating same-sex marriage and, in such cases, First Amendment speech protections may be implicated." *Craig*, 370 P.3d at 288. That court, therefore, acknowledged that the presence of words or symbols communicating specific messages changes the constitutional calculus.

In addition, the Washington Supreme Court in *Arlene's Flowers* indicated that careful constitutional scrutiny is required whenever the government compels people to create words, images, or symbols. Specifically, the court stated that "words, realistic or abstract images, symbols, or a combination of these"—which, according to the court, were not present in that case—"are forms of pure expression that are entitled to full First Amendment protection." *State v. Arlene's Flowers, Inc.*, 389 P.3d 543, 559 n.13 (Wash. 2017) (quoting *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061 (9th Cir. 2010)). Thus, where words, images, or symbols are involved, as they are in this case, there is no doubt that the First Amendment applies.

B. *Amici's* arguments against Masterpiece Cakeshop

Like the courts discussed above, many of the *amici* that opposed Masterpiece Cakeshop have acknowledged that compelling a creative professional to write words or create designs poses serious First Amendment questions. To begin with, 13 First Amendment scholars who filed a brief against Masterpiece Cakeshop admitted this in their brief:

Had Masterpiece refused service because of a disagreement over the actual cake design, and if state law gave customers a right to sue in such circumstances, that hypothetical case might raise serious First Amendment questions about the extent to which the law may compel the actual content of a baker's artistic expression.

Brief of First Amendment Scholars as *Amici Curiae* in support of Respondents at 28, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. Likewise, another group of free speech scholars who opposed Masterpiece Cakeshop wrote that "serious constitutional questions would be raised if [an antidiscrimination] statute compelled a baker to affix an offensive message to a cake he or she was asked to bake." Brief for Freedom of Speech Scholars as *Amici Curiae* supporting Respondents at 8, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

Finally, the National League of Cities, which "is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans," explicitly distinguished *Masterpiece Cakeshop* from this case because "[n]o actual images, words, or design celebrating same-sex marriage or the rights of LGBT individuals were ever at issue" there. *Amici Curiae* Brief of the National League of Cities

in support of Respondents at 1, 27, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (U.S. No. 16-111), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

In short, no matter the merits of the First Amendment compelled speech claim in *Masterpiece Cakeshop*, a broad array of diverse voices recognize that it is constitutionally suspect for the government to coerce people to write, print, create, or disseminate words or symbols that express messages they cannot in good conscience support.

CONCLUSION

For the foregoing reasons, regardless of the ruling in *Masterpiece Cakeshop*, this Court should affirm the Court of Appeals' decision in this case.

Respectfully submitted,

A handwritten signature in blue ink that reads "Stanton L. Cave". The signature is written in a cursive style with a horizontal line underneath.

Stanton L. Cave, Esq.

LAW OFFICE OF STAN CAVE

P.O. Box 910457

Lexington, KY 40591-0457

Telephone: (859) 309-3000

Facsimile: (859) 309-3001

Email: stan.cave@stancavelaw.com