AOW 4 Period: Name:

1. Summarize main and important points in margins, and underline key sentences.
2. Include your own original reactions and questions in margins.
3. Write a one-page reflection and attach it to the article.

**Codes**: MI=More Main Ideas need summarizing; OC=More Original Content needed

# Cake Is His ‘Art.’ So Can He Deny One to a Gay Couple? By [ADAM LIPTAK](https://www.nytimes.com/by/adam-liptak)SEPT. 16, 2017 *New York Times*

LAKEWOOD, Colo. — Jack Phillips bakes beautiful cakes, and it is not a stretch to call him an artist. Five years ago, in a decision that has led to a Supreme Court showdown, he refused to use his skills to make a wedding cake to celebrate a same-sex marriage, saying it would violate his Christian faith and hijack his right to express himself. “It’s more than just a cake,” he said at his bakery one recent morning. “It’s a piece of art in so many ways.” The couple he refused to serve, David Mullins and Charlie Craig, filed civil rights charges. They said they had been demeaned and humiliated as they sought to celebrate their union.“ We asked for a cake,” Mr. Craig said. “We didn’t ask for a piece of art or for him to make a statement for us. He simply turned us away because of who we are.”

At first blush, the case looked like a conflict between a state law banning discrimination and the First Amendment’s protection of religious freedom. But when the Supreme Court hears the case this fall, the arguments will mostly center on a different part of the First Amendment: its protection of free speech. The government, Mr. Phillips contends, should not be allowed to compel him to endorse a message at odds with his beliefs. “I’m being forced to use my creativity, my talents and my art for an event — a significant religious event — that violates my religious faith,” Mr. Phillips said. Gay rights groups regard the case as a potent threat to the equality promised by the Supreme Court in 2015 when it said the Constitution guaranteed the right to same-sex marriage. A ruling in favor of Mr. Phillips, they said, would mark the marriages of gay couples as second-class unions unworthy of legal protection.

After losing the court fight on same-sex marriage, opponents regrouped and reframed their legal arguments, focusing on the rights of religious people. They say, for instance, that many businesses run on religious principles have a free speech right to violate laws that forbid discrimination against gay men and lesbians. The argument has met with little success in the lower courts. But the Supreme Court has in recent years been exceptionally receptive to free speech arguments, whether pressed by [churches](https://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf), [corporations](https://www.law.cornell.edu/supct/html/08-205.ZS.html), [pharmaceutical companies](https://www.supremecourt.gov/opinions/10pdf/10-779.pdf), [musicians](https://www.supremecourt.gov/opinions/16pdf/15-1293_1o13.pdf) or [funeral protesters](https://www.supremecourt.gov/opinions/10pdf/09-751.pdf). And [it has ruled](https://www.law.cornell.edu/supremecourt/text/430/705) that the government may not compel people to convey messages that they do not believe.

It takes the votes of four justices to add a case to the Supreme Court’s docket, meaning at least that many thought Mr. Phillips’s case worthy of review. Earlier opinions suggest that the court will be closely divided in the case. The Trump administration, for its part, filed [a brief](http://www.scotusblog.com/wp-content/uploads/2017/09/16-111-tsac-USA.pdf) urging the court to rule for Mr. Phillips on free speech grounds. Mr. Craig said the free speech argument was a smoke screen. “It’s not about the cake,” he said. “It is about discrimination.” If a bakery has a free speech right to discriminate, gay groups contend, then so do all businesses that may be said to engage in expression, including florists, photographers, tailors, choreographers, hair salons, restaurants, jewelers, architects and lawyers. A ruling for Mr. Phillips, they say, would amount to a broad mandate for discrimination.

The case, Masterpiece Cakeshop v. Colorado Civil Rights Commission, No. 16-111, will be argued in the late fall and is likely to turn on the vote of Justice Anthony M. Kennedy, who is simultaneously the court’s most prominent defender of gay rights and its most ardent supporter of free speech. His majority opinion in [Obergefell v. Hodges](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf), the 2015 decision establishing a constitutional right to same-sex marriage, seemed to anticipate clashes like this one. Justice Kennedy called for “an open and searching debate” between those who opposed same-sex marriage on religious grounds and those who considered such unions “proper or indeed essential.” But the debate has instead turned into another battle in the culture wars, with sharp-edged litigation taking the place of the civil discussion Justice Kennedy had invited. On one side are religious people who say the government should not force them to violate their principles in order to make a living. On the other are same-sex couples who say they are entitled to equal treatment from businesses open to the public.

Mr. Mullins and Mr. Craig have so far prevailed, winning before the Colorado civil rights commission and in the courts. The Colorado Court of Appeals ruled that Mr. Phillips’s free speech rights had not been violated, noting that the couple had not discussed the cake’s design before Mr. Phillips turned them down. The court added that people seeing the cake would not understand Mr. Phillips to be making a statement and that he remained free to say what he liked about same-sex marriage in other settings. The Alliance Defending Freedom, a conservative Christian group that represents Mr. Phillips, said in a brief that the Supreme Court has long recognized a First Amendment right not to be forced to speak. In 1977, for instance, the court [ruled](http://www.law.cornell.edu/supremecourt/text/430/705) that New Hampshire could not require people to display license plates bearing the state’s motto, “Live Free or Die.”

A wedding cake created by Mr. Phillips, [the group said](http://www.adfmedia.org/News/PRDetail/8700), is “the iconic centerpiece of the marriage celebration” and “announces through Phillips’s voice that a marriage has occurred and should be celebrated.” “The government can no more force Phillips to speak those messages with his lips than to express them through his art,” the brief said. The couple’s meeting with Mr. Phillips five years ago was, both sides agree, short and unpleasant. The excited couple had a binder full of possible designs, but they never got to open it. Mr. Craig’s mother had tagged along to give advice, but she never got to offer it. Mr. Phillips shut down the conversation as soon as he heard that a gay couple was getting married. “I’ll make you birthday cakes, shower cakes, cookies, brownies,” Mr. Phillips recalled saying. “I just can’t make a cake for a same-sex wedding.” Mr. Mullins remembered being stunned. “What followed was a horrible pregnant pause as what was happening really sunk in,” he said. “We were mortified and just felt degraded, and it was all the worse to have Charlie’s mom sitting there with us. You don’t want your mom to see something like that happen to you.”

Mr. Phillips’s bakery is in a modest strip mall, but it is homey and colorful, with a children’s play area, a desk bearing several Bibles and lots of fancy baked goods. One cake looked like a basket of flowers. Another was covered in a moonlit winter landscape rendered in frosting. A third bore a likeness of the Rev. Dr. Martin Luther King Jr. Mr. Phillips, 61, grew emotional as he talked about the case. “I have no problem serving anybody — gay, straight, Muslim, Hindu,” he said. “Everybody that comes in my door is welcome here, and any of the products I normally sell I’m glad to sell to anybody.” But a custom-made wedding cake is another matter, he said. “Because of my faith, I believe the Bible teaches clearly that it’s a man and a woman,” he said. Making a cake to celebrate something different, he said, “causes me to use the talents that I have to create an artistic expression that violates that faith.”

Mr. Mullins and Mr. Craig, speaking in the kitchen in their Denver home, rejected the distinctions Mr. Phillips drew. “Our story is about us being turned away and discriminated against by a public business,” said Mr. Mullins, 33, an office manager, poet, musician and photographer. Mr. Craig, 37, who works in interior design, said the episode at the bakery still haunted them. “To this day, we still question whether talking about our relationship when we go in somewhere, we could be discriminated against again,” he said. They were formally married in 2012 in Provincetown, Mass., because same-sex marriage was not yet lawful in Colorado. But the wedding reception was back home. After Mr. Phillips turned them down, another baker supplied the cake. “The point isn’t that we could get a cake elsewhere,” Mr. Mullins said. “Of course we could get a cake somewhere else. This was about us being turned away from and denied service at a business because of who we are and who we love.”

Mr. Phillips, who calls his bakery Masterpiece Cakeshop, said he chose the name with care. It was partly to emphasize the creativity that informs his craft, he said. “It says ‘masterpiece,’” he said, “which hopefully indicates painting and art.” The name is also a nod to Jesus Christ, Mr. Phillips said. “It’s not just the art,” he said. “It’s not just the cakes. It’s not just the baking. It’s my faith.” The case has taken a financial toll, Mr. Phillips said. A judge ordered him to create custom wedding cakes for same-sex marriages if he did so for opposite-sex ones. He instead stopped making custom wedding cakes entirely. “The civil rights commission says you have to violate your faith,” he said. “Use your talents and make cakes for religious events you don’t agree with. The only way I can avoid disobeying the ruling of the court is to not make wedding cakes, period.”Top of FormBottom of Form