

In the
Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD.; AND JACK C. PHILLIPS,

Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION; CHARLIE CRAIG; AND DAVID MULLINS,

Respondents.

**On Writ of Certiorari to the
Colorado Court of Appeals**

RESPONDENTS' JOINT MOTION FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of this Court, Respondents Colorado Civil Rights Commission (“the State”), and Charlie Craig and David Mullins (“the Individual Respondents”), jointly file this motion for divided oral argument. Respondents request that argument time be divided equally between counsel for the State, to appear first, and counsel for the Individual Respondents, to appear second. This division of argument time will ensure that both sets of Respondents have their interests fully represented and their arguments fully conveyed by counsel, and it will ensure that the Court will receive a full understanding of the interests and perspectives of all Respondents.

Petitioners do not oppose Respondents’ motion.

1. There are two sets of interested Respondents in this appeal, each with unique interests in, and perspectives regarding, the question presented. The State seeks primarily to advance its sovereign interests in the enforceability and constitutionality of its anti-discrimination laws, whereas the Individual Respondents seek primarily to advance the interests of individuals protected by those laws. Given their different perspectives, Respondents believe that the Court would materially benefit from oral argument on behalf of both the State and the Individual Respondents. Each set of Respondents has been represented by separate counsel throughout this case and continues to be.

When both governmental and private parties appear on the same side of a case, this Court regularly hears oral argument from both. *See, e.g., Wittman v. Personhuballah*, 136 S. Ct. 1241 (2016) (mem.); *Friedrichs v. Cal. Teachers Ass'n*, 136 S. Ct. 566 (2015) (mem.); *Harris v. Ariz. Indep. Redistricting Comm'n*, 136 S. Ct. 533 (2015) (mem.); *Michigan v. EPA*, 135 S. Ct. 1541 (2015) (mem.); *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 884 (2014) (mem.); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 72 (2011) (mem.); *Nw. Austin Mun. Utility Dist. No. 1 v. Holder*, 556 U.S. 1163 (2009) (mem.); *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320 (2000); *Abrams v. Johnson*, 521 U.S. 74 (1997); *Bush v. Vera*, 517 U.S. 952 (1996). Granting divided argument recognizes the distinct sovereign interests of a government in representing itself, and the individual interests of the private parties. For instance, in *Hosanna-Tabor*, which similarly concerned a First Amendment challenge to an anti-discrimination

statute, this Court granted divided argument between the private charging party and the government agency (the Equal Employment Opportunity Commission). Likewise, in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987)—another First Amendment case—both a local Rotary Club and the State of California argued in defense of a state public accommodations law. Divided argument is similarly justified here.

2. This case is plainly of great public importance and presents two distinct constitutional arguments. It concerns whether the Free Speech Clause or the Free Exercise Clause provides a business that is open to the public with a defense to a claim that it engaged in discrimination prohibited by a state law that targets neither speech nor religion. Both the free speech and free exercise arguments present complex legal issues. This Court has previously granted motions for divided argument in cases that present weighty constitutional or statutory questions and involve multiple parties and interests. *See, e.g., United States v. Texas*, 136 S. Ct. 1539 (2016) (mem.); *Friedrichs*, 136 S. Ct. 566; *Kansas v. Carr*, 135 S. Ct. 2917 (2015) (mem.); *Se. Legal Found., Inc. v. EPA*, 134 S. Ct. 1051 (2014) (mem.); *NLRB v. Noel Canning*, 134 S. Ct. 811 (2013) (mem.).

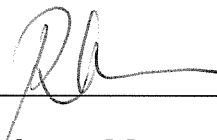
Counsel for each set of Respondents will be in the best position to expand upon the arguments presented in their separate merits briefs as to the constitutionality of Colorado's public accommodations law and the harms that a constitutional defense to its enforcement would create.

3. In light of the United States' *amicus* filing, the opposing parties are likely to seek divided argument as well.

CONCLUSION

For the foregoing reasons, both the State's and the Individual Respondents' participation in oral argument would be of material assistance to the Court. Movants therefore jointly request that the Court divide oral argument time equally between counsel for the State, to appear first, and counsel for the Individual Respondents, to appear second.

Respectfully submitted,



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