COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203	DATE FILED: February 17, 2015 9:18 AM
COLORADO CIVIL RIGHTS COMMISSION, DEPARTMENT OF REGULATORY AGENCIES 1560 Broadway, Suite 1050 Denver, CO 80202 Case No. 2013-0008	
RESPONDENTS-APPELLANTS: MASTERPIECE CAKESHOP, INC., and any successor entity, and JACK C. PHILLIPS, v. PETITIONERS-APPELLEES: CHARLIE CRAIG and DAVID MULLINS.	
John M. McHugh, No. 45456, jmchugh@rplaw.com Anthony L. Giacomini, No. 26057, agiacomini@rplaw.com REILLY POZNER LLP 1900 16th Street, Suite1700 Denver, CO 80202 (303) 893-6100 Jennifer C. Pizer, *of counsel* Lambda Legal Defense and Education Fund, Inc. 4221 Wilshire Boulevard, Suite 280 Los Angeles, California 90010 (213) 382-7600 ext. 242 jpizer@lambdalegal.org	▲ COURT USE ONLY ▲ Court of Appeals Case No. 2014CA1351

BRIEF *AMICI CURIAE* OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., ONE COLORADO AND ONE COLORADO EDUCATIONAL FUND IN SUPPORT OF APPELLEES

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

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It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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of C.A.R. 28 and C.A.R. 32.

s/ John McHugh

John McHugh

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INTERESTS OF AMICI

Amicus Curiae Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is the nation's oldest and largest legal organization working for full recognition of the civil rights of lesbian, gay, bisexual, and transgender ("LGBT") people and people living with HIV through impact litigation, education and policy advocacy. *See, e.g., Lawrence v. Texas,* 539 U.S. 558 (2003) (Texas ban on same-sex adult intimacy was unconstitutional denial of liberty); *Taylor v. Rice*, 451 F.3d 898 (D.C. Cir. 2006) (allowing challenge to U.S. Foreign Service's blanket exclusion of HIV-positive applicants to proceed to trial).

Lambda Legal has represented lesbian and gay couples in many cases of sexual orientation discrimination involving assertions that neutral statutes, rules, or policies regulating businesses, professional services, and other public accommodations infringed religious freedom. *See, e.g., North Coast Women's Care Med. Grp., Inc. v. San Diego Cnty. Superior Court (Benitez)*, 189 P.3d 959 (Cal. 2008) (rejecting claim that nondiscrimination statute protecting LGBT patients infringed physician's speech and religious exercise rights); *Cervelli v. Aloha Bed & Breakfast*, Hawaii Intermediate Court of Appeals Case No. CAAP-13-0000806 (in case concerning refusal of lodging to lesbian couple, appeal by proprietor of rejection of religious liberty defense), information available at

http://www.lambdalegal.org/in-court/cases/cervelli-v-aloha-bed-and-breakfast; *McCrea and White v. Sun Taxi Assoc. et al.*, Illinois Dept. of Human Rights Charge No. 2014-CP-1093 (sexual orientation discrimination charge filed by gay couple after being ejected from taxicab), information available at http://www.lambdalegal.org/sites/default/files/mccrea_il_20131028_charge-of-discrimination.pdf; *Odgaard v. Iowa Civil Rights Comm'n*, Iowa Supreme Court Case No. No. 14-0738 (case filed by owners of art gallery and event space who refused rental to same-sex couple for wedding reception, seeking to bypass state civil rights agency's investigation of couple's discrimination complaint), information available at http://www.lambdalegal.org/in-court/cases/odgaard-v-iowa-civil-rights-commission.

Amicus Curiae One Colorado is a statewide advocacy organization dedicated to securing and protecting equality and opportunity for LGBT Coloradans and their families. It works toward that goal by advocating for LGBT Coloradans and their families and by lobbying the General Assembly, executive branch, and local governments on issues such as safe schools, recognition of LGBT people's family relationships, and LGBT health and human services. *Amicus Curiae* One Colorado Education Fund is a 501(c)(3) nonprofit organization that shares with One Colorado a mission to secure and protect equality and opportunity for LGBT

Coloradans and their families. The One Colorado Education Fund provides educational programming on LGBT issues, conducts research to understand public opinions, mobilizes a community of LGBT people and straight allies, and develops campaigns to build public support for fairness and equality. Together, these organizations are working for a fair and just Colorado.

The legal issues before this Court on the instant appeal are similar to those addressed in cases arising in many other states. Because the Court's decision here is likely to affect thousands of LGBT people across Colorado, Lambda Legal, One Colorado and One Colorado Educational Fund share a particular interest in ensuring that the Court may consider the issues presented here with the additional context provided in this *amici* brief.

STATEMENT OF THE CASE

Amici Curiae join in the Statement of the Case presented by Appellees.

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case concerns sexual orientation discrimination by a man who has chosen to earn his living by making and selling cakes—including wedding cakes—to the general public. Through his business, Appellant Masterpiece Cakeshop, Inc. ("Cakeshop"), Appellant Jack Phillips offers a variety of styles, colors and flavors

from which his customers may choose what suits their tastes and plans. While he decides the range of options that will comprise his offerings, he does not, of course, limit certain colors or flavors to persons of particular races or ethnicities. Likewise, and similarly in keeping with Colorado law, Cakeshop does not limit sales to those who share Mr. Phillips' religious beliefs. But unlike this routine willingness to serve those of faiths different from his, as well as atheists and interfaith couples, Cakeshop and Mr. Phillips claim a religious right to turn away lesbian and gay couples. [1] Regardless of what motivates Mr. Phillips personally, that is sexual orientation discrimination and it violates the Colorado Anti-Discrimination Act ("CADA"), COLO. REV. STAT. §§ 24-34-601–605 et seq.

Appellants contend that this Court should create an exception to CADA that allows them to turn away same-sex couples because they claim that the State's interest in enforcing the law with respect to this business is only "marginal," that

[1] Appellants Cakeshop and Phillips also claim a privilege to turn away same-sex couples based on constitutionally protected rights of expression and expressive association. *Amici Curiae* agree with the explanations submitted by Appellees David Mullins and Charlie Craig in their Responding Brief on the Merits, and by *Amicus Curiae* Americans United for Separation of Church and State, as to why those arguments are mistaken. This brief addresses only Appellants' claim that they may refuse to make and sell wedding cakes for same-sex couples notwithstanding Colorado's nondiscrimination law, as a matter of protected exercise of religion. This brief complements the *amicus* brief of the National Center for Lesbian Rights also addressing this claim.

allowing this exception will not "swallow the nondiscrimination rule," and that, after all, Appellees Charlie Craig and David Mullins "easily" obtained a cake elsewhere after Cakeshop refused them because they are a gay couple. Appellants' Opening Brief ("AppBr") at 36, 35, 5.

Appellants miss the point. Fortunately, given our history, most Americans now do recognize that being told essentially, "we don't serve your kind here" is discrimination that inflicts dignitary harm on those rejected and stigmatizes the entire disparaged group. On this point, the United States Supreme Court has admonished firmly that nondiscrimination laws "serve interests of the highest order." *Roberts v. United States Jaycees*, 468 U.S. 609, 624 (1984) (requiring enforcement of California's public accommodations law). The Court has emphasized in particular that public accommodations nondiscrimination laws serve the essential social function of reducing the "moral and social wrong" of discrimination. *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 250 (1964). They "eliminate [the] evil" of businesses serving only those "as they see fit," which demeans both the individual and society as a whole. *Id.* at 259.

Religious motivations cannot mitigate this harm. To the contrary, from the Crusades and the Inquisition to current disputes in the Balkans, the Middle East, parts of Africa and elsewhere round the globe, too much of human history shows

how religious sectarianism can exacerbate human strife when deployed to justify lesser treatment of those perceived as different. We have learned this lesson the hard way in America, too. Time and again, religion has been proffered to excuse invidious discrimination. Given the immense demographic diversity and religious pluralism of our Nation, the law must be crystal clear that each person's religious liberty ends where harm to another would begin.

That well-settled principle of American law must apply equally with regard to invocations of religious belief whether urged to justify racial, gender or marital-status discrimination, or discrimination based on sexual orientation. Religious liberty must not become a shield for invidious deprivations of other's basic rights. Our shared pledge that we are "one nation, indivisible, with liberty and justice for *all*" demands nothing less.

The Colorado Civil Rights Commission considered and properly rejected Appellants' arguments for a religiously based exemption from CADA. *Amici Curiae* thus support Appellees' request for affirmance.

II. ARGUMENT

A. Across Generations Of Equality Struggles, Courts Repeatedly Have Confirmed That Religious Objections Do Not Trump Society's Compelling Interests In A Nondiscriminatory Marketplace.

In the United States, differing religious beliefs about family life and gender roles often have generated disputes not only in public accommodations, but also in education, employment, medical services and other arenas. Prominent among them, in particular, have been problems arising when religious convictions prompt some to believe that others have sinned or should be kept apart, leading to discrimination in commercial and other public settings. Although some forms of religiously motivated discrimination doubtless have receded, our history tells a recurring saga of successive generations asking anew whether our protections for religious liberty warrant exemptions from laws protecting others' liberty and right to participate equally in civic life. Our courts rightly and consistently have recognized that the answer to that question must remain the same: religious beliefs do not entitle any of us to exemptions from generally applicable laws protecting all of us.

Thus, for example, during the past century's struggles over racial integration, some Christian schools restricted admissions of African American applicants based on beliefs that "mixing of the races" would violate God's

commands. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 580, 583 n.6 (1983). Some restaurant owners refused to serve African American customers citing religious objections to "integration of the races." *Newman v. Piggie Park Enters., Inc.*, 256 F. Supp. 941, 944-45 (D.S.C. 1966), *rev'd* 377 F.2d 433 (4th Cir. 1967), *aff'd and modified on other grounds*, 390 U.S. 400 (1968). Religious tenets also were used to justify laws and policies against interracial relationships and marriage. *See, e.g.*, *Loving v. Virginia*, 388 U.S. 1, 3 (1967) (in decision invalidating state interracial marriage ban, quoting trial judge's admonition that "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. . . . The fact that he separated the races shows that he did not intend for the races to mix."); *Whitney v. Greater N.Y. Corp. of Seventh-Day Adventists*, 401 F. Supp. 1363 (S.D.N.Y. 1975) (firing of white clerk typist for friendship with black person was not protected exercise of religion despite church's religious objection to interracial friendships).

And as our society began coming to grips with the desire and need of women for equal treatment in the workplace, some who objected on religious grounds sought exemptions from employment non-discrimination laws as a free exercise right. Notwithstanding the longstanding religious traditions on which such claims often were premised, courts recognized that these religious views could not

be accommodated in the workplace without vitiating the sex discrimination protections on which workers are entitled to depend. *See, e.g., EEOC v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986) (school violated antidiscrimination law by offering unequal health benefits to female employees); *Bollenbach v. Bd. of Educ.*, 659 F. Supp. 1450, 1473 (S.D.N.Y. 1987) (employer improperly refused to hire women bus drivers due to religious objection of Hasidic male student bus riders).

Similarly, after state and local governments enacted fair housing laws that included protections for unmarried couples, landlords unsuccessfully sought exemptions based on their belief that they would sin by providing residences in which tenants would commit the sin of fornication. *See, e.g., Smith v. Fair Emp. and Hous. Comm'n*, 913 P.2d 909, 925 (Cal. 1996) (rejecting religious exercise claim of landlord because housing law did not substantially burden religious exercise); *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska 1994) (same).

Across generations, then, these questions have been asked and answered, echoing with reassuring consistency as courts have recognized the public's abiding interests in securing fair access and peaceful co-existence in the public marketplace. Today, these common interests are tested once again as LGBT people

seek full participation in American life. There is growing understanding that sexual orientation and gender expression are personal characteristics bearing no relevance to one's ability to contribute to society, including one's ability to form a loving relationship and build a family together. *United States v. Windsor*, 133 S.Ct. 2675, 2694-96 (2013); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). And yet, there remain pervasive and fervent religious objections on the part of many people to interacting with LGBT people in commercial contexts, still inspiring widespread harassment and discrimination. *See, e.g.*, *Bodett v. Coxcom, Inc*., 366 F.3d 736 (9th Cir. 2004) (supervisor religiously harassing lesbian subordinate); *Peterson v. Hewlett-Packard Co*., 358 F.3d 599 (9th Cir. 2004) (anti-gay proselytizing intended to provoke coworkers); *Knight v. Conn. Dep't. of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (visiting nurse proselytizing to home-bound AIDS patient); *Erdmann v. Tranquility, Inc*., 155 F. Supp. 2d 1152 (N.D. Cal. 2001) (supervisor harassment of gay subordinate with warnings he would "go to hell" and pressure to join workplace prayer services); *Hyman v. City of Louisville*, 132 F. Supp. 2d 528, 539–40 (W.D. Ky. 2001) (physician refusal to employ gay people), *vacated on other grounds*, 53 Fed. Appx. 740 (6th Cir. 2002); *North Coast Women's Care Med. Grp., Inc. v. San Diego Cnty. Superior Court (Benitez)*, 189 P.3d 959, 967

(Cal. 2008) (applying strict scrutiny and rejecting physicians' religious objections to treating lesbian patients).

As laws and company policies have begun to offer more protections against this discrimination, some who object on religious grounds are asking courts to change course and allow religious exemptions where they have not done so in past cases. For the most part, the past principle has held true and the needs of third parties have remained a constraint on religion-based conduct in commercial contexts. *See, e.g.*, *Bodett,* 366 F.3d at 736 (rejecting religious accommodation claim)*; Peterson,* 358 F.3d at 599 (same); *Knight,* 275 F.3d at 156 (same); *Erdmann*, 155 F. Supp.2d at 1152 (antigay harassment was unlawful discrimination); *Hyman*, 132 F.Supp.2d at 539-540 (rejecting physician's claim of religious exemption from nondiscrimination law); *North Coast Women's Care Med. Grp.*, 189 P.3d at 970 (same).

The exemption Cakeshop seeks here would mark a sea change – opening the door to similar denials of goods, access to services, and other equitable treatment for LGBT people, persons living with HIV, and anyone else whose family life or minority status is disfavored by a merchant's religious convictions. As the U.S. Supreme Court has recognized, our laws and traditions have "afford[ed] constitutional protection to personal decisions relating to marriage, procreation,

contraception, family relationships, child rearing, and education." *Lawrence,* 539 U.S. at 574 (citation omitted). The Court's explanation of the "respect the Constitution demands for the autonomy of the person in making these choices," *id.*, makes clear that the "person" whose autonomy is protected is the individual himself or herself – not those offering goods or services to everyone in the marketplace. This must remain the rule. Religion must not be made into a shield for invidious deprivations of basic human rights.

B. Colorado's Interest In Ending Discrimination Against Gay People, Regardless Of The Motivations For That Discrimination, Is Compelling.

According to the 2010 United States Census, approximately 12,500 same-sex couples make their home in Colorado, with nearly two thousand of those couples raising children. Gary J. Gates & Abigail M. Cooke, *Colorado: Census Snapshot: 2010, available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Colorado_v2.pdf. Treatment of same-sex couples, and of LGBT people generally, in Colorado has not always been kind. Researchers at the Williams Institute at UCLA School of Law have documented the history of discrimination against LGBT Coloradans, reporting substantial discrimination by government actors as well as the general public. Williams Institute, *Colorado – Sexual Orientation and Gender Identity Law and Documentation of Discrimination* (UCLA School of Law, Sept. 2009), *available at*

http://williamsinstitute.law.ucla.edu/wp-content/uploads/Colorado.pdf (documenting public sector employment discrimination based on sexual orientation and gender identity in Colorado, as part of 15-chapter study reporting widespread, persistent unconstitutional discrimination by state governments against LGBT people) ("*Documenting Discrimination*").

Documenting Discrimination reports that the State of Colorado surveyed the law on sexual orientation discrimination in Colorado as of 1992 for the purpose of informing voters in connection with that year's ballot measures, including Amendment 2 to the Colorado Constitution which proposed to prohibit the enactment or enforcement of nondiscrimination protections for gay, lesbian and bisexual Coloradans. *Id*. at 1. According to the State's survey, the cities of Aspen, Boulder and Denver had "determined that discrimination based on sexual orientation was a sufficient problem to warrant protections against discrimination in the areas of employment, housing, and public accommodations." *Id*. at 2 (citing *Colorado General Assembly, Legislative Counsel Report on Ballot Proposals, An Analysis of 1992 Ballot Proposals*, RESEARCH PUBL. NO. 369, 9-12 (1992)).

In 1992, Colorado voters famously passed Amendment 2, Colo. Const., Art. II, § 30b, intentionally thwarting the municipal ordinances Aspen, Boulder and Denver had adopted to ban such discrimination. Although the U.S. Supreme Court

held Amendment 2 unconstitutional as a violation of Equal Protection and Due Process, *Romer v. Evans*, 517 U.S. 620 (1996), Colorado voters again changed their state constitution to deny lesbian, gay and bisexual Coloradans equality under state law, approving Amendment 43 in 2006 to exclude same-sex couples from the freedom to marry. Colo. Const. Art. II, Amend. 43; *see Brinkman et al. v. Long et al.*, No. 13-CV-32572 2014 WL 3408024, at *21 (Colo. Dist. Ct. July 9, 2014) (ruling Amendment 43 unconstitutional).

The legislature's subsequent addition of sexual orientation and gender identity protections to CADA was a significant improvement for LGBT Coloradans. But the events at issue in this case are part of a larger, persistent pattern of business proprietors in many states claiming religious rights to defy nondiscrimination laws, with refusal of wedding-related goods and services inflicting particular humiliation and reinforcing stigma for same-sex couples. For example:

- In Washington State, a florist refused to sell flowers for a gay couple's wedding. *See* Associated Press, *Ruling against florist who didn't want to do gay wedding*, KOMONEWS.com (Jan. 7, 2015), http://www.komonews.com/news/local/Ruling-against-florist-who-didnt-want-to-do-gay-wedding-287857051.html**;** Sara Schilling, *Judge:*

Arlene's Flowers owner can be sued in her personal capacity, TRI-CITY HERALD (Jan. 7, 2015), http://www.tri-cityherald.com/2015/01/07/3346717_judge-denies-motion-to-toss-out.html?rh=1**;** *Ingersoll v Arlene's Flowers*, AM. CIVIL LIBERTIES UNION (Oct. 11, 2013), https://www.aclu.org/lgbt-rights/ingersoll-v-arlenes-flowers.

- An Oregon baker objected on religious grounds to selling a cake to a lesbian couple. Everton Bailey, Jr., *Same-sex couple files complaint against Gresham bakery that refused to make wedding cake*, THE OREGONIAN (Feb. 1, 2013), http://perma.cc/MJ5W-VJ5L; Molly Young, *Sweet Cakes by Melissa violated same-sex couple's civil rights when it refused to make wedding cake, state finds*, THE OREGONIAN (Jan. 17, 2014), http://perma.cc/66XH-5EYQ.
- And in Iowa, a couple who operates an event facility, bistro, and art gallery refused on religious grounds to rent the venue to a gay male couple for a reception after their wedding. Sharyn Jackson, *Gortz Haus owners file suit against Iowa Civil Rights Commission*, DES MOINES REGISTER (Oct. 8, 2013), http://perma.cc/B9MB-NRN2. *See also* Verified Petition, *Odgaard v. Iowa Civil Rights Comm'n*, NO. CVCV046451 (Polk Cty., Iowa, Dist. Ct. Oct. 7, 2013); Ruling on

Defendants' Motion to Dismiss, *Odgaard v. Iowa Civil Rights Comm'n*, NO. CVCV046451 (Apr. 3, 2014) (dismissing petition); *see also* www.lambdalegal.org/in-court/cases/odgaard-v-iowa-civil-rights-commission.

But, this discrimination did not begin when same-sex couples gained the opportunity to marry. Rather, lesbian and gay couples have been encountering refusals of services based on proprietors' religious objections for years and in diverse settings. For example:

- Diane Cervelli and Taeko Bufford were refused vacation lodging at the Aloha Bed & Breakfast, despite Hawaii's nondiscrimination law, due to the owner's religious objection to hosting lesbians. *See Cervelli v. Aloha Bed & Breakfast*, LAMBDA LEGAL, http://www.lambdalegal.org/in-court/cases/cervelli-v-aloha-bed-and-breakfast.
- In Illinois, a gay couple planning their civil union reception was turned down by two establishments that routinely host weddings; one not only refused the couple but berated them with religiously condemning emails. *See Mattoon couple challenge denial of services at two Illinois Bed and Breakfast Facilities*, ACLU-ILLINOIS (Nov. 2, 2011), http://www.aclu-

il.org/mattoon-couple-challenge-denial-of-services-at-two-illinois-bed-and-breakfast-facilities/.

- In California, Lupita Benitez was refused a standard infertility treatment because her physicians objected on religious grounds to treating her the same as other patients because she was in a relationship with another woman. *North Coast Women's Care Med. Grp.*, 189 P.3d at 959.

See generally Douglas NeJaime, *Marriage Inequality: Same-Sex Relationships, Religious Exemptions, and the Production of Sexual Orientation Discrimination*, 100 CAL. L. REV. 1169, 1189–92 (2012).

Many business owners hold religious and other beliefs that guide their lives. Those beliefs remain with many of them when operating their businesses. As recognized in the decisions cited above, permitting those engaged in for-profit commerce to apply a religious litmus test to would-be customers not only would encourage other businesses to do the same, but would subvert the compelling state interests in equality served by Colorado law. Cakeshop and Phillips offer no limiting principle and, indeed, there is none. Religious critiques of marriage for same-sex couples can be leveled just as easily at interracial and interfaith marriage, at same-sex cohabiting relationships, at heterosexual cohabitation, at divorce, at

contraception, sterilization, and infertility care, and at innumerable other personal decisions about family life.

Amici sound alarm bells here because discriminatory refusals of goods or services exacerbates the stress from social exclusion and stigma that can lead to serious mental health problems, including depression, anxiety, substance use disorders, and suicide attempts. Ilan Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, Psychological Bulletin, Vol. 129, No. 5, 674-97 (2003); Vickie Mays & Susan Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 19 Am. J. Pub. Health 1869-76 (2001).

Religious reinforcement of anti-LGBT bias and discrimination often increases the negative impact on mental health. *See* Ilan H. Meyer, Merilee Teylan & Sharon Schwartz, *The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians, Gay Men, and Bisexuals*, WILLIAMS INST. (2014) (research shows anti-gay messages from religious leaders/organizations increases severe mental health reactions), http://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/lgb-suicide-june-2014/; Edward J. Alessi, James I. Martin, Akua Gyamerah & Ilan H. Meyer, *Prejudice Events and Traumatic Stress among Heterosexuals and*

Lesbians, Gay Men, and Bisexuals, WILLIAMS INST. (2013), available at http://www.tandfonline.com/doi/full/10.1080/10926771.2013.785455#abstract. *See also* Maurice N. Gattis, Michael R. Woodford & Yoonsun Han, *Discrimination and Depressive Symptoms Among Sexual Minority Youth: Is Gay-Affirming Religious Affiliation a Protective Factor?*, ARCH. SEX. BEHAV. 1589 (2014) (finding that harmful effects of discrimination among sexual minority youth affiliated with religious denominations that endorsed marriage equality were significantly less than those among peers affiliated with denominations opposing marriage equality).

The case before this Court concerns baked goods, but the "go elsewhere" approach Appellants defend is not necessarily confined to wedding-related services. The notion that the owner of a commercial business sins by engaging in a commercial transaction with a "sinful" customer could apply just as well to business transactions concerning any goods or services, medical care, housing or employment. Some might find this connection implausible. But for those hoping that nondiscrimination protections soon will reduce stigma, health disparities, wage disparities, job loss, and unequal employment benefits based on sexual orientation

or gender identity,[2] Cakeshop's quest for a religious exemption for commercial activity poses a potentially devastating threat with distressing historical echoes. *See generally* David B. Cruz, Note, *Piety and Prejudice: Free Exercise Exemption from Laws Prohibiting Sexual Orientation Discrimination*, 69 N.Y.U. L. Rev. 1176, 1221 (1994) (desired exemptions "would undermine the egalitarian public order that such laws seek to establish, creating precisely the access and dignitary harms that the Supreme Court held to be the legitimate concern of antidiscrimination laws.").

Accepting Cakeshop's arguments would eviscerate bedrock doctrine reaffirmed consistently over time. This settled approach permits and encourages a flourishing coexistence of the diverse religious, secular, and other belief systems that animate our nation while ensuring equal opportunity for everyone in the public marketplace. The proposed alternative would transform that marketplace into segregated dominions within which each business owner with religious convictions "becomes a law unto himself," *Employment Division v. Smith*, 494 U.S. 872, 879

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[2] *See generally* Jennifer Pizer, *et al.*, *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L.A.L. Rev. 715 (2012); Randy Albelda, *et al.*, *Poverty in the Lesbian, Gay, and Bisexual Community* (March 2009), http://williamsinstitute.law.ucla.edu/wp-content/uploads/Albelda-Badgett-Schneebaum-Gates-LGB-Poverty-Report-March-2009.pdf.

(1990), and would force members of vulnerable minority groups to suffer the harms and indignities of being shunned and required to go from shop to shop searching for places where they will not be treated as pariahs.

Religious freedom is a core American value and burdens on it can make for hard cases. But this is not among those hard cases, given the compelling interests served by the Colorado Anti-Discrimination Act's insistence that commercial enterprises open to the public serve all members of the public without distinction based on sexual orientation.

III. CONCLUSION

For the foregoing reasons, Lambda Legal Defense and Education Fund, Inc., One Colorado and One Colorado Education Fund as *amici curiae* respectfully urge this Court to affirm the decision of the Colorado Civil Rights Commission.

Respectfully submitted this 13th day of February, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2015, I electronically filed a true and correct copy of the foregoing: **AMICI CURIAE BRIEF OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., ONE COLORADO AND ONE COLORADO EDUCATION FUND** through ICCES which will send notification of such filing to the following:

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