

“FUNERAL HOME”: THE HIGH STAKES OF THE *MASTERPIECE CAKESHOP* CASE

February 2018



Released in February 2018, a new public education ad, Funeral Home, produced by the Movement Advancement Project (MAP), depicts a devastating scenario in which a grieving widow and her family are turned away from a funeral home and refused burial services for her wife. While this video is both haunting and shocking, for many lesbian, gay, bisexual and transgender (LGBT) people in the United States, the risk of being denied service—even in a such a painful moment—is all too real. In fact, in 2016, a funeral home in Mississippi refused service to Jack Zawadski, after learning his deceased spouse was a man. The couple, Jack Zawadski and Bob Huskey, had been together for more than 50 years and were legally married in 2015. Lambda Legal is representing Jack Zawadski’s family in court in Mississippi. Jack recently passed away.

This type of discrimination will only become more prevalent if the Supreme Court rules in favor of a baker who wants to turn away same-sex couples in the *Masterpiece Cakeshop* case. Not only that, but a ruling for the baker could sanction and encourage this type of discrimination not just against LGBT people, but also interfaith couples, people of color, women, people with disabilities, and others.

On the surface, *Masterpiece Cakeshop v. Colorado Civil Rights Commission* involves a business—one that is open to the public—that refused to sell a cake to a couple for their wedding reception because they are gay. But in reality, this case is about whether laws against discrimination can continue to be enforced without sweeping exemptions. A loss in *Masterpiece* would open the door to much wider ranging forms of discrimination—including what the grieving widow in Funeral Home faced. In short, it could lead to the erosion of federal and state nondiscrimination protections across the country.

Masterpiece Cakeshop argues that the Constitution’s free speech protections should allow businesses with a creative element to refuse service to customers to whom a business objects, even when that refusal of service otherwise violates state and federal nondiscrimination laws. If the Supreme Court were to agree, any business that provides custom services or products, like a funeral home, could claim a right to discriminate—and the ruling could support discrimination against women, minority faiths, and people of color—as well as LGBT people. A ruling for the baker in *Masterpiece* could make the scenario in “Funeral Home” the law of the land across the nation. To learn more about the case and what’s at stake, visit www.OpenToAll.com.



Even if the Supreme Court rules against the baker in *Masterpiece*, LGBT people in 31 states people can currently be refused service because of their sexual orientation or their gender identity.

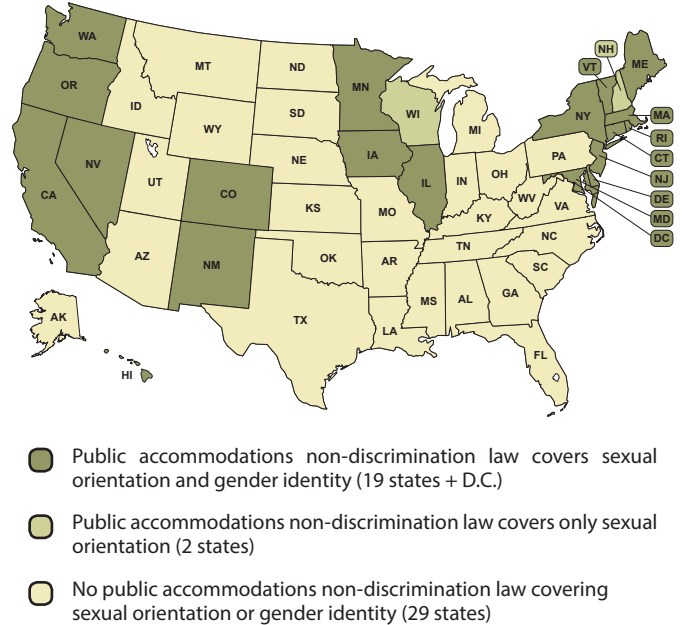
Masterpiece is so important because it will create a right to discriminate in our nation's constitution that will override state and federal nondiscrimination laws. However, even without a ruling for the baker in *Masterpiece*, laws protecting people from discrimination in public accommodations based on sexual orientation and gender identity exist in only 19 states and the District of Columbia, as shown in *Figure 1*. And there are no federal nondiscrimination protections in public accommodations for any of these characteristics. As a result, just over half of LGBT people in the United States live in a state where businesses, including funeral homes, can refuse to serve them because of who they are.

Loosely defined, public accommodations are any place a person is when they are not at home, work or school—places of business, public transit, hotels restaurants, taxi cabs and more. While the media has often focused on wedding cakes, florists and photographers, the real life experiences of LGBT people show much broader harms. The reality is that LGBT people face widespread discrimination in places of public accommodation, and the discrimination is pervasive.

For example, a survey of LGBT people by the Center for American Progress shows that over the course of one year (2016), fully one-quarter of LGBT respondents experienced discrimination because of their sexual orientation or gender identity in employment, housing, and/or public accommodations—and that transgender people and LGBT people with disabilities are particularly affected, as shown in *Figure 2*.

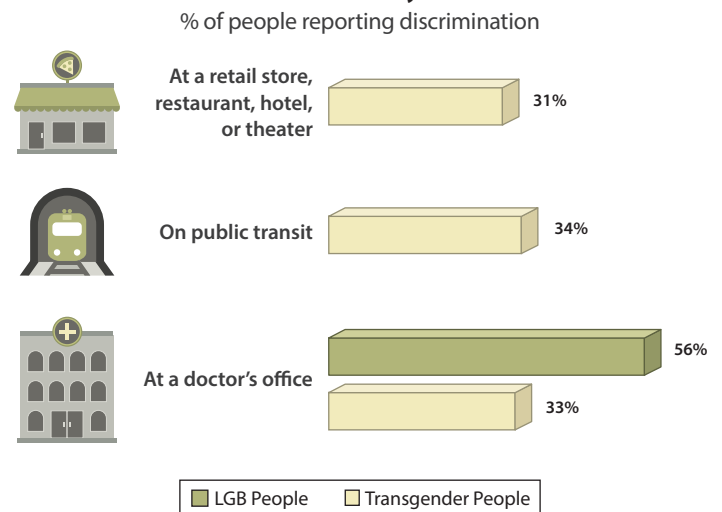
Refusing service to a widow and her family as they make funeral arrangements is just one example of the day-to-day discrimination that could become more common if the Supreme Court were to rule in favor of the bakery and grant them a license to discriminate. Businesses, ranging from funeral homes to doctor's offices to restaurants to movie theaters, could refuse to serve customers simply because of who they are.

Figure 1: 31 States Lack Public Accommodations Protections for Sexual Orientation and Gender Identity



Source: Movement Advancement Project, "Public Accommodations Nondiscrimination Laws," Current as of February 27, 2018.

Figure 2: LGBT People Experience Discrimination In Many Areas of Life



Sources: Sejal Singh and Laura E. Durso, "Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways," Center for American Progress, May 2, 2017; James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality; Lambda Legal, "When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV," 2010, www.lambdalegal.org/health-care-report.

Learn more about what's at stake in the *Masterpiece* case for people of color, women, religious minorities, people with disabilities, LGBT people and others at www.OpenToAll.com. Organizations are also invited to contact Open To All to add their voice to the chorus ensuring that businesses that are open to the public remain open to everyone on the same terms.