

<p>SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>On Petition for Writ of Certiorari to the Colorado Court of Appeals, Case No. 2021CA1142, Judges Schutz, Dunn, Grove</p>	
<p>DISTRICT COURT, COUNTY OF DENVER District Court Judge: The Hon. A. Bruce Jones District Court Case No. 19CV32214</p>	
<p>Petitioners: MASTERPIECE CAKESHOP INC., and JACK PHILLIPS,</p> <p>and</p> <p>Respondent: AUTUMN SCARDINA.</p>	<p>Case No.: 2023SC000116</p> <p>Court of Appeals Case Number: 2021CA1142</p> <p>District Court Case Number: 2019CV32214 County: Denver</p>
<p><i>Attorneys for Defendants/Appellants:</i> Jonathan A. Scruggs (Arizona Bar No. 030505)* Jacob P. Warner (Arizona Bar No. 033894)* ALLIANCE DEFENDING FREEDOM 15100 N. 90th Street Scottsdale, Arizona 85260 T. (480) 444-0020 F. (480) 444-0028 jscruggs@ADFlegal.org jwarner@ADFlegal.org</p> <p>John J. Bursch (Michigan Bar No. P57679)* ALLIANCE DEFENDING FREEDOM 440 First Street NW, Suite 600 Washington, DC 20001 T. (202) 393-8690 F. (202) 202-347-3622 jbursch@adflegal.org</p> <p><i>*Admission Pro Hac Vice</i></p> <p>Samuel M. Ventola, Atty. Reg. #18030 1775 Sherman Street, Suite 1650 Denver, CO 80203 T. (303) 864-9797 F. (303) 496-6161 sam@sam-ventola.com</p>	
<p style="text-align: center;">PETITIONERS' RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY</p>	

Answering Respondent’s Rule 28(i) notice, Petitioners affirm that the U.S. Supreme Court held that government may not apply CADA to “compel an individual to create speech [he] does not believe.” *303 Creative, LLC v. Elenis*, 143 S. Ct. 2298, 2308 (2023); *see id.* at 2314-15. This rule protects Petitioners here, who the Court said are engaged in “nearly identical conduct” to petitioners in *303 Creative*. *Id.* at 2310. Indeed, the Court’s rule broadly safeguards:

- Artists who offer “speech for pay,” *id.* at 2316; *see id.* at 2320, like Phillips, because commissioned art is the *artist’s* “speech” even when such “speech may combine with the [customer’s] in the final product,” *id.* at 2313;
- “All manner of speech”—including “expressive conduct” such as “artwork” and “symbols” created by “visual artist[s]” like cake artists, *id.* at 2312, 2316, 2320; *see id.* at 2314 (citing Creative Professionals amici brief showing CADA’s threat to cake artists);
- Artists like Phillips who serve “all customers” but cannot “create custom” art promoting messages that “violate [their] beliefs”—including messages that concern protected classifications, *id.* at 2316-17; *see id.* (distinguishing objection to same-sex marriage and sexual-orientation discrimination); *id.* at 2317 n.3 (“distinction between status and message”); and
- Even speech choices that are “hurtful”—because freedom of speech “belong[s] to all, including to speakers whose motives others may find misinformed or offensive, *id.* at 2317, 2321.

When applied to “coerce” speech, government misuses CADA to “excis[e] certain ideas or viewpoints from the public dialogue” *Id.* at 2313; *see id.* at 2318. Respondent used the government to do that here, and the lower court punished Petitioners for not expressing a message they don’t believe.

Such coercion imposes no “incidental burden”; it forces artists “to ‘utter what is not in [their] mind’ about a question of political and religious significance.” *Id.* at 2318. The “First Amendment does not tolerate” that. *Id.* When citizens face speech choices they don’t like, “our Nation’s answer” is “tolerance, not coercion.” *Id.* at 2322.

303 Creative controls here. Given its clarity, Petitioners ask this Court to grant review, vacate the decision below, and enter judgment for Petitioners.

Respectfully submitted this 18th day of July, 2023.

Attorney for Petitioners Masterpiece
Cakeshop Inc. and Jack Phillips

/s/ Jacob P. Warner
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CERTIFICATE OF SERVICE

I certify that on this 18th day of July, 2023, a true and correct copy of the foregoing Petitioner's Response to Notice of Supplemental Authority was filed with the Colorado Supreme Court via the Colorado Courts E-Filing system, and served via the Colorado Courts E-Filing system on the parties and/or their counsel of record.

/s/ Jacob P. Warner
Jacob P. Warner