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January 8, 2018

Scott S. Harris
Clerk of the Court
United States Supreme Court
1 First Street, NE
Washington, D.C. 20543

RE: *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111—
Notice Regarding Clarification of the Record

Dear Mr. Harris:

I write on behalf of Respondent Colorado Civil Rights Commission to clarify the record in this matter. At oral argument, Justice Kennedy referred to a statement made by one of Colorado's Civil Rights Commissioners, which is transcribed at pages 293a–94a of the Petition Appendix. Tr. 51:10–14. Justice Kennedy attributed that statement to Commissioner Heidi Hess, the current Chair of the Commission. *Id.* The statement he quoted, however, was not made by Commissioner Hess but by then-Commissioner Diann Rice, whose term as Commissioner expired on March 13, 2016.¹

Counsel for the Commission has carefully reviewed the record of this case, both before this Court and before the lower courts, to determine whether any party made this same misattribution. The misattribution does not appear in any brief for any party. Counsel has found one amicus brief, however, filed on the merits in this Court in support of Petitioners, that makes the misattribution. *See Br. of Amici Curiae Ethics & Religious Liberty Comm'n of the Southern Baptist Convention, et al.*, at 31.

¹ Commissioner Rice's statement at pages 293a–94a of the Petition Appendix begins by referring to a statement made by Commissioner Hess. Commissioner Rice says, "You—yeah, you're exactly right ... *Commissioner Hess.*" Pet. App. 293a (emphasis added). Commissioner Rice's reference to Commissioner Hess was not an instance of self-identification but rather an acknowledgment of Commissioner Hess's previous statement.

The Commission respectfully requests that the Court be notified of this clarification of the record.

Sincerely,

FOR THE ATTORNEY GENERAL

/s/ Frederick R. Yarger

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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.

Notice Regarding Clarification of the Record

Proof of Service Under Supreme Court Rule 29.3

I certify that on January 8, 2018, I caused the foregoing *Notice Regarding Clarification of the Record* to be electronically filed with the Clerk of the United States Supreme Court, and, in accordance with Supreme Court Rule 29, to be served on counsel for Petitioners Masterpiece Cakeshop, Ltd., and Jack C. Phillips, and on counsel for Respondents Charlie Craig and David Mullins, by sending a copy by U.S. mail, first-class postage prepaid, and by e-mail, to the following addresses:

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