LET THEM EAT CAKE: ANALYZING THE SOCIAL CONSTRUCTION OF HUMAN RIGHTS IN THE CONTEXT OF RIGHT-WING POPULISM IN THE UNITED STATES

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Abstract

This dissertation examines how human rights claims are constructed by the political right in the context of a right-wing populist political climate in the United States. I use the *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* case as a case study given its role as one of the first clashes between religious freedom and LGBTQ rights to make its way to the United States Supreme Court. Specifically, I analyze the extent to which the baker's lawyers, and key actors and members of the general public who spoke in support of the baker framed their human rights argument using similar strategies as those used by right-wing populist political actors. I conducted a text analysis of court documents from the baker's lawyers and X (Twitter) data surrounding the case from the baker's supporters. I then conducted a dictionary-based sentiment analysis on these datasets to better understand the extent to which these findings reflect the use of affect by right-wing populist political actors.

In both institutional (court documents) and public (X (Twitter)) discourse surrounding this human rights claim, right-wing actors did apply right-wing populist framing strategies such as exclusionary constructions of 'the people,' an 'elite' pandering to minority interests, and an 'other' acting as a threat to the rights of 'the people,' however; they did so inconsistently. Even though the application of these constructs was uneven, this suggests that the right-wing populist political climate in the United States has some impact on how the political right is constructing and discussing their human rights argument in favor of religious freedom. My sentiment analysis revealed limited evidence of a strong negative tone in both court documents and X (Twitter) data, suggesting that, while right-wing populist leaders are typically associated with a reliance on anger, fear, and resentment, other actors in supportive institutional and public contexts may rely equally or more on other, more positive emotions. I conclude that, given the centrality of backlash towards progressive human rights projects in right-wing populist movements, it is important to understand how right-wing populist framing strategies are used by institutions and members of the public who support these movements in their human rights arguments.

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Chapter 1 - Introduction

Background

In 2012, the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case began its way to the Supreme Court of the United States, marking a key moment in what is an ongoing tension between the rights of LGBTQ people to live free of discrimination and the freedom to act in accordance with one's religious beliefs. The premise of the case was that Jack Phillips, the Christian owner of Masterpiece Cakeshop in Colorado, refused to make a cake for a gay couple's wedding, citing his religious beliefs. This sparked a controversy over whether owners of private businesses that serve the public, what are legally described as public accommodations,[1] can refuse certain services based on claims of both free speech and free exercise of religion. This claim would effectively grant religious owners of public accommodations an exemption from laws protecting people from discrimination in public accommodations. This question of discrimination in public accommodations was a new moment in manifestations of the tension that has always existed in anti-discrimination law wherein laws prohibiting discrimination in the name of equality are sometimes seen as infringing on an individual's freedoms, in this case to choose whom to serve (Cherminsky, 2018).

In June of 2018, in a 7-2 decision,[2] the Supreme Court overturned the Commission's decision, arguing that the Commission had not employed religious neutrality, and had therefore

[1] According to the United States Department of Justice, a public accommodation is defined as "privately-owned spaces that serve and are open to the general public. They may be owned by private companies or individuals but are intended for public use" including establishments for temporary guests, spaces where people can buy food to eat on site, gas stations, and places of entertainment but excluding most retail stores where food is not stored, religious buildings, and private clubs where membership is required (U.S. Department of Justice, 2022).

[2] The majority opinion was authored by Justice Anthony Kennedy (a centrist and generally considered the deciding vote in this case), with support from Chief Justice John Roberts (a conservative), and Justices Samuel Alito (a conservative), Stephen Breyer (a liberal), Elena Kagan (a centrist), and Neil Gorsuch (a conservative). Justices Sonia Sotomayor (a liberal) and Ruth Bader Ginsburg (a liberal) dissented. The majority opinion, as well as a concurring opinion by Justices Kagan and Breyer emphasized the narrow grounds of the ruling, pointing to the fact that it applied only to the lack of religious neutrality demonstrated by the Colorado Civil Rights Commission. Justice

violated Jack Phillip's right to free exercise under the First Amendment. In this decision, the Court did not rule that the Commission's finding itself was unconstitutional, but rather that the Commission had not fulfilled the State's obligation to religious neutrality in the application of the law when making its decision (Columbia University Global Freedom of Expression, 2018). This ultimately did not effectively resolve the conflict between religious freedom—the right to act in accordance with one's religious beliefs—and LGBTQ rights in public accommodations. In 2019, however, the Department of Health and Human Services (HHS) extended the purview of who can legally deny services based on religious practice by passing the "Protecting Statutory Conscience Rights in Health Care" rule which protects health care entities from discrimination should they choose to deny certain services or procedures based on an exercise of 'conscience' (Department of Health and Human Services, 2019).

Context

Though the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case was filed in 2012 during the Obama administration, it ultimately reached the Supreme Court during the first Trump administration; therefore, much of the surrounding discourse emerged in the context of Donald Trump's first term as president. This is significant because scholars widely consider Donald Trump to be an example of a contemporary right-wing populist leader as a result of his frequent invocation of the unified will of a disillusioned 'people'—defined in racial, nationalist, anti-immigrant, anti-diversity terms—against what he claimed to be a corrupt establishment 'elite' pandering to minority interests (Kazin, 2016; Montgomery, 2017; Pierson, 2017). As a result, support for Jack Phillips emerged within, and was potentially shaped by, the context of a

Clarence Thomas (a conservative) wrote a separate opinion concurring in part with the judgment, asserting that the majority opinion did not sufficiently consider the free speech or free exercise dimensions of the case, and expressed support for Masterpiece Cakeshop on those grounds.

right-wing populist leader who, through executive actions like Executive Order 13798 passed in 2017 promoting free speech and religious liberty, and departmental rules like the 2019 HHS 'Conscience rule,' staunchly advocated for a broadened scope of and re-invigorated protection for religious freedom.

Through the frame of the tensions brought to light by the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case, I seek to understand how, and to what extent, the rise of right-wing populism has influenced contemporary manifestations of liberal human rights claims in the United States. Given the exclusionary foundations through which contemporary liberal human rights frameworks emerged, examining this intersection can shed light on the ways in which these frameworks can be manipulated to form the basis of counterattacks on the progressive rights movements they were intended to protect. The specific ways the political right in the United States has laid a foundation through which First Amendment rights like freedom of religion and freedom of speech, specifically, can be weaponized to exempt individuals from upholding equal rights protections are explored in Chapter 2.

In the United States, the right-wing conservative cultural agenda, and therefore the rights claims pursued by the political right, are based on a "politics of intimacy" that centers the interests of the nation (Berlant, 1997, p.7). Despite writing in 1997, Berlant's assertion that the nuclear family, defined by the image of white, middle-class, monogamous, heterosexual, reproductive couples, becomes inextricably linked to the success of the capitalist economy and, by extension, the nation itself remains applicable to right-wing conservative thinking in the United States today. This model of citizenship is contrasted with nonmonogamy, homosexuality, and "by implication, other forms of racial and economic alterity" more typically associated with the left (Berlant, 1997, p.7). As a result, the protection of two seemingly incompatible versions

of American life and society is championed by the political right and left, respectively (Berlant, 1997).

Right-wing populism is a particular political framing of right-wing conservativism, is characterized by a strong, moralistic antagonism between 'the people' and 'the elite,' wherein the populist leader is portrayed as the only person capable of truly representing the unified, general will of 'the people.' This particular form of populism is often ethno-nationalist in nature, relying on racialized delineations of who does and does not belong in formulations of 'the people' and opposition to more progressive endeavors like multiculturalism, immigration, and gender and LGBTQ equality (Crowley, 2020; Hrynyshyn, 2019). As Hrynyshyn (2019) points out, right-wing populism "is motivated to defend the privileges of a certain kind of subject who feels threatened by changes that are demanded within the liberal democratic order. This subject is, most generally, the white, male, law-abiding individual member of the nation" (p.31).

In the United States, right-wing populism capitalized on the conservative political agenda that emerged in the 1980s during Ronald Reagan's presidency. This agenda sought to exacerbate conflict between white, monogamous, heterosexual people claiming to have "lost the respect of their culture," and the historically marginalized whose expanding rights were perceived as threatening the former group's status and sense of being "unmarked" by identity categories (Berlant, 1997, p.2). Right-wing populist rhetoric capitalizes on the tensions between right- and left-wing pursuits of freedom by encouraging collective affinity to these individual identities (Berlant, 1997). As a result, rights claims become about identities (and the groups that form by association with those identities) clashing in their pursuit of freedom—the right to act according to one's convictions—and power. In the United States, these differing pursuits of freedom typically manifests as divergent views on the role of government oversight and interference, the

protection and expansion of rights for vulnerable populations, and foreign policy. This exacerbation of such tensions therefore often serves to pit historically marginalized group such as racialized people, immigrants, women, and the LGBTQ community against those who, by virtue of their dominance within the social hierarchy of the United States, "used to feel undefensive and unfettered" and now "feel truly exposed and vulnerable" (Berlant, 1997, p.2).

Trump's support of religious freedom in conflict with expanding LGBTQ rights was based on the right-wing populist tendency to frame rights claims in hierarchical terms, wherein certain rights are seen as indispensable to national identity while others are considered to be fringe claims made by 'the elite' on behalf of special interest groups and minorities. In the United States, where some rights are addressed in the Constitution—and are, in other words, considered by many Americans to be fundamental aspects of American freedom—others are left up to a judge's interpretation and philosophy and not always treated as constitutional rights (Greene, 2021).[3] In cases that seek to address institutional and structural inequalities, the side that can appeal most clearly to constitutional rights is often successful, regardless of whether or not such decisions reinforce these underlying inequalities (Greene, 2021). In the context of the tension between religious freedom and LGBTQ rights, Greene's (2021) argument means that

[3] A notable example here is the interpretation of the Due Process Clause of the Fourteenth Amendment which prohibits the government from "depriving 'any person of life, liberty, or property, without due process of law.'" (Carlisle & Zorthian, 2022). The Due Process Clause was interpreted as protecting a person's right to privacy which was used as the basis for protecting an individual's right to contraception in *Griswold v. Connecticut* (1965) and *Eisenstadt v. Baird* (1972), and perhaps most notably for protecting a woman's right to abortion in *Roe v. Wade* (1973). Other notable cases that have relied on this interpretation include the legalization of interracial marriage with *Loving v. Virginia* (1967), the legalizations of same-sex consensual sexual relations with *Lawrence v. Texas* (2003), and the legalization of same-sex marriage with *Obergefell v. Hodges* (2015).

When *Roe v. Wade* (1973) was overturned in 2022 in the *Dobbs v. Jackson* case, Justice Clarence Thomas wrote in his concurring opinion that all cases which relied on the Due Process Clause's protection of the right to privacy should be revisited. His argument was that the assumption that the Fourteenth Amendment grants any substantive rights is "demonstrably erroneous" (*Dobbs v. Jackson*, 2022). This therefore points to the way rights which are not explicitly and clearly articulated in the Constitution are more precarious than, for example, the First Amendment rights to freedom of religion and freedom of speech.

religious freedom is legitimized by its clear ties to the Constitution, while LGBTQ rights are deemed special interests. As have right-wing populist leaders around the world, Donald Trump constructed the protection of religious freedom as fundamental to national identity, culture, and security in contrast to LGBTQ rights (Brysk, 2019; Gostin et al., 2020).

Donald Trump's campaign and presidency relied on right-wing populist tropes of the "innocent, always hard-working" 'people'—defined in terms of white, Christian nationalism and xenophobia—struggling against 'corrupt' elites who pander to minority groups "who do not really work and instead live off others" to mobilize this anxious and vulnerable-feeling group (Müller, 2017, p.593). He used the right-wing populist strategy of relying on affective states of resentment, fear, and anger to reinforce a racial, cultural, and nationalist formulation of 'the people' and their unified will, targeting marginalized groups as responsible for changing the political and social rules of 'the American way of life.' His campaign slogan, 'Make America Great Again,' reflects a strong nostalgia for a past social and racial order "setting up that lost world as a utopian horizon" for the Republican party to strive for (Berlant, 1997, p.2).

Berlant (1997) was writing in the context of the Reagan-era conservative politics of the 1980s and 1990s in which the conservative Christian right and its focus on reinforcing 'traditional family values' clashed with increasingly visible feminist, LGBTQ, and civil rights activism. Though Donald Trump was first elected over two decades later, his first term saw a resurgence of the power and popularity of the Christian right and its emphasis on family values and morality. His campaign slogan and his harkening to a glorified past America therefore echoes not only the theoretically similar nostalgia that Berlant (1997) was writing about, but also the foundational characteristics of the past the conservative political right wished to reconstruct.

Studies on populist politics have typically centered a focus on the 'supply side' of populism—how and when a populist leader or party appears and orients itself in relation to salient issues—analyzing the presence of populist framing in party manifestos, political speeches and newspaper articles (Guiso et al., 2017; Hawkins et al., 2018). Increasingly, however, studies have explored why there is *support* for populist movements—the 'demand side' of populism (Guiso et al., 2017; Hawkins et al., 2018). This approach to understanding populism provides a useful framework for understanding how populist framing *itself* resonates with and mobilizes support among the electorate through the lens of the ideology to which populism 'attaches' itself. This framing includes the vilification of 'the elite' and an 'other' as the root cause of 'the people's' suffering, and unifying an exclusionary conception of 'the people' by way of exacerbating pre-existing emotion-based divides (affective divisions) and discursively challenging political norms. There are also a plethora of studies that have underscored complex relationships between populism and constitutional democracies (see Blokker, 2018; Brysk, 2019; De Cleen, 2017; Gostin et al., 2020; Halmai, 2019; Moffitt, 2020; Müller, 2017; Petrov, 2020; Scholtes, 2019; Walker, 2019) but these studies have largely ignored how these relationships impact the specific construction of human rights claims in the context of a right-wing populist movement.

Originally introduced by Ostiguy and Moffitt (2021), there is growing recognition that populism is a relational phenomenon[4] developed among a populist leader, societal institutions, and members of the public (both supporters and opponents), rather than a phenomenon shaped only by the actions and rhetoric of the leader. From a relational perspective, the populist leader not only makes claims on behalf of 'the people,' but those claims and the associated political

[4] This approach to understanding populism is explored further in the theoretical framework in the following chapter.

identity are shaped by and through societal institutions like the courts and social actors, or members of the public, like 'the people' themselves (Ostiguy & Moffitt, 2021). It is important to consider the relational dynamics of populism because social actors, institutions, and the populist leader engage with populist discourses in distinct ways. Though social actors and institutions are positioned in relation to the populist leader, they are also positioned in relation to each other, as well as to various systems, institutions, affects and discourses, shaping the way they influence and interact with populist discourse.

Ostiguy and Moffit's (2021) conceptualization of populism points to the ways in which a leader relates to the people in ways that are often "informal, at times crude and course, improper, and 'street-wise' […] in contrast to the ways of technocrats, Eurocrats, bureaucrats, and other 'proper'-crats" (p.51). Donald Trump's rhetoric is distinctly reflective of this style and therefore an analysis of the ways in which his right-wing populist discourse may have shaped the discourse around a human rights case, like the *Masterpiece Cakeshop* case, is warranted. Furthermore, because of right-wing populist leaders' emphatic calls for the protection of national identity and the rights of 'the people' defined in narrow, exclusionary terms, right-wing populism is often associated with a retrenchment of minority rights—the rights of 'others' who are not part of 'the people' (Bílková, 2018; Golder, 2016; Heller, 2020; Kováts, 2018; Mudde, 2017; Pelinka, 2013; Spittler, 2018).

Donald Trump has exemplified this behavior when he, for example, took credit for 'illiberal' SCOTUS decisions like the 2022 overturning of Roe v. Wade because he packed the court with conservative justices (Feiner & Mangan, 2022). This points to the importance of exploring the ways in which institutions like the courts may act as an extension of a populist leader and reinforce many of the messages central to a right-wing populist leader's core agenda.

The *Masterpiece Cakeshop* case Supreme Court ruling came during a time when right-wing populist themes were becoming institutionalized in the United States, in part because of Donald Trump's rise to power. As such, the case offers a compelling site to investigate whether and how right-wing populism intersects with the social construction of human rights. My approach deviates from the traditional focus on the actions of a single charismatic leader, instead examining how right-wing populism manifests in the discourse of the courts and supporters of right-wing populist agendas. In other words, rather than studying the *individual* 'source' of populist sentiment in the United States, I will draw on Ostiguy and Moffitt's (2021) relational reimagination of the 'discourse-theoretical' approach to explore how populism manifests through institutions and through 'the people' themselves in ways that shape discourse surrounding human rights claims. Specifically, I will examine how Jack Phillips' supporters in both court documents and X (Twitter)[5] data rely on similar tropes as right-wing populist leaders, and Donald Trump specifically.

Furthermore, studies have increasingly sought to understand the role that affect plays in populist framing (see Cohen, 2019; Krämer, 2017; Levinger, 2017; Rico et al., 2017; Salmela & von Scheve, 2017; Schrock et al., 2017; Wodak, 2015). Affect—the emotional "forces or intensities" that circulate among people and groups (Gregg & Seigworth, 2010, p.2; Zembylas, 2021)[6]—has increasingly become a focus in studies of social science and law. This phenomenon is particularly relevant to understanding how human rights claims are socially constructed in the context of right-wing populism, because, broadly speaking, affect contributes to the delineation of boundaries between groups of people and, thereby, reinforces the populist boundaries around

[5] Twitter was rebranded as X on July 23, 2023 after being acquired by Elon Musk in October 2022. Though it was known as Twitter both during the time period I am analyzing and when the data was collected, I will refer to the site as X (Twitter) throughout the dissertation.
[6] The concept of affect is explored further in the theoretical framework in the following chapter

'the people,' 'the elite,' and 'the other.' These affectively-based, exclusionary constructions in right-wing populism can subsequently be used to delineate who is and who is not worthy of having rights. The ways in which a populist leader draws on existing affects among the electorate to unify 'the people' and support vilifying claims against 'the elite' and 'the other,' and the way the electorate use affect among themselves to reinforce support of the populist leader can also shed light on some of the relational dynamics explored by Ostiguy & Moffitt (2021).

Existing studies on the relationship between affect and populism, however, focus primarily on how populist leaders mobilize affect in their rhetoric and do not adequately speak to how institutions and individuals who are supportive of a populist leader might rely on similar populist uses of affect in their own discourse. An analysis of specific case studies focused on institutions' and individuals' use of affect and how it is similar to or different from that of populist leaders can provide important empirical evidence in support of Ostiguy & Moffitt's (2021) more relational approach to populism. I take a novel approach to the study of affect in populism by conducting a sentiment analysis of court documents and X (Twitter) data in R,[7] where previous research on affect in populism has focused on populist leaders' rhetoric. Evidence of how right-wing populism is shaped and spread by institutions and the electorate themselves both discursively and affectively, however, points to a need to reimagine strategies to combat exclusionary and discriminatory right-wing populist agendas that challenge the success of rights claims on behalf of marginalized communities.

Research questions

This research explores the following questions:

[7] R is a free, open-source programming language and software environment for statistical analysis.

1. How are human rights claims socially constructed by different social and legal actors on the political right in the context of right-wing populism?
2. How do differently situated social, legal, and political actors, working at different scales of social and political engagement, contribute to shaping populist discourse in their engagement with human rights cases?
3. How is affect mobilized as a tool to construct human rights claims emerging from the populist political right?

In order to answer these questions, I examine the discursive and affective choices made by right-wing religious freedom advocates in the United States using court documents, policy briefs, press releases, and social media posts related to the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case in order to identify the extent to which populist framing strategies were used. For the purposes of this dissertation, only rhetoric from Jack Phillips' supporters and lawyers is included, while rhetoric from LGBTQ rights advocates and lawyers supporting Craig and Mullins are excluded. The justification for only analyzing one side of this debate is included in Chapter 3. To analyze these data sources consistently, I first develop a definition of populism that draws on the current debates about what constitutes populism—particularly focused on articulations of the relational, performative approach to populism—and also takes into account the manifestation of populism in popular discourse, particularly on social media. As I analyze the court documents, I identify key organizations that acted in support of Jack Philipps.[8] I then gather X (Twitter) data from their public accounts, as well as X (Twitter) data from the broader population using relevant hashtags. Finally, I analyze the affective choices made by individuals and organizations who advocated on behalf of Jack Phillips.

[8] A detailed justification for why I chose to look exclusively at individuals and organizations who advocated on behalf of Jack Phillips is included as part of my methodology in Chapter 3.

A note on terminology

Throughout the dissertation, I refer to the strategic choices that right-wing populist actors make when framing their arguments and political stances as 'right-wing populist framing strategies.' Framing is a concept that has been studied across numerous bodies of scholarship, and can broadly be defined as the choices made about the angles through which a story can be told (Crow & Lawlor, 2016; Dodge & Metz, 2024). Specifically, actors select particular aspects of a situation and bring salience to these elements to promote a particular problem definition, causal interpretation, moral evaluation, or policy solution (Ansolabehere et al., 1993; Entman, 1993). Framing strategies involve the integration of diverse cognitive and emotional elements in an actor's discourse, effectively guiding audience reactions and interpretations to fit actors' preferred narratives and outcomes (Clarke et al., 2006; Crow & Lawlor, 2016; Jones et al., 2023).

Fahey (2021) applies the concept of framing specifically to populism as he studies specific frames employed by populist leaders to "*enact specific relationships* and *construct identities* through discourse" (p.1271). These frames center around a populist leader "(1) construct[ing] a valorized people to which he and his supporters belong, (2) identif[ying] his opponents as members and/or tools of anti-democratic elite interests, (3) convinc[ing] the audience that these two groups are not merely distinct but engaged in zero-sum competition with one another, and (4) advocat[ing] for the direct, unmediated rule of the people through his election" (Fahey, 2021, p.1271). 'Framing strategies' is thus an apt way to describe the discursive and emotive choices that right-wing populist actors make to galvanize particular beliefs and reactions amongst their supporters.

My use of 'framing strategies' to describe populist discursive choices also draws on Demertzis' (2019) conceptualization of populism as an "orienting schema - i.e. as a mental structure by which individuals represent the political world and assimilate new information from their political environment" (p.32). This schema then "has two principal slots through which individuals orient themselves meaningfully towards the political field: 'the people' and the division of society between two main power blocs" ('the people' and 'the elite') (Demertzis, 2019, p.32). It is this schema—this way of orienting oneself to understand the political world—which attaches itself to different political ideologies across the left/right spectrum. I find this construction to be a compelling approach to understanding how populism works because unlike most studies of populism which focus on the 'supply side'—the "actors, organization, style, consequences, and normative implications"—the idea of populism as an orienting schema allows for a more meaningful analysis of the 'demand side' of populism—the people that support populist movements (Demertzis, 2019, p.31). This is because Demertzis (2019) focuses on the populist orienting schema as an attribute of thinking and feeling individuals, in other words the supporters of various populist actors. This aligns with my interest in better understanding populism as a relational phenomenon that underscores the importance of individuals in shaping populist rhetoric.

It is also important to note that populism isn't an ideology in and of itself but rather a way of framing diverse ideologies across the political spectrum (De Cleen and Glynos, 2021; Petrov, 2020; Reinemann et al., 2017; Ronderos, 2021; Walker, 2019).[9] Right-wing populism refers to the use of populist framing strategies to articulate messages and agendas from the political right. For the purposes of this dissertation, right-wing populism is used to refer to the current political

[9] Populism and its definitions are explored in more detail in Chapter 2.

context in the United States since Donald Trump campaigned for and subsequently took over the presidency in 2017. Specifically, populist framing strategies are used to articulate political messaging from the right. In the United States, the political right is associated with conservatism; a political philosophy that emphasizes limited government, individual liberty, a free-market economy, and traditional social values (Rohland, 2025). This term is used throughout the dissertation to refer to the right-wing ideology for which populist framing strategies are used to articulate.

Though 'conservatism' exists along a spectrum, in this dissertation it is used interchangeably with 'far right' as a reflection of the current, dominant articulation of conservatism in the United States today. This is reflective of a more extreme emphasis on traditional social values and indirect or covert racism that straddle the line between the liberal and the illiberal than what is espoused by the more center-right (Mondon & Winter, 2020). This is not to say that less extreme perspectives no longer exist along the spectrum of conservatism in the United States, it is merely an acknowledgement of the ways in which 'conservatism' has come to be associated with increasingly right-wing political views. I also recognize that the term 'conservative' is not universal and espouses a different meaning and set of values in the United States than it does elsewhere.

Finally, right-wing populist leaders understand 'the people' to be an "uncompromised majority" that are the only people to whom rights should be afforded (Fournier, 2019, p.365). This understanding of rights operates under the guise of a pluralist perspective which advocates for rights for everyone in support of the coexistence of diverse groups, beliefs, and cultures (Jenson, 2019) when, in reality, right-wing populist leaders and supporters only accept minority rights insofar as they are not perceived to conflict with the rights of the majority—the 'true

people' (Riedel, 2017). In other words, pluralism is allowed only as long as 'the people's' rights are afforded primacy.

Chapter outline

This dissertation is made up of an introduction, five chapters, and a conclusion. Chapter 1—the introduction—is followed by an outline of the theoretical framework and conceptual tools upon which this dissertation is based in Chapter 2. First, I examine the history and trajectory of *liberal human rights*. In this section I explore how liberalism and its conceptualization of freedom, as well as its attempts to erase and exclude otherness, lie at the heart of modern Western human rights frameworks. In other words, at their core, these human rights frameworks were founded on the exclusion of certain 'others' from the concept of 'the human.' I also examine how the emergence of neoliberalism and the centrality of the market over social policy vilified social protections and efforts towards equality as excessive government interference, political correctness, and an impediment to true liberty.

I then explore how the political right in the United States has, more recently, adopted the language of rights in order to combat the expansion of rights for vulnerable minority groups such as women, racial minorities, and the LGBTQ community in favor of expanded freedoms for White, Christian Americans. This is an important component of my theoretical framework insofar is it outlines the historical trajectory and underpinnings of modern conceptions of human rights, particularly as employed in the legal efforts of the political right in the United States. This sets the stage for the arguments made by Jack Phillips' lawyers and supporters in the *Masterpiece Cakeshop* case, not as an isolated event, but as a reflection of how historical exclusions ultimately allow for rights language to be used in illiberal ways to prevent or impede the expansion of minority rights.

Second, I examine *populism*. Here I outline the literature on the diverse ways populism as a concept has been defined. I also examine the differences and similarities between right- and left-wing manifestations of populism as a result of their objectives and constructions of 'the people,' 'the elite,' and 'the other.' I focus, in particular, on the ways in which right-wing populist leaders interact with constitutions once in power, drawing comparisons to Donald Trump's recent actions as President of the United States. I then look at how neoliberalism, in many ways, facilitated the rise of right-wing populism in the United States. Theories of populism are the crux of my dissertation, as understanding how populism is defined and understood, allows for an analysis of not only how right-populism currently manifests in the United States, but the extent to which right-wing populist rhetoric from the country's leaders permeates into institutional language (in this case the courts), and public discourse (as represented by X (Twitter) data).

Third, I looked at *affect.* As a crucial component of how right-wing populism operates, I explore the rise of affect as a legitimate approach to understanding social relations. I also specifically examine how right-wing populist movements rely on affect to garner support and increase the legitimacy of their messaging, particularly through the use of anger (and by extension, shame and blame), fear, and resentment and *ressentiment*. This aspect of my theoretical framework underpins Chapter 6, wherein I conduct a sentiment analysis to better understand how affect appeared in court transcripts and X (Twitter) data, and whether my findings align with the literature on the use of affect in right-wing populist movements.

In Chapter 3 I detail how I collected and compiled lower court documents (opening and reply briefs, notices of appeal, and briefs in support of appeals filed by Jack Phillips' defense, Alliance Defending Freedom), Supreme Court documents (petition for writ of certiorari and

supporting brief filed by Alliance Defending Freedom to the Supreme Court, opening and reply briefs also filed by Alliance Defending Freedom to the Supreme Court, and the Supreme Court's oral arguments transcript and opinion), and Amicus Briefs[10] filed by Jack Phillips' lawyers and supporters as well as X (Twitter) data from the baker's supporters in R. I also outline my methodology, explaining the approach I took to thematically coding and analyzing my data sources to identify how human rights claims are social constructed by the political right in the context of right-wing populism. Finally, I provide an explanation of the queer feminist ontology I used to orient my research.

Chapter 4 explores how key elements of the case—religious Americans and Christian business owners, the LGBTQ community, and the courts and government—are framed in court documents by Jack Phillips' lawyers and by key actors on X(Twitter). This chapter explores how the groups and people who were driving and shaping the conversation around the case constructed each element, and the influence that a right-wing populist political context might have had on their portrayal.

Chapter 5 analyzes how the case was discussed on X (Twitter) more broadly. X (Twitter) here is used as a representation of the 'general public' so that popular, colloquial framings of the same key elements of the case are explored.[11]

Chapter 6 analyzes the use of affect across all the court documents and the X (Twitter) data. Specifically, I explore whether or not this data shows affective patterns that are similar to those typically employed by right-wing populist leaders.

[10] See Appendix A for a complete, detailed list of court documents and Amicus Briefs submitted on behalf of Jack Phillips

[11] Though there are limitations associated with conceptualizing X (Twitter) as a representation of the 'general public' as a result of the demographics of typical X (Twitter) users, this is a common approach in social science research. This is explored in more detail in Chapter 5.

Finally, the dissertation concludes with an overview of the contributions made by this study, particularly in the context of Donald Trump's re-election in 2024. Areas for future research and analysis are then highlighted, along with considerations of the implications of the work.

Chapter 2 - Theoretical Framework

This research project relies on three different, yet interconnected bodies of literature: liberal human rights and the construction thereof; populism and its manifestations; and the role of affect in both general and populist political mobilization. Right-wing populism is often portrayed as a political style and performance that directly threatens liberal democratic systems. However, by analyzing how human rights emerge in liberal systems based on a foundation of exclusionary principles, it becomes apparent that right-wing populism can actually be complementary to liberal human rights systems. In fact, right-wing populist actors can exploit the existing exclusions that lie at the heart of liberal human rights frameworks in order to legitimate their claims. Affect is a crucial cross-cutting theme as it serves to reinforce the boundaries of inclusion and exclusion both in liberal human rights frameworks and in right-wing populist definitions of 'the people.' In both cases, affect is mobilized to construct a victim whose plight is worthy of empathy and who is deserving of rights and protection from an enemy.

Liberal human rights

Defining liberalism

Liberalism, as it is commonly understood, refers to a political philosophy that centers a narrative of the pursuit of citizenship and membership in the state, as well as individual economic freedom and prosperity. Important to this philosophy is the right and responsibility to spread 'civilization' to those deemed to be 'human' and capable of understanding and emulating a particular national culture (Lowe, 2015). According to Lowe (2015), the conditions and exclusions characteristic of slavery and colonial rule serve as the foundation for the emergence of liberal societies and the conception of the 'human' that lies at the heart of liberalism. This is because even early theories of liberalism, such as those put forward by John Stuart Mill and John

Locke, were predicated on a distinction between those who were seen as capable of self-government, moral and social development, and order and progress, and those deemed incapable of taking on the 'responsibilities of liberty' (Goldberg, 1993; Anker, 2021; Lowe, 2015). Specifically, those 'others' who failed to meet the standards of what constitutes a 'human person'—a white, middle-class European man in liberalism's earliest configurations—were excluded from the freedoms and equality promised by liberal principles by virtue of their perceived lack of civilization (Goldberg, 1993; Lowe, 2015).

Theories of liberalism typically value individual claims to freedom above those of the collective, and seek to bring people together around moral principles, such as universal equality, as opposed to allegedly divisive political, cultural or geographic identities (Goldberg, 1993). Because of these moral principles, racial identity, for example, may be deemed irrelevant to one's experience of the social world and material condition. As a result, the simultaneous denial and erasure of the centrality of 'otherness' is central to the logic of liberalism and the establishment of liberal societies. For example, at the same time that liberalism is responsible for the development of racialized difference and relies upon such differences to determine who constitutes a liberal subject, liberalism also seeks to erase racial differences "by diluting them, by bleaching them out through assimilation or integration" into the white, Christian, cisgender, Western, male norm (Goldberg, 1993, p.7). The *Masterpiece Cakeshop* case reflects the right-wing use of traditional liberal ideologies of normative identity to argue for the political primacy of the rights attached to those identities (like Christian religious freedom) over the protection of minority rights.

Liberal freedom

The principle of freedom is often centered as a key value in contemporary liberal societies. Though as Brown (1995) suggests, freedom is a "relational and contextual practice" shaped in contrast to what is considered to be "unfreedom" at a given moment in time, the reality that freedom can be produced out of and be practiced as subjugation continues to be central to understandings of liberal democracies (Anker, 2021; Brown, 1995, p.6). To be free in the 'New World' meant engaging in the practice of necropolitics, determining who could be considered 'disposable' by owning the (stolen) land and controlling the (slave) labor that allowed one to be self-reliant (Anker, 2021). This type of liberal freedom, wherein "property and personhood for some entails poverty and deracination for other," continues to be characteristic of contemporary liberal understandings of freedom that seek to protect (certain) citizens from state power while also preventing chaos and anarchy (Brown, 1995, p.6). Despite the arguable expansion of freedoms to historically vulnerable and marginalized groups of people, the desire for self-reliance, freedom from interference, and the ability to shape the conditions of one's life lie at the heart of liberal politics (Brown, 1995; Pettit, 2000). The four main forms of freedom instrumental to the development of liberal subjectivity are: (1) freedom as individual liberty, (2) freedom as emancipation from slavery, (3) freedom as private property and individual economic choice, and (4) freedom as citizenship (Anker, 2021).

The *Masterpiece Cakeshop* case is predicated primarily on the framework of freedom as individual liberty—envisioned as "continual human progress toward peace through individual self-possession, noncoerced activity, rule of law, and economic prosperity" (Anker, 2021, p.5)—because it creates a conflict between the expression of individual liberty for those with normative versus non-normative identities. In this case, the rights demands of the non-normative LGBTQ

couple is placed in direct conflict with the individual freedom of the normative shop owner to exercise his Christian religious freedom.[12] My project underscores the domination and subjugation at the heart of liberalism in order to disrupt understandings of liberal societies as having linearly transitioned from a period of colonial domination to freedom and equality for all in the aftermath of emancipation (Lowe, 2015). The 'freedom' enjoyed by European settler colonizers is reflected in experiences of 'freedom' in today's liberal democratic systems, enjoyed against a backdrop of "systemic and legal antiblack racism, unacknowledged indigenous dispossession, and the wholesale destruction of ecosystems for short-term prosperity" (Anker, 2021, p.42).

In the context of human rights, right-wing populism is one framework through which to examine the ways in which dynamics of domination and subjugation continue to be central to liberalism insofar as right-wing populist movements recall an Enlightenment understanding of liberalism, democracy, and equality (Mégret, 2022). Specifically, they adopt "a narrow, formal, and universalizing concept of equality" focused on individual rights to challenge the validity and legality of more progressive human rights projects that fight for "a conception of *substantive* equality with racial and economic redistributive overtones" (Mégret, 2022, p.245). For example, when human rights campaigns push for things like multiculturalism and racial justice through affirmative action, right-wing populist actors quickly point to the ways in which these efforts result in unnecessary government intervention, and represent a prioritization of the rights of internal and external 'others' and a reinforcement of the victimization of 'the people' (Mégret, 2022).

[12] The association of Christianity with normativity is explored below.

Efforts to expand human rights rely on claims by a sovereign liberal subject that they are being oppressed by the state and denied full, unhindered participation in the free market (Brown, 1995). Particularly for marginalized 'others' who are often perceived as outsiders to a national culture, rights movements celebrate and encourage these groups' adherence to capitalist cultural rules and assimilation into culturally established institutions as a means for achieving greater equality, power, and legitimacy (Berlant, 1997; Brown, 1995). By emphasizing the need to conform to the status quo, the pursuit of freedom fails to substantively challenge and transform the conditions of domination that produce suffering and subjugation, as well as the social categories and subjectivities produced by those systems of domination (Anker, 2021; Brown, 1995). Rather, a "kind of (often tacit) peace" is made with the exploitation and normativity of these social categories insofar as conformity is seen as the pathway to freedom and equality (Berlant, 1997, p.9).

Formations of freedom designed to expand the power and profit of the few while others continue to suffer provide the context for the founding principles of the legal system as it appears and is understood in Western liberal democracies like the United States. Liberal democratic societies often rely on the state to regulate, determine, and ultimately allocate rights. When both the political right and left rely on state-based regulatory powers to enshrine and protect liberal configurations of freedom—particularly in a deeply unequal and hierarchized society—the connection between subjugation and certain classed, racialized, and gendered identities becomes codified in law. This serves to increase the vulnerability of the already marginalized by legitimizing and facilitating their exploitation by the socially privileged who seek to exercise their own freedom from interference by the government (Brown, 1995; Pettit, 2000).

While liberal freedom as individual liberty is the primary legal framework for examining the *Masterpiece Cakeshop* case, the second most salient understanding of freedom is that of citizenship—the "condition of social membership produced by personal acts and values" (Berlant, 1997, p.5). Membership in the state in the form of citizenship is central to the construction of rights claims because only those who are considered to be citizens, or legitimate members of the nation and 'the people,' are deserving of human rights.[13] In the case of the *Masterpiece Cakeshop* case and the right-wing political rhetoric surrounding LGBTQ rights in the United States more generally, Jack Phillips is constructed as an upstanding citizen deserving of the right to religious freedom.

By contrast, the LGBTQ community and the left-wing government who afforded the community rights and recognition are portrayed as encroaching on 'true' citizens' rights. As it intersects with liberalism, this form of freedom becomes about preventing encroachment on one's individual freedoms, and fosters an environment of separation and defensiveness (Brown, 1995). This understanding of freedom equates to a desire for freedom from (governmental) interference in one's ability to make choices (Pettit, 2000). Jack Phillips' case hinges on the argument that the government unduly encroached on his right to religious freedom by granting LGBTQ people the right to non-discrimination. Additionally, Phillips, his lawyers, and his supporters claimed that he was denied his right to make a choice about who to serve by the Colorado Civil Rights Commission—an extension of the liberal-leaning Colorado state government (Brief of Amici Curiae Becket Fund for Religious Liberty, 2017).

[13] At present, the notion that citizenship guarantees rights is being eroded as [non-white] United States citizens continue to be regularly targeted by Immigration and Customs Enforcement. Donald Trump has also made threats that he will revoke the citizenship of "homegrown criminals" (Mann, 2025) and those who disagree with him like comedian Rosie O'Donnell and Democratic nominee for New York City mayor, Zohran Mamdani (Ewing, 2025).

Liberal human rights

The concept of human rights originally emerged during the Renaissance of the fifteenth and sixteenth centuries. European Christian humanists sought to establish a basis for further distinguishing themselves from enemy communities they perceived to be 'lesser than' by defining themselves, contrastingly, as human or 'man' in philosophical terms. The idea that there were certain rights associated with the quality of humanity gained credence during the early exploration and colonization of the Americas, wherein European Christian humanists argued that the people they encountered had property rights despite not being Christian, and sought means to appropriate their land nonetheless (Mignolo, 2009). This was achieved by arguing that, despite their humanity, these native populations fell short of the intelligence required to meet the criteria of universal law and thus required a Western power to implement a proper legal state (Anghie, 2006). The failure of native populations to meet the criteria established by European colonizers for 'sovereignty' ultimately allowed for the reinforcement of hierarchies of power (Anghie, 2006).

These hierarchies placed 'civilized' European colonizers in positions of power and domination over native populations who were perceived to be fundamentally 'uncivilized.' European colonizers eventually moved beyond theological bases for distinguishing between the 'civilized' and the 'uncivilized' of the world, transitioning instead to a reliance on the notion that evolutionary differences contributed to a spectrum of rationality that distinguished between 'natural masters' and 'natural slaves' (Wynter, 2003). This new, more powerful system of domination formed the basis of modern racial formations. At the 'rational' end of this "Chain of Being" was the political subject, represented by European intellectuals and Christians, with Black people portrayed as irrational and uncivilized (Wynter, 2003).

In the interest of protecting national interests and the sovereignty of the state, the civil political subject eventually became the central figure of rights discourse (Mignolo, 2009). This framing of rights emerged most prominently in the late eighteenth century with the development of the concept of the nation-state, through documents like the 1776 Declaration of Independence in the United States and the 1789 Declaration of the Rights of Man in France. These documents underscored certain unalienable rights of 'men,' all of whom were to be considered equal under the law (Hunt, 2007). Having rights meant being included in and respected by a community and recognized politically and, therefore, was akin to being considered a citizen of the state (Hunt, 2007; Moyn, 2010). In the context of rights, citizens were those who were able to contest situations in which established rights were violated, as well as shift notions of citizenship by campaigning for new rights (Moyn, 2010).

Inclusion in the citizenry, however, also required strict adherence to established cultural norms and conventions (Goldberg, 1993). As a result, in exclusionary terms similar to those at the heart of liberalism, those who existed outside the bounds of citizenship either, as Arendt (1951) discussed, by virtue of migrant or refugee status, or on the basis of othered classed, racialized, and gendered identities deemed incongruent with cultural rules, were not afforded rights and not included in the decision-making spaces wherein they might affect changes to their rightlessness. Interestingly, because human rights are the rights of humans as they relate to one another in society, rights (and those who have them) can only be defined and established according to the rightless exceptions (Hunt, 2007; Puar & Barker, 2002).

When the Universal Declaration of Human Rights in 1948 was developed, political and civil rights such as the right to possession of property and political participation were established as the foundation for human rights. Though social protections like the right to bodily autonomy,

and concerns for economic deprivation have arguably existed as long as political and civil rights, they were only added to official human rights discourse in 1986 with the Declaration of the Right to Development, and are therefore regularly considered to be less important, "'second-generation' principles" (Koggel, 2006; Moyn, 2010, p.17).

Despite claims that human rights were universal, early international rights frameworks were established by Western powers and reflected their strong global influence (Wa Mutua, 1996). These frameworks often served to facilitate Western domination as these countries increasingly used human rights as a mean to justify violence and invasion against others under the guise of protecting 'national security' and sovereignty, and preventing perceived human rights abuses (Anghie, 2006). Human rights were inextricably linked to the colonial legacy of 'civilizing' beings defined as exterior to and different from the 'human' or citizen who is worthy and deserving of rights and recognition (Douzinas, 2013; Mignolo, 2009).

Neoliberalism, equality, and the political right

Neoliberalism is characterized by policies that gained popularity in the 1970s aimed at privatization, strengthening of property rights, tax reform, promoting market competition, and freeing up the global flow of capital by facilitating foreign investment and trade by reducing restrictions and imposing uniform tariffs (Brown, 2019; Cayla, 2021). Neoliberalism also prompts market labor reforms by seeking to do away with labor unions and legal minimum wages and attempts to reform public assistance programs to avoid 'disincentivizing' people from working (Cayla, 2021). Though these policies began largely in the Low and Middle Income Countries (LMICs) as a result of International Monetary Fund mandates around borrowing and debt restructuring, they were quickly adopted by leaders like Ronald Reagan and Margaret Thatcher.

Michel Foucault argues that neoliberalism is a "reprogramming of liberalism" insofar as it seeks to make market principles the governing principles not only of the state but of institutions and entities across society like schools and workplaces (Brown, 2019, p. 19). This is because, where classic liberalism sought to delineate boundaries between the state and the market, neoliberalism seeks to dismantle such boundaries so that the state can be "analyzed and assessed *as if* it was a market" (Kiely, 2020, p.404). Neoliberalism is a doctrine which seeks to "diminish the role of the state in the economy in order to let market mechanisms operate spontaneously" as the free market is seen as being efficient and inherently able to self-regulate (Cayla, 2021, p.60-61). The state's role thereby becomes one of intervening to impose regulations that expand the market and shape individual behavior to conform to the market through consumerism and entrepreneurialism (Kiely, 2020). This perspective solidified the hegemony of neoliberalism in the 1990s, with increased globalization and the notion that free trade would naturally improve productivity and the flow of capital, contributing to global economic growth (Rodrik, 2019).

According to Hayek (1978), "complex interdependence in modernity […] does not arise from fellow feeling or organized common pursuit" as advocated for by those interested in social justice, "but from individuals following rules of conduct that emanate from markets and moral tradition" (Brown, 2019, p.31). In a neoliberal society, justice is not about state intervention but rather about universally known and applied rules. Winners and losers are a natural byproduct of such a society because the evolution of civilization rests on ridding itself of any weakness or failure (Brown, 2019). However, this view of societal interactions promotes the notion that such dynamics are not only integral to the survival of society as an extension of the market, but also "necessary to achieve any worthwhile modern form of freedom" (Purdy, 2014, p.213). These

dynamics then "become means to rationalize and insulate structurally produced inequality as being simply the product of fair relations among equally free individuals" (Purdy, 2014, p.213). This goes against the very foundation of democratic political thinking which, according to Mouffe (2005), is akin to "an idealized view of human sociability, as being essentially moved by empathy and reciprocity" (p. 2-3).

As a result, neoliberalism has paved the way for antidemocratic forces to mobilize and gain legitimacy in the 2010s through its goal of "dismantling the social state" (Brown, 2019, p.28). Specifically, "neoliberal rationality […] fashioned an ordinary discourse in which social justice is at once trivialized and monsterized as 'political correctness' or characterized as the Left's Gramscian Kulturkampf aimed at overthrowing liberty and morality and secured through blasphemous statism" (Brown, 2019, p.7). In other words, the left's attempts to realize social equality are reduced to excessive state intervention and an impediment on true liberty. Through this discourse, the political left is constructed as "tyrannical or even 'fascistic' in its care for social justice" while also being responsible for disintegrating traditional notions of morality, contributing to unsecured borders, and providing giveaways in the form of social assistance to the 'undeserving' (Brown, 2019, p.10).

Democratic political systems operate effectively based, in part, on the discrimination between friend and enemy in the construction of a collective identity centered around a 'we' opposed to a 'they' (Mouffe, 2005). However, rather than an antagonistic we/they distinction wherein 'the other' is seen as an enemy threatening the very existence of one's identity and advocating for illegitimate demands, democracy requires a more 'agonistic' relationship that emerges as the product of a "universal consensus based on reason" (Mouffe, 2005, p. 11). In other words, there is a universal understanding that the 'they' or 'the other' is governed by the

same reasonable principles, producing a political alternative as opposed to an existential threat. Neoliberalism, however, seeks to eliminate the legitimate political channels that allow for dissenting voices to exist, quashing this 'agonism' in favor of a 'consensus at the centre' (Mouffe, 2013). This 'consensus at the centre' precludes voters from making real choices between significantly different policy platforms.

In the United States, both Republicans and Democrats embraced the exclusive emphasis that neoliberalism places on the market and a free, naturally regulated economy which made many feel as though they presented effectively the same political platform. Traditional left-right conflicts have therefore decreased in relevance (Stanyer et al., 2017). Coupled with "declining trust in political institutions and political representatives, in party de-alignment, a decline in political participation and decreasing election turnouts" spurred on by neoliberal globalization, citizens became increasingly disenchanted politically (Sauer et al., 2018, p.14). This ultimately empowered increasingly right-wing politicians to claim that they represent an alternative to this dissatisfying 'consensus' (Mouffe, 2013; Stanyer et al., 2017). Right-wing populist parties have been increasingly successful insofar as they replace a weakened left/right distinction with an opposition between 'the people' and 'the establishment.' As Mouffe (2005) points out, though right-wing populist political actors rely on problematic mechanisms of exclusion to articulate the 'we/they' distinction, such as xenophobia and racism, they are articulating "real democratic demands which are not taken into account by traditional parties" (p.71). As such, neoliberalism empowers and legitimates the far right as they mobilize "a discourse of freedom […] for rescuing white, male, and Christian hegemony, and not only for building the power of capital" (Brown, 2019, p.10).

Particularly relevant to this project is Brown's assertion that "nothing is untouched by a neoliberal mode of reason and valuation and […] neoliberalism's attack on democracy has everywhere inflected law, political culture, and political subjectivity" (Brown, 2019, p.8). In other words, it is important to understand how right-wing populist discourse, as it emerges in a perverse effort to revitalize the agonism of democracy (antagonism in reality), pervades social and legal discourses.

Rights on the political right

Prior to 1970s conservative Christians emphasized the need to protect community morality as opposed to liberal rights claims which focused predominantly on individual rights (Lewis, 2017). Critics of the more liberal approach to rights argued that individualism "promotes unrealistic expectations, heightens conflict, and inhibits dialogue that may lead toward consensus, accommodation, or at least discovery of common ground" (Glendon, 1991, as quoted in Lewis, 2017). Despite the success of liberal individual rights arguments in front of the Supreme Court from victories such as African Americans being granted the right to vote, to women gaining access to birth control pills and abortion, to the decriminalization of gay sex and the legalization of gay marriage, conservatives instead promoted limited government and law and order (Lewis, 2017).

However, as neoliberalism increased in prevalence, the pro-life movement emerged, and evangelicals lost prominence in the face of declining religion, conservative Christians moved away from their emphasis on community and morality in favor of a rights-based advocacy strategy centered around conceptions of 'liberty,' particularly focused on religious freedom and freedom of speech (Lewis, 2017). Neoliberalism brought with it "neoliberal jurisprudence—a framework for interpreting the First Amendment on behalf of broad deregulation, especially for

corporate and religious interests" (Brown, 2019, p.123). This meant that "the market itself, with all its inequality, is ever more thoroughly constitutionalized as a realm of freedom" (Purdy, 2014, p.203). At the same time, becoming a minority spurred evangelicals to "embrace rights to protect their status in the increasingly diverse political community; they embrace rights to preserve cultural morality; and they embrace rights because it is an expected part of citizenship" (Lewis, 2017, p.9-10). In the last decade in particular, this conservative movement towards rights-based discourse and legal arguments has successfully used individualism to protect traditional morality.

The shift towards individual rights among conservative Christians most notably began with anti-abortion advocacy. While Catholics are responsible for developing the individual rights approach to anti-abortion advocacy—the *right to life*—in the 1960s, evangelicals originally opposed abortion on the basis of an opposition to feminism and sexual freedom (Lewis, 2017). It wasn't until the 1990s that the *right to life* argument gained more widespread popularity and was adopted by evangelical Christians (Lewis, 2017). Abortion politics expanded to religious freedom arguments when religious individuals and groups felt that providing contraceptives to employees under the 2010 Affordable Care Act violated their religious convictions and eventually, religious freedom arguments expanded to anti-gay rights efforts surrounding the 2015 *Obergefell v. Hodges* legal battle for gay marriage (Lewis, 2017).

At the same time, the extension of free speech to corporate spending in the *Citizens United* decision in 2010 expanded the understanding of free speech as it had previously been understood to only protect the speech of a "flesh-and-blood person" engaged in political debate from government regulation and intervention (Purdy, 2014, p.199). Notably, in this decision, Justice Kennedy stated, "the State may not burden the speech of others in order to tilt public

debate in a preferred direction. 'The commercial marketplace, like other spheres of our social and cultural life, provides a forum where ideas and information flourish.'" (Justice Kennedy as quoted in Purdy, 2014, p.199). This quotation foreshadows the *Masterpiece Cakeshop* case insofar is it speaks to the ways in which the argument made on behalf of the baker criticized the state for its perceived imposition of 'political correctness' over religious conviction in the context of a 'marketplace' interaction.[14]

When a constitution is wielded to protect "the autonomy of self-defining individuals whose identities and relationships are their own to form," the state cannot be allowed to dictate or interfere in these identities and relationships (Purdy, 2014, p.212). This perspective ultimately opens the door to cases like the *Masterpiece Cakeshop* case where a business' actions are inextricably linked to the identity of its owner and thereby afforded the same constitutional protections. Understanding the extension of free speech to corporations and the commercial marketplace also underscores the arguments in *Masterpiece Cakeshop* that Jack Phillips, as a business owner, had a right to free speech—to not be coerced to produce a cake for a gay couple. This expansion of freedom of speech to not only individuals but small businesses and corporations, however, renders legal advancements in equality vulnerable "to being overturned or undermined through individual exemptions (Brown, 2019, p.124).

Businesses, along with the religious right have increasingly made headway with both deregulation and individual exemptions in the courts through their specific use of free exercise and freedom of speech together. In its recently expanded form, free speech generally "pushes back against democratic mandates legitimately organizing commercial, public, and social life" (Brown, 2019, p.125), while the free exercise clause protects the religious practices that also

[14] The notion of the state imposing a particular mainstream perspective in violation of one's religious beliefs is explored in chapter 4.

organize commercial, public, and social life. Taken together, these components of the First Amendment become a tool to dismantle the legislative progress made in the last fifty years towards addressing the inequality and subordination experienced by women, racial, and sexual minorities. Instead, the focus of legal protection and "redress [becomes] a different pool of the ostensibly ostracized or victimized: businesses and moral-religious traditionalists" (Brown, 2019, p.126).[15] Or, in the case of the *Masterpiece Cakeshop* case, a moral-religious traditionalist business owner.

In fact, the *Masterpiece Cakeshop* case represents a salient example of the conservative Christian right mobilizing freedom of speech and free exercise together to attempt to demonstrate that all antidiscrimination legal provisions in the commercial marketplace effectively violate businesses' freedom of speech, as Justices Clarence Thomas and Neil Gorsuch detailed in their concurring opinion. The first real example of this legal strategy emerged in *Burwell v. Hobby Lobby Stores, Inc.* (2014), where the owners of Hobby Lobby argued that the Affordable Care Act forced them to provide contraceptives to employees in violation of their Christian beliefs. While this case was the first instance of individual religious conviction being tied to business ownership and thereby the commercial actions of the business, it only extended religious freedom to control the lives of employees. The *Masterpiece Cakeshop* case took this control a step further to the lives of consumers.

The Alliance Defending Freedom, the legal organization defending Jack Phillips, expertly crafted Phillips' identity as a complex combination of expert baker, business owner, and artist. As a result, his Christianity is portrayed as "exceed[ing] his concern with profit, hence that the bakery is an extension of his religious beliefs, which in turn makes the baked goods 'expressive'

[15] The construction of conservative Christians as 'victims' is explored in chapters 4 and 5.

of these beliefs" (Brown, 2019, p.131). In so doing, requiring Phillips to bake a cake for a same-sex couple was formulated as simultaneously violating his free speech and religious freedom. Rather than religion being a question of individual values tied to a person, this case "implicitly tie[d] a religious liberty to commercial ownership (Brown, 2019, p.132). The use of the freedom of speech argument allowed Phillips' lawyers to craft an argument in which refusing to bake a cake for a same-sex couple is constructed as "act or event-based, rather than person-based" which would effectively allow the baker to circumvent public accommodations laws (Brown, 2019, p.134).[16] The historical precedent extending back to early anti-abortion activism allowed for the joining of ownership, religion, and speech in legal arguments as a means to expand free exercise into the public and commercial spheres, allowing the conservative Christian right to demand the legal recourse to circumventing laws focused on equality (Brown, 2019).

Just as neoliberalism allows right-wing populism to flourish in its attempts to decry a social state that supports the allegedly 'undeserving' over the 'true' people, the centrality of the market in neoliberalism has allowed right-wing populism to further challenge the validity of equality-focused legislation. Neoliberal jurisprudence has effectively extended personhood to market actors, allowing corporations and businesses to claim free speech and freedom of religion as opposed to just individuals. The result is an economy in which "the First Amendment [becomes] a natural vehicle to constitutionalize transactions at the core of the market" (Purdy, 2014, p.202).

As Cayla (2021) describes, right-wing populism and the rights-based agenda being lobbied for by the conservative Christian right, emerge from the "contradiction between the democratic ideal, which implies that the people should decide, and neoliberal governance, which

[16] The differentiation between refusal to support a particular action or behavior and homophobia is explored in chapters 4 and 5.

seeks to make markets and competition the arbiters of major social developments" (p.i). This neoliberal approach allows for the replacement of a democratic society with one governed by the markets and, with growing success in front of the Supreme Court, a resurgence of traditional morality under the guise of individual 'freedom.' Ultimately, this "new jurisprudence mobilizes religious liberty and free speech to permit the (re)Christianization of the public sphere" (Brown, 2019, p.125).

Ultimately, by centering perspectives that shed light on the domination and subjugation that are key to liberalism and the ways in which these liberal principles underpin modern understandings of human rights (Anker, 2021; Berlant; 1997; Brown, 1995; Goldberg, 1993; Hunt, 2007; Lowe, 2015), my dissertation explores how human rights are constructed in liberal democratic societies against a backdrop of growing right-wing populism. Much of the scholarship on right-wing populism positions the phenomenon as a backlash against the institutionalization of liberal human rights frameworks for threatening popular sovereignty and, therefore; a fundamental threat to not only human rights frameworks, but liberalism more broadly. When one considers critiques of liberalism and neoliberalism that underscore their exclusionary characteristics, however, it becomes clear that right-wing populism can use liberal exclusions and the erasure of 'otherness' to their advantage, rather than acting only to threaten liberal systems.

This project joins scholars in feminist, postcolonial, and cultural theory who challenge the tendency to view liberalism as an egalitarian protective mechanism, arguing instead that it is an individualistic, ethnocentric, and imperialistic pursuit emphasized by the "bourgeois-individualist modern West" (Brown, 1995, p.18). This critique stems, in part, from the ways in which the pursuit of freedom through state-produced rights ultimately transforms rights

frameworks into a disciplinary power of the government focused on protecting and advancing the interests of self-interested subjects deeply concerned with maintaining their own independence (Brown, 1995).

Populism

Defining populism[17]

Though the study of populism has dramatically expanded in the last several years, scholars continue to disagree about how to define the concept. Some scholars define populism according to the presence of a charismatic leader who is able to mobilize diverse social groups around a common idea (Germani, 1978), while others define it as a political style that seeks to link "an increasingly undifferentiated and depoliticized electorate" with political leadership (Mair, 2002, p.84). Laclau (2005), on the other hand, defined populism as a political logic that discursively divides the social between 'the people' and those in power through "the linking of very different demands, then the formation of a collective identity through the recognition of an enemy […] and finally the affective investment in an element (e.g. the leader) that represents the people" (Mudde & Kaltwasser, 2012, p.6). According to Mudde and Kaltwasser (2012), however, each of these approaches to defining populism overly conflates the concept with aspects of more general political behavior such as the ability to mobilize diverse social groups and the demagogy and opportunism that is typical of politicians during campaigns.

For the purposes of this research, I draw upon scholarship arguing that populism cannot be understood as a consistent or universal set of actions but rather, must be viewed as a strategy designed to mobilize particular narratives across the political spectrum (Fournier, 2019; Halmai, 2019; Petrov, 2020; Riedel, 2017; Ronderos, 2021; Walker, 2019). A 'minimal' definition of

[17] The limitations of populism as a framework are explored in the methodology section of this dissertation.

populism—a definition that seeks to define the commonalities across theorizations of populism, despite the diversity of approaches and understandings—underscores the drawing of a moralistic boundary between a 'the people' and a corrupt and illegitimate political 'elite' who fail to represent the common and united will of 'the people' (Halmai 2019; Müller, 2017; Mudde & Kaltwasser, 2012; Petrov, 2020; Walker, 2019). Mudde and Kaltwasser (2012) therefore identify three core elements necessary to classify a movement or leader as populist: the people, the elite, and the general will, which can only be represented by the populist leader, as well as their opposites: elitism and pluralism.

I am similarly interested in identifying right-wing constructions of 'the people,' 'the elite,' and the general will, in addition to discussions of elitism and pluralism, both of which are seen as threatening the common will of 'the people.' Mudde and Kaltwasser's (2012) 'minimal' definition allows for a decentering of the populist leader as the sole engineer of populism in a given context. Though the charismatic populist leader is crucial for mobilizing the electorate, they only represent what Mudde and Kaltwasser (2012) call "the supply-side of the populist phenomenon" (p.10). In reality, "the formation, propagation, and transformation of the populist ideology depends on [both] skillful political entrepreneurs and social groups" who are motivated to support a populist agenda (Mudde & Kaltwasser, 2012, p.10).

Ostiguy and Moffitt (2021) similarly argue for a more relational understanding of populism that emphasizes the 'bottom-up' component of populism. In other words, the idea that populism emerges as much by virtue of what a leader says and does as it does by how supporters and institutions interpret the leader's performance and the symbolic meanings they impose upon the leader (Ostiguy & Moffitt, 2021). This is particularly relevant to my research, as I am interested less in Trump's discourse as the populist political leader, and more in the

manifestation of populism in the institutional and popular landscape. Studying populism from a 'bottom-up' perspective challenges the centrality of the populist political leader in the literature, prompting an expanded understanding of how to challenge exclusionary and discriminatory populist agendas.

I also recognize the critique that 'minimal' definitions of populism, as presented by Mudde and Kaltwasser (2012) are, in many ways, too broad and general, and are therefore a limited tool for understanding and evaluating the specificities of different populist politics (De Cleen & Glynos, 2021; Katsambekis, 2022). I balance Mudde and Kaltwasser's (2012) criteria with Laclau's (2005) "discourse theoretical" approach which emphasizes how demands are *articulated* and encourages an acknowledgement and analysis of the ways in which populism attaches itself to existing political ideologies (De Cleen & Glynos, 2021, p.2). Laclau (2005), in fact, theorizes that the meaning of populism "is not to be found in any political or ideological content entering into the description of practices of any particular group, but in a particular *mode of articulation* of whatever social, political, or ideological contents" (p.34).

As a result, I agree with De Cleen and Glynos' (2021) argument that populism must be regarded as "a dimension of certain sorts of politics" rather than a phenomenon driving social and political change in and of itself (p.4). In other words, populism is "a general, abstract concept about politics and society that is open to a diversity of more concrete political ideas and programs, depending on both national and historical context" (Reinemann et al., 2017a, p.13). All movements and political acts have the potential to adopt a populist logic that manifests through the performativity of a leader and resonates with 'the people' by symbolically representing the material identities of those who feel they have been 'forgotten' or 'left behind'—the 'non-elite' (Laclau, 2005; Ostiguy & Moffitt, 2021; Zembylas, 2020).

Populism is therefore an avenue for mobilizing diverse political ideologies through a *vertical* antagonism wherein "'the people' is discursively constructed as a large powerless group through opposition to 'the elite' conceived as a small and illegitimate powerful group" (De Cleen & Stavrakakis, 2017, p. 310). Populism further appeals to 'the people' by encouraging "*horizontal* opposition to those outside," who do not conform to ethnic, racial, and gendered formations of 'the people' (Brubaker, 2020, p.44, emphasis added; Obradovic et al., 2020). 'The people' is differentiated from 'the elite' as "underprivileged citizens" who are worse off economically, have less formal education, and less access to power (Reinemann et al., 2017, p.17). With its staunch emphasis on 'the people' as a political group, politics is reduced to a question of shared values marking a "transition from class politics to value politics, from party politics to symbolic politics, from ideological to identity politics, from socio-economic to cultural cleavages" (Krasteva, 2017; Sauer et al., 2018, p.24). Despite the differentiation between 'the people' and 'the elite' pointing to a critique of socio-economic injustice and inequality, this dichotomy underscores "the (native) people" as opposed to class identity (Reinemann et al., 2017, p.17).

Populism emerges when social groups feel as though their demands have not been heard or acknowledged by way of normal liberal democratic political processes for a long period of time by uniting these demands into a common 'will of the people' and portraying a political leader or movement as the sole entity capable of representing that will (Laclau, 2005; Zembylas, 2021). In the case of the *Masterpiece Cakeshop* case, the Christian right saw First Amendment rights as being threatened in the last decade or so by the perceived undue expansion of 'minority' rights. In this case, a 'correct' decision from the Supreme Court in line with President Donald

Trump's religious freedom agenda—a win for the Christian baker—is the only way to re-establish this 'will of the people.'

According to Laclau (2005), people typically unite around abstract symbols, such as 'equality' or 'freedom,' that lack concrete definitions and can therefore be called 'empty signifiers.' These empty signifiers are useful entry points for populist leaders as they can mobilize already unifying concepts while simultaneously defining them with more specificity according to their particular agenda (Zembylas, 2021). The concepts of 'the people' and 'the elite' can also be considered empty signifiers, as it is particular populist movements that construct the meanings of these categories (Mudde & Kaltwasser, 2012). It is therefore important to recognize that populist politics is not only uniting existing demands but also constructing new demands and fueling frustration with an 'illegitimate elite' as the cause of unmet needs, often through the manipulation of existing empty signifiers (De Cleen & Glynos, 2021).

Ostiguy and Moffitt (2021), however, challenge Laclau's (2005) tendency to characterize the populist leader themself as an 'empty' signifier insofar as 'the people' "project a wide range of their concrete demands, grievances, and emotions onto the redemptive name of the leader" (Ostiguy & Moffitt, 2021, p.55). Where Laclau (2005) sees this phenomenon as rendering the leader a symbol devoid of a particular meaning—or an 'empty' vessel that can represent any desire, demand, or grievance—Ostiguy and Moffitt (2021) instead argue that a multiplicity of meanings projected upon a leader makes them an 'overflowing' signifier rather than an 'empty' one. The notion of an 'overflowing' signifier emphasizes the relational dimension of populism wherein people seek to address a sense of personal 'lack' by finding political and social identities with which they relate and identify. In other words, it is something *specific* about the populist leader that appeals to 'the people' rather than the blank emptiness attributed by Laclau (2005).

Rather than presenting a blank canvas onto which people project their demands and grievances, something specific about the populist leader allows people to see their demands and grievances represented by that leader.

This approach therefore recognizes that a leader has agency which is equally as important to the identification process as the possibility of associating the leader with multiple different narratives (Ostiguy & Moffitt, 2021). As such, "what you semantically 'make of it/him' […] in terms of projecting, *cannot* be independent of what the actual [leader] in his concrete finitude did, said, and enforced—and of the reactions he/it triggered" (Ostiguy & Moffitt, 2021, p.57). In this configuration, "the performance, including the traits, words, and particular practices of the populist leader" orient the frustrations, resentment, and anger of 'the people' towards 'the elite' and a social 'other' as the obstacle to overcoming one's sense of lack (Ostiguy & Moffitt, 2021, p.63).

When the *Masterpiece Cakeshop* case made its way to the Supreme Court in 2018, Donald Trump's rhetoric surrounding a need to protect religious freedom from the threat of equality-oriented legislation likely shaped much of the rhetoric that emerged around the case in the public sphere, as well as the way Jack Phillips' lawyers framed the case as a violation of the baker's rights, by focusing blame on a broad social 'other.' By incorporating a relationally-oriented, 'discourse theoretical' approach as envisioned by Ostiguy & Moffitt (2021), I examine how human rights cases are constructed and shaped by a political context in which right-wing populist articulations of 'the people,' 'the general will,' 'the elite', and 'the other' are regularly mobilized by political leaders. This enables me to draw conclusions about right-wing populism as a practice that may shape the construction of human rights claims rather than simply a categorical use of certain tropes.

Left-wing populism

As mentioned above, populism is a political framing strategy that can attach itself to different political philosophies, including left-leaning political causes. Both right-wing and left-wing populist parties question the tenants of liberal democracy—specifically the representative nature of the system, as well as the "constitutional and institutional realm"—albeit in different ways and with different desired outcomes (Agustín, 2020, p.2). Both also emerge as the representativeness of mainstream political parties declines and the differences between political parties narrows, with politicians prioritizing their own interests over representation and popular sovereignty (Agustín, 2020; Mouffe, 2013). As a result, there are increased "demands for political change and more democracy, coming from civil society and social movements" (Agustín, 2020, p.2). As with right-wing populism, left-wing populist parties also often rely on a charismatic leader who views themselves as the sole representative and embodiment of 'the people' (Moffitt, 2020).

Ultimately, however, the ideology articulated through populist framing strategies is substantially different between the left and the right. On the one hand, right-wing populism typically promotes exclusionary, ethno-nationalist definitions of 'the people,' vilifying immigrants and minorities as an 'other' who, with support from 'the elite' are infringing on the rights, freedoms, and privilege of those who *are* considered part of the 'true' people.[18] On the other hand, left-wing populism typically takes a much more inclusive approach to defining 'the people' for whom politics is opened (Blokker, 2018). This is a more civic-nationalist definition of 'the people' centered around shared citizenship and the right and responsibility to participate politically (Moffitt, 2020).

[18] Manifestations of right-wing populism are explored further below.

When populism builds on this type of nationalism, the result is often an inclusive bringing together of a diverse population united in their socioeconomic and political frustrations and struggles (Moffitt, 2020). As a result, left-wing populism tends to focus on more progressive social protections, egalitarianism, and economic re-distribution (Candia, 2019; Katsembakis, 2022; Mazzolini, 2015). Many left-wing populist parties are associated with "socialism's acceptance of parliamentary democracy and rejection of capitalism" (Mudde, 2005, as quoted in Agustín, 2020, p.4), becoming distinctly populist in nature through their "'proletarian' anti-elitism" and class-based understandings of who constitutes the 'true' people (Agustín, 2020, p.4; Riedel, 2017; Halmai, 2019; Bugaric, 2019).

Populism overall is a response and resistance to a "crisis of representation" (Agustín, 2020, p.7) brought on "by 30 years of neoliberal hegemony" (Mouffe, 2018, p.79). In contrast to right-wing populism, however, left-wing populist parties seek to deepen democracy while right-wing populism tends towards a more authoritarian politics. As such, left-wing populism can be defined as "the combination of the populist impetus of expanding representation (through the appeal to 'the people' against the elites) and higher participation and of the left tradition to promote equality and social justice" (Agustín, 2020, p.10). Left-wing populism was most notably first seen in Latin American democracies like Ecuador (Rafael Correa, 2007-2017), Bolivia (Evo Morales since 2006), or Venezuela (Hugo Chávez, 1999-2013, followed by Nicolás Maduro since 2013), beginning in the 2000s. In Latin America, populist framing strategies have most often coincided with expressly socialist values, following a revolutionary constitutional tradition that emphasizes constituent power and "founding the polity *anew*" (Blokker, 2018, p.4).

Though populism can be democratically productive in early stages of a country's process towards democratization, it becomes more destructive during processes of democratic

consolidation and can ultimately lead to democratic backsliding towards authoritarianism or 'illiberal' democracy (Blokker, 2018; Riedel, 2017). Populist political actors are known for engaging in behavior similar to that of authoritarian leaders once in office, by limiting political plurality by suppressing all political opposition, appealing to the emotions of the populace as a defense for political actions, as well as the constraining of civil society and the media. They also stress the legitimacy of executive discretion that often stretches beyond the power granted to the executive within the constitution. As seen in Latin America, these leaders did, at first, effectively increase the inclusion of previously disempowered groups through income redistribution and poverty reduction and increased political participation by relying on referenda and other, more direct, mechanisms of democracy (de la Torre, 2017a; de la Torre, 2013; Mazzolini, 2015). However, they also immediately implemented major constitutional reforms, concentrating power in the executive and severely constraining opposition parties' ability to fairly compete politically (de la Torre, 2017a; Kaltwasser, 2018; Mazzolini, 2015). Despite promising beginnings, in countries like Ecuador, Venezuela, and Bolivia, left-wing populist parties quickly experienced democratic backsliding towards autocracy and authoritarianism.

This backsliding may also be a product of the shorter, less established constitutional legacy which makes it easier for leaders to quickly adapt the constitution to suit their agenda and crystallize their power and control over the government once voted into power (Sáenz de Viteri Vazquez & Bjornskov, 2018). In Bolivia, for example, though the political system has arguably become more inclusive and representative with, for example, the expansion of LGBTQ and gender rights, limitations placed on judicial independence and the rule of law have contributed to a more authoritarian shift (de la Torre, 2017a; de la Torre, 2017b; de la Torre, 2013; Wolff, 2018). Venezuela, in particular, now faces a dire human rights situation, a lack of judiciary

independence, rampant corruption, and high inflation after Chávez and then Maduro took power, despite original improvements to and expansions of inclusion, equality, and redistribution (de la Torre, 2013; Wolff, 2018). The shift towards authoritarianism from left-wing populist leaders in Latin America is often thought to be a result of the less established and entrenched constitutional norms in place when the respective leaders were elected, as well as the challenges with defining a coherent enemy 'elite' that commonly arise when a populist leader is elected and thereby incorporated into the 'establishment' (Sáenz de Viteri Vazquez & Bjornskov, 2018; Houle & Kenny, 2018; Riedel, 2017).

Despite the history of left-wing populism in Latin America, the surge of both right- and left-wing populism truly occurred in the aftermath of the 2008 Global Financial Crisis (GFC), particularly in Europe. The primary interest in the phenomenon of populism, however, was "provoked by phenomena like Brexit and the [first] electoral victory of Donald Trump" (Agustín, 2020, p.4). Radical left parties began to embrace a populist approach in Europe for similar reasons as the preceding Latin American wave of left-wing populism: because of the above-described decline of representation by and self-interest of mainstream political parties, corruption as defined by the ways in which political parties in power govern for the interests of the economic elite, and the explosion of social revolts and protests in the face of post-GFC austerity measures—some of whom transformed into political parties—which encouraged direct citizen engagement and mobilization as alternative means of participation in politics (Agustín, 2020).

Left-wing populism, however, goes beyond economics and understandings of equality simply as redistribution. Leftist party platforms like those of Podemos in Spain and SYRIZA in Greece, as well as politicians like Bernie Sanders and Alexandra Ocasio Cortez in the United States—politicians who tend to emphasize a positive and more inclusive image of 'the people'

than their right-wing populist counterparts—typically endorse the idea that 'ordinary' people should be able to participate directly in constitutional politics (Blokker, 2018; Bugaric, 2019). In this way, left-wing populism is identified as an opportunity to reinvigorate politics and energize political participation (Moffitt, 2020). Additionally, social justice projects related to gender, migration, the environment, and human rights have been adopted by a left agenda, implying a broader understanding of equality than only a fight against economic struggle (Agustín, 2020). Finally, in contrast to right-wing populism whose exclusionary, ethno-nationalist definitions of 'the people' are at odds with pluralism, left-wing populism advocates for diversity, seeking not only "to be inclusive […] of the groups that do not feel represented (or feel excluded) but also to guarantee the plurality of those who are represented" (Agustín, 2020, p.11; Katsembakis, 2022).

Ultimately, by attaching itself to ideologies at opposing ends of the political spectrum, right- and left-wing populism are differentiated by the way they orient themselves to questions of institutional and constituent power. Hindman (2020) articulates this different orientation towards ideology and power in terms of 'thin' vs. 'thick' conceptions of populism. A 'thin' conception of populism, typically associated with right-wing populism, is critical of the perceived intrusiveness of the government, and distrustful of experts (Hindman, 2020). As a result, there is an inherent paranoia and anti-institutionalism built into such movements and parties (Hindman, 2020). This conception of populism "expect[s] little-to-nothing from citizens beyond routinized expressions of hostility and anger" (Hindman, 2020, p.28). 'Thick' populism on the other hand, more often associated with left-wing populism, sees the government as a potential ally and offers respect to institutional officials so long as these institutions remain connected with ordinary citizens (Hindman, 2020).

While right-wing populist leaders foster conspiracy theories and expect little of citizens in the face of what they see as 'elite' institutions, left-wing populist leaders foster "a spirit of rebellious experimentation, community organizing, or even the building of alternative institutions" when public institutions are seen to be corrupt (Gratan, 2016, as cited in Hindman, 2020, p. 28). In other words, a 'thin' conception of populism dismisses the power of organized constituents and citizens, 'thick' populism relies on citizens to contest institutional abuses of power and a lack of transparency. Additionally, though both right- and left-wing populist leaders see themselves as the sole representative of the 'general will' of 'the people,' while right-wing populist parties define 'the people' and by extension those who are allowed to participate in politics in narrow, exclusionary, ethno-nationalist terms, left-wing populism seeks to expand political participation to a more inclusive version of 'the people.'

Right-wing populism

For right-wing movements in Europe and the United States that have adopted populist strategies and rhetoric, 'the people' has most often been defined in terms of white, typically Christian nationalism and xenophobia. 'The nation' and its 'true' citizens are portrayed as being threatened by high immigration rates, multiculturalism, and the growing power of international and supranational organizations (De Cleen, 2017; Moffitt, 2020). This nativist, ethno-nationalist populism "holds that states should be inhabited exclusively by members of the native group ('the nation') and that non-native elements (persons and ideas) are fundamentally threatening to the homogenous nation-state" (Moffitt, 2020, p.37). Though right-wing populism relies primarily on identity-based exclusions, socioeconomic motivations are still important insofar as they strengthen narratives of how "'ordinary people' […] are the prime victims of multicultural society" (De Cleen, 2017, p.349; Kiely, 2020). Multiculturalism, in particular, is seen as

threatening nativism by deconstructing the integrity of the nation and the identities that are constitutive of the 'true people' and being responsible for the socioeconomic struggles faced by 'ordinary people' including lower education rates, job loss, and low pensions (De Cleen, 2017; Kiely, 2020; Pelinka, 2013; Zembylas, 2021).

Right wing populist leaders define 'the elite' enemy of 'the people' around claims that political actors have favored protecting the rights of immigrants, refugees, and minority groups "to the detriment of the interests of its own nation" (De Cleen, 2017, p.350). 'The elite' also encompasses artists, intellectuals, journalists, and academics who are seen as advocating for a multicultural society (Moffitt, 2020). These 'elite' are also seen as being far removed from the realities of the perceived suffering endured by 'the people' as a result of the multicultural policies they advocate for (De Cleen, 2017; Moffitt, 2020). By contrast, the right-wing populist party claims to be the only one that "says things as they are, [and] 'dares' to speak unpleasant 'truths' about multicultural society," and the only one willing to say what 'the people' actually think (De Cleen, 2017, p.350). Unlike left-leaning candidates, right-wing populist candidates are perceived to have the courage to call out 'the other' threatening the rights of the true 'people,' from immigrants to racialized minorities, to women, to the LGBTQ community.

Right-wing populist leaders capitalize on their supporters' nostalgic fantasies of past status and power, allowing them to express feelings of anger towards policies and laws perceived to exclude them from social, economic, and cultural privilege (Anderson, 2017; Inglehart & Norris, 2017; Zembylas, 2021). This is particularly true in the face of the neoliberal 'consensus at the centre' that erases the feeling of real political choice, with right-wing populist leaders claiming to represent an opportunity for 'the people' to vent their anger (Kiely, 2020; Mouffe, 2013). In other words, right-wing populism seeks to correct "the shortcomings and the broken

promises of the representative system" by "bring[ing] back the disruptive noise of the people and, thus, prevent[ing] the closure of the formal political system" (Abts & Rummens, 2007, p.406). My project therefore identifies how human rights claims put forward by individuals and organizations supportive of a right-wing populist movement are constructed in a political context that emphasizes right-wing populist constructions of a 'pure,' united, hardworking 'people' versus 'othered' minority groups, corrupt elites and elitism, and the perceived threats of pluralism.

Despite a narrowly defined victory in the *Masterpiece Cakeshop* case for Jack Phillips, much of the emerging rhetoric from supporters after the Supreme Court decision underscored the primacy of rights that are explicitly defined in the Constitution. These rights that right-wing populist leaders champion to protect from special interest and 'minority' rights, however, typically only extend to the protection of certain people who conform to the specific racial, ethnic, cultural, and nationalist characteristics required for belonging in 'the people' (Blokker, 2018). In the United States, these characteristics center whiteness, Christianity, heterosexuality, and gender normativity.

As do left-wing populist leaders, right-wing populist leaders in liberal democracies around the world often have complicated relationships with their respective countries' constitutions (Halmai, 2019). In constitutional democracies, right-wing populist political actors criticize 'the elite' for their perceived weaponization of the constitution and its institutions to impose progressive measures surrounding LGBTQ rights, gender equality, and reproductive rights in direct conflict with political unity and the execution of the will of the alleged 'majority'—the 'true people' (Blokker, 2018; De Cleen, 2017). These 'minority,' special interest rights are seen as threats to rights like free speech and freedom of religion which are constructed

as being more fundamental to national identity, culture, and security (Brysk, 2019; Gostin et al., 2020).

Of note, however, are the instances of right-wing populism in which leaders have engaged in what is called "liberal illiberalism" (Moffitt, 2017, p.113; Moffitt, 2020). In these cases, right-wing populist actors "pick and choose the most appropriate and useful aspects of liberalism and refashion them for ends that are ultimately illiberal" (Moffitt, 2020, p.79). This is achieved through the reconfiguration and strategical mobilization of "traditional liberal defenses of discriminated-against groups" (Moffitt, 2017, p.112). Specifically, groups like women and even sometimes gay people are included in 'the people' as a means to justify extreme anti-immigration platforms or anti-transgender rights efforts by portraying these 'others' as dangerous to these select minority groups because they come from "illiberal cultures" (Moffitt, 2020, p.77). This serves the purpose of 'normalizing' what are often seen as extreme policy agendas, bringing right-wing populist parties closer to the mainstream and increasing their perceived legitimacy and support (Moffitt, 2020).

Despite the inclusion of certain minority groups in 'the people,' those that are included represent a small sub-section of minorities who otherwise conform to normative conceptions of gender and sexuality. For example, it is only women who conform to normative, binary expressions of femininity and traditional gender roles that would be included in 'the people' (Graff & Korolczuk, 2022). Many of these cases of 'liberal illiberalism' have occurred in Europe, including support of 'homosexuals' in the face of 'intolerant' Muslim immigrants by Geert Wilders in the Netherlands or by the Dansk Folkeparti in Denmark. This trend, however, is also increasingly apparent in the United States as anti-transgender legislation is touted as

protecting women and girls (Morris, 2022). As such, right-wing populism, broadly speaking, still poses a threat to progressive human rights efforts overall.

Rather than simply dismantling the constitution that is perceived as being manipulated by the elite to favor minority rights, some right-wing populist leaders may seek to *reform* the constitutional provisions that they see as limiting their ability to embody and act out the general will of 'the people,' while also supporting the rule of law and protection of democratic and constitutional institutions (Bugaric, 2019). This is often referred to as *circumventing* the constitution or finding ways to work around or outside of constitutional norms without questioning or trying to change the constitution (Walker, 2019). Circumvention of a constitution contrasts with a *commandeering*[19] approach which entails a more outright rejection of a country's constitution.

In these cases, populist leaders are not opposed to the existence of constitutionalism per se but rather see certain constitutional provisions as limiting their ability to represent the will of 'the people' (Blokker, 2018; Scholtes, 2019). As such, though often critical of what are seen as the 'static norms' that governed the development of a constitution, right-wing populist leaders rely on the constitution to legitimize their agenda by using constitutionally legitimized rights and actions like executive orders and court packing (Blokker, 2018; Moffitt, 2020; Müller, 2017; Petrov, 2020; Walker, 2019). In doing so, those who are opposed to the constitutional changes or amendments employed to better reflect the right-wing populist leaders' interpretation of society's views and values are portrayed as an enemy of the people concerned with maintaining an oppressive status quo (Blokker, 2018).

[19] This approach is explored in detail below.

This is an instrumental approach to the constitution, wherein a populist leader manipulates, influences, or ignores constitutional institutions and their decisions rather than completely destroying them. This involves actions like executive orders, limiting the freedom of information by curtailing the power of the media, criticizing or influencing judicial decisions, and packing the courts with loyalists, and appointing friends, allies, and supports to political and administrative positions (Moffitt, 2020; Müller, 2017; Petrov, 2020; Walker, 2019). With this approach, the populist leader ultimately respects the existence of the constitution but seeks ways to "bring constitutionalism closer to the people" by finding ways to facilitate the execution of what they see as the will of the people (Blokker, 2018, p.8). Populist leaders who circumvent the constitution are fundamentally challenging the tendency in liberal democracies to separate constitutional law from politics, considering constitutions as instruments of rights only to be interpreted by higher courts (Blokker, 2018).

Unlike more illiberal abuse or rejection of constitutions (explored below), constitutional circumvention reflects more of a *legal resentment* (Blokker, 2018). Legal resentment is the result of the populist critique of liberal democratic constitutions—specifically the assumption that constitutions represent a 'foundational norm' across time (Blokker, 2018). Constitutional norms like checks and balances, division of powers, parliamentary debate, and rights of political adversaries are perceived as artificially dividing rulers from the ruled and preventing the populist leader's ability to represent the popular will (Blokker, 2018). This is because populist leaders promote a direct, unmediated form of leadership of 'the people' and are skeptical of any limitations placed on the power to execute their 'general will' (Blokker, 2018; Müller, 2017). Legal resentment is an effort to afford primacy to the political—as the true embodiment of popular will and sovereignty—over the law. It is common for a circumvention of the constitution

to involve attacks on the norms that maintain the efficient functioning of constitutions. For example, it is common to see challenges to checks and balances and pluralism, as well as disdain for any political opposition (Bugaric, 2019; Walker, 2019). For right-wing populist leaders who engage in circumventing the constitution, insofar as constitutions protect minorities and marginalized groups, they serve as obstacles to political unity and the execution of the will of the majority (Blokker, 2018).

In circumventing the constitution, right-wing populist leaders take either a *modernization* or a *redemptive* approach. Modernization centers around the argument that an existing constitution is outdated and archaic and no longer represents modern societal values. (Blokker, 2018). This approach is therefore focused on updated the existing constitution to bring it into alignment with the perceived 'general will.' A redemptive approach, however, not only requires that the constitution be changed to re-establish sovereignty and popular rule, but that constitutional adjustments address and undo past perceived wrongdoings (Blokker, 2018). Regardless, both approaches ultimately value constitutional endurance despite the critique that when a constitution is static in nature it fails to evolve with the popular will. Right-wing populist leaders who circumvent the constitution are arguing that "a dynamic engagement with the constitution is […] a necessary response to the rapid changes of 'post-modern' society (in which politics needs to rapidly respond to societal change) or […] an urgent answer to imminent threats to the political community" (Blokker, 2018, p.14).

An alternative approach that some populist leaders take is to *commandeer* the constitution or gain "control of the means to shape the normative framework of the constitution itself" (Walker, 2019, p. 520). In this approach, populist leaders often seek to adjust dominant interpretations of the constitution to reinforce narratives of "tradition, the preservation of the

past, identity, ethnicity, religion, and skepticism toward the future" (Pin, 2019, p.233). These populist leaders are often "backward-looking," promising to rediscover and represent the 'true' identity of 'the people' (Walker, 2019, p.522). This nostalgic rhetoric reflects the belief that 'the people' who were once responsible for developing the constitution are no longer represented by the document and its related norms and institutions. 'The people' therefore often see the commandeering of the constitution as a "symbolic affirmation of the renewal of political unity," rather than an authoritarian move (Walker, 2019, p.522). Efforts to commandeer the constitution involve a radical reimagining or dismantling of a constitution and its related institutions, and often occur when a populist leader fails to effectively circumvent the constitution (Walker, 2019). It also frequently coincides with a growing belief by the populist leader that they are the sole, authentic representative and embodiment of 'the people' (Moffitt, 2020).

In this context, populist leaders oppose the idea that constituent power can be (and has been) absorbed into and is reflected by the constitution and its related institutions (Blokker 2018). Unlike populist leaders who try to circumvent the constitution, these populist leaders take a more ambitious approach, hoping to challenge the very constitutional rules that make amendment or replacement difficult, such as requirements of special majorities to approve changes by intruding on the independent functioning of the highest courts or by completely dismantling the existing constitution in favor a new "constitutional scheme to consolidate executive power" (Walker, 2019, p.521). By strengthening the power of the executive and weakening "horizontal accountability" from, for example, the judicial branch, the populist leader is better placed to maintain control of the government and remain in power (Müller, 2017, p.600).

Furthermore, right-wing populist leaders engaged in commandeering the constitution often demonstrate the nostalgic fantasies described above. According to Walker (2019), efforts to reinvent a new, supportive constitutional environment are often representative of movements that are "backward-looking, involving a claimed recovery in the constitutional heritage of a broken promise of original collective intent" and that are driven by promises to rediscover and represent the 'true' identity of 'the people' (p.522). In other words, such right-wing populist leaders believe that 'the people' were once responsible for developing the constitution and its related norms and institutions, but that they are no longer represented by the document. In this context, the right-wing populist's actions to commandeer the constitution then represent a "symbolic affirmation of the renewal of political unity" rather than a demonstration of authoritarianism (Walker, 2019, p.522).

As Donald Trump's actions in his second term have become increasingly illiberal, his presidency could increasingly be characterized as *commandeering* the constitution. In his first term, Trump's actions were more characteristic of a circumvention of the Constitution insofar as he sought to pack courts with loyalists and appoint friends and allies to political and administrative positions in order to effectively make the Constitution work for him through constitutionally approved means. Since his re-election in 2024, however, Donald Trump has more seriously questioned the legitimacy of all levels of courts, calling judges who make rulings he sees as unfavorable activists or part of the "radical left" and blatantly ignoring judicial rulings, as seen in the case of mass deportations to El Salvador and South Sudan (Neuman, 2025; UNOHCHR, 2025; Yang & Singh, 2025). In these cases, judges independently ruled that it was unconstitutional for Donald Trump to deport people to countries other than their home country without due process. The Trump administration ignored the ruling and sent deported people to

prisons in El Salvador and South Sudan—countries with notoriously poor human rights records and prison conditions (UNOHCHR, 2025; Yang & Singh, 2025).

Donald Trump has also sought to consolidate the power of the executive, issuing executive orders (many of which, like ending birthright citizenship, are blatantly unconstitutional) to bypass congressional approval (Wending, 2025; Wofsy, 2025). Similarly, during the ongoing Iran war, which Trump initiated without Congressional approval, he sought to ignore and manipulate the legal 'rules of the game' regarding his power to continue hostilities after sixty days without receiving approval from Congress under the 1973 War Powers Resolution. In fact, he attempted to bypass approval by claiming that a temporary ceasefire effectively "paused the clock" on the sixty-day timeline (Habeshian, 2026). Additionally, as Trump cracks down on immigration, the ability to claim asylum, and general dissent, all while pardoning January 6th, 2021 insurrectionists and inviting White South Africans to come to the United States as refugees, it becomes increasingly clear that he is seeking to reimagine and redefine constitutional norms to reflect the 'general will' of the White, Christian, heterosexual, cisgender 'people' (Iqbal et al., 2025; Johnson, 2025; Martin & Totenberg, 2026; Office of Public Affairs, 2026).

This demonstrates how, unlike right-wing populist political actors who take an instrumental approach to the constitution, circumventing the expectations of the rule of law, those who seek to commandeer the constitution are taking on the more ambitious task of challenging the fundamental "constitutional rules of the game against amendment or replacement"—like requiring special majorities to enact changes to the constitution—by intruding on the independent functioning of the courts (Walker, 2019, p.521). It also represents the tendency to question the universality of notions like the "separation of powers, the rule of

law (rather than the rule of men), and the neutrality of the state" (Blokker, 2018, p.12). In these contexts, right-wing populist leaders "prioritize particularist and historical values related to a distinctive political community, and on this basis, justify political interference in legal matters" (Blokker, 2018, p.12).

Questioning these constitutional norms and justifying political interference in legal matters extends beyond the constitution itself to any institution that does not support or critiques the right-wing populist leader (Moffitt, 2020; Petrov, 2020). Leaders like Donald Trump seek to erode the legitimacy of the court system where actions like court packing or appointing loyalists have not sufficiently facilitated the implementation of the right-wing populist leader's agenda. Interestingly, right-wing populist political actors often justify these challenges to the constitution by "contend[ing] that the law is manipulated by outsiders and criminals to the detriment of the people" (Houle & Kenny, 2018, p.7). Donald Trump has used this type of justification as the basis of much of his immigration agenda, particularly to allow Immigration and Customs Enforcement agents or the National Guard to descend on cities in the name of allegedly high crime rates and numbers of undocumented immigrants. These efforts to strengthen executive power and weaken "horizontal accountability" subsequently require establishing new, sympathetic constitutions in order to keep the leader in power (Müller, 2017, p.600). Donald Trump's actions have increasingly reflected the actions characteristic of right-wing populist leaders seeking to commandeer their country's constitution. This is particularly evident, not only in the context of his attempts to redefine constitutional norms and erode confidence in the court system, but also in his growing sense of self-importance and sole authority to represent 'the people' as he has called himself as a 'king' on White House social media accounts.

The rhetoric surrounding the *Masterpiece Cakeshop* case during Trump's first term aligned more with a circumvention of the Constitution, as supporters and key actors articulate a respect for constitutional rights and the Supreme Court insofar as it is seen to have made the 'right' decision.[20] Specifically, he took a redemptive approach to circumventing the Constitution insofar as the rhetoric surrounding the *Masterpiece Cakeshop* demanded the Supreme Court (a constitutional institution) undo the wrongs of rulings like *Obergefell v. Hodges* by ruling in favor of the baker and, by extension, religious freedom. In other words, during his first term, Trump generally demonstrated respect for the Constitution, the rule of law and constitutional institutions like the Supreme Court. This was particularly true when they ruled 'favorably' on cases aligned with his policy agenda, as in the *Masterpiece Cakeshop* case, even as he and the Republican Party sought to reform such institutions by ensuring that Trump could stack the court with conservative judges.

Though many populist leaders, particularly those who commandeer the constitution, become distinctly authoritarian in nature—particularly as they engage in distinctly illiberal actions—it is important to distinguish pure authoritarianism from populist engagement with the constitution. While authoritarian leaders also claim to be the sole authentic leader, this is not tied to any claims of representation. Populism, on the other hand, is fundamentally tied to the claim that a leader or party represents and responds to 'the people' as a "concrete organic sociopolitical force" with a homogenous, unified will rather than a "juridical abstraction" (Walker, 2019, p.527). Additionally, however illiberal their actions may be, populist leaders rely on a more "democratic conception of original constituent power" than authoritarian leaders who claim power through military power or dynastic legacy (Walker, 2019, p.528). It is important to note

[20] This is explored further in chapters 4 and 5.

that though populism and pure authoritarianism are distinct in practice, as seen in left-wing populist contexts in Latin America and right-wing populist contexts in Europe, populist leaders often become more authoritarian once in power as they seek to limit political plurality by suppressing opposition, appeal to the populace as a defense for political actions, and constrain civil society and the media (Blokker, 2018; Riedel, 2017; Rummens, 2017; Walker, 2019).

Neoliberalism and the rise of right-wing populism in the United States

While the previous section on liberal human rights explored the ways in which neoliberalism laid the groundwork for the emergence of right-wing populism insofar as right-wing populism challenges neoliberalism's consensus at the center, it is important to note that right-wing populism does not necessarily seek to challenge all forms of neoliberalism—only its more socially liberal or progressive formulations (Kiely, 2020). According to Fraser (2023), hegemonic blocs—a combination social forces assembled by the ruling class to assert their leadership—rely on assumptions about distribution and recognition. While distribution refers to the ways in which society allocates resources like income—the structure of the economy—recognition embodies ideas about how society affords marks of belonging and membership—social hierarchies.

Progressive neoliberalism had been the dominant hegemonic bloc in the United States until Donald Trump was first elected in 2016. Progressive neoliberalism "combined an expropriative, plutocratic economic program" (distribution) with a "liberal-meritocratic politics of recognition" fueled by liberal social movements like feminism, anti-racism, multiculturalism, and LGBTQ rights, but ultimately only "superficially egalitarian and emancipatory" (Fraser, 2023, p.101). In a classically neoliberal approach, the goal was to remove all barriers to the free movement of capital. In order to establish what ultimately amounted to a regressive political

economy, the neoliberal project was forced to seek broader appeal by attaching itself to more progressive social ideals. This progressive rhetoric, however, was rooted in an understanding that only 'deserving' minorities could improve their material and social conditions (Fraser, 2023).

Progressive neoliberalism became the dominant hegemonic bloc over a more 'reactionary' neoliberalism which followed a similar approach to distribution but emphasized "an exclusionary vision of a just social order: ethno-national, anti-immigrant and pro-Christian, if not overtly racist, patriarchal and homophobic" (Fraser, 2023, p. 103). Ethno-nationalism is an extension of nationalist ideology which defines who is considered a legitimate member of a national community (Crowley, 2020). *Ethno*-nationalism refers to the set of attitudes which articulate these rules for membership "according to ethnic characteristics, including such qualities as race, common ancestry, native birth, and even language [and] religion" (Crowley, 2020, p.135). Reactionary neoliberalism and its roots in ethno-nationalist social values was unable to gain traction in a society largely shaped by "New Deal thinking, the 'rights revolution,' and a slew of social movements descended from the New Left" (Fraser, 2023, p.101).

However, progressive neoliberalism neglected American manufacturing communities on the dual basis that these economies were seen as being uncompetitive and should be corrected through the free market, and the perspective that these communities were "stuck in the past, tied to obsolete, parochial values" (Fraser, 2023, p.103). As Sauer et al. (2018) point out, the "marginalization of low-skilled (male) workers on the labor market paved the way for frustration and anger, especially of white men—anger towards the political elites and especially towards immigrants" seen as stealing scarce jobs (p.17). This in turned fueled a desire for new and exclusionary forms of solidarity resonant with the gathered base of support for reactionary neoliberalism (Fraser, 2023; Sauer et al., 2018). As a result, these two factions of the

electorate—those left behind by progressive neoliberalism and those more attracted to reactionary neoliberalism—became increasingly disillusioned with the progressive neoliberal status quo, eventually fueling a shift towards right-wing populism first seen in the wake of the Global Financial Crisis in 2008, and the gaining popularity of the Tea Party in the 2010s (Crowley, 2020).

In the wake of the 2008 Global Financial Crisis, economies around the world adopted policies of fiscal austerity—an approach characterized by the reduction of government spending, often coupled with increased taxes in order to reduce budget deficits and debt. Restrained government spending greatly "contributed to citizens' sense of scarcity of public goods and services, including in the areas of social housing, healthcare, and education" (Crowley, 2020, p.134). Nationalist-oriented politicians and public figures capitalized on the scapegoating of allegedly undeserving 'others' they defined as falling outside of ethno-nationalist definitions of 'the people' as the real cause of this scarcity (Crowley, 2020; Kiely, 2020). This sentiment is often referred to as 'welfare chauvinism'; the idea that "public goods and services should only be available to 'native' citizens and not squandered on undeserving or under-contributing outsiders" (Crowley, 2020, p.136; Kiely, 2020; Otova & Puurunen, 2018). 'Welfare chauvinism' is often associated with right-wing populist political views given its "tendency to delineate the 'pure people' and their birthright to the nation-state's welfare structure from those undeserving others, such as ethnic/racial/religious minorities along a logic of nationalistic solidarity" (Kinnvall, 2018, p.5). Policies of fiscal austerity can be considered a 'demand-side' condition of the growth of right-wing populism insofar as they fuel this 'politics of scarcity,' while the ethno-nationalist spin on the cause of this scarcity represents the 'supply side' of right-wing populism's success (Bonikowski, 2017; Crowley, 2020; Golder, 2016; Otova & Puurunen, 2018; Rydgren, 2007).

The Tea Party movement[21] in the 2010s was one of the first times senses of financial scarcity and nationalism were framed together through populist framing strategies of 'the people' and 'others' in American politics. Though the Tea Party often avoided direct mentions of race and ethnicity, they successfully conveyed ethno-nationalist sentiments by contrasting 'illegal immigrants' or 'illegals' with "'real,' 'hard-working' Americans" (Crowley, 2020, p.138). The growing sense of scarcity of public goods and services provided an opportunity to create a zero-sum game wherein the 'deserving' left-outs—defined in ethno-nationalist terms—are forced to compete with "an extractive, foreign 'Other'" (Crowley, 2020, p.142). The Global Financial Crisis itself coupled with the subsequent fiscal austerity measures ultimately did contribute to growing inequality (Kiely, 2020; Sauer et al., 2018). This, in turn, "is accompanied by growing social distance between the political and economic elites and those citizens who are afraid of losing wealth and identity due to austerity policies and cuts in welfare provision" (Sauer et al., 2018, p.17). It is then ultimately easy for right-wing populist leaders to frame the sense of scarcity brought on by cuts to welfare provisions as being the fault of 'undeserving' 'others' and 'outsiders' as opposed to the government's own austerity measures.

As such, the Tea Party movement set the stage for Donald Trump to give a more blatant, less subtle voice to the growing anti-government anger and racial and ethnic anxieties among the white middle class during the 2016 election (Crowley, 2020). Ultimately, voters across the political spectrum ahead of the 2016 election remained stuck with neoliberalism as the foundational hegemonic bloc regardless of social values (Fraser, 2023; Kiely, 2020). Not only

[21] The Tea Party movement emerged in the aftermath of the 2008 Global Financial Crisis in response to frustrations with what was seen as excessive government intervention as failing banks, insurers, and others were bailed out (Connolly, 2010).

Though the Tea Party agreed with Republicans on issues of social conservatism, they felt the Republican Party was no longer fiscally conservative enough (Connolly, 2010).

did Donald Trump and his right-wing populist approach cater to ethno-nationalist sentiments of who belonged to 'the people,' as well as who belonged to 'the elites' and 'other' responsible for a loss of perceived wealth and identity, he claimed to offer a real alternative to the neoliberal status quo (Fraser, 2023).

Populist political communication and the mediatization of politics[22]

As previously discussed, understanding how populism emerges discursively is crucial to understanding the ways populism shapes particular narratives, for example, around human rights claims. It is therefore important to analyze the diverse platforms that are often used directly by populist leaders and their supporters. Rather than existing predominantly within the sphere of professional journalism in the form of newspapers and television, political debate and the articulation of candidates' messaging is now shaped in a more hybrid environment wherein traditional journalism is intertwined with social media interactions (Chadwick, 2013). Whereas voters in the past were typically passive consumers of news, the hybridity of the new media system has transformed them into a combination of consumer and producer (Chadwick, 2013; Gil de Zuñiga et al., 2020; KhosraviNik, 2014; Wodak, 2018). In other words, people are often consuming content from a source like television while simultaneously providing their own commentary via platforms like X (Twitter).

Since 2010, a majority of parties have, in some way, established systematic online political communication (Wodak, 2018). With the proliferation of social media, new opportunities have emerged for political actors "to exercise their voices and to interact with a new generation of citizens," while simultaneously dramatically expanding citizens' access to information (Aalberg & de Vreese, 2017, p.6; Sauer et al., 2018). Social media and the rise of

[22] The intersection of populism with social media, specifically, is explored in chapter 5.

internet communication has also prompted a shift towards 'politainment' wherein politics is presented in the media as a combination of information and entertainment (Sauer et al., 2018).

Politics has also become more personalized as political candidates become a commodity to be sold, relying on increasingly complex branding and marketing strategies, while at the same time, voters are treated as consumers rather than citizens. This perspective instrumentalizes the role of citizens as one of enabling "'organizations to achieve their goal'—and this is to win elections and not to solve political problems" (Sauer et al., 2018, p.18). Those who succeed and gain power in this hybrid media system—both among politicians and the electorate—are those who are able to blend together 'old' and 'new' media in ways that shift and shape the flow of information to suit their own objectives (Chadwick, 2013; Moffitt, 2018).

More recently, populist political parties have increased their use of the internet to promote ideas and ideologies, campaign, and mobilize. Right-wing populist leaders, in particular, have also used the internet to foster fear, anger, and hate against 'others' (Pajnik & Sauer, 2020). The mediatization of politics in general works in favor of populist parties and movements because of the reliance of populism on "the personification of party politics and simplification, for example by launching popular catchy slogans to gain voters' attention, by polarizing political issues and ideas, and by antagonizing 'the people' and 'the elite'" lends itself well to newer information and communication technologies like X(Twitter) (Pajnik & Sauer, 2018, p.1).

This is largely because as all media, including more traditional sources like newspaper and television, are forced to compete for attention, there is a widespread tendency to "focus more on news value and headlines and less on political information and political content" encouraging an emphasis on "'the negative and sensationalist elements of news' and 'the more extreme and scandalous aspects of politics" (Sauer et al., 2018, p.18). Furthermore, populist parties are

particularly dependent on developing strong communication strategies—relying heavily on media, especially social media—given they typically "have weaker party organization compared to the old, traditional parties" (Aalberg & de Vreese, 2017, p.3).

Right-wing populist leaders specifically contributed to the transformation of the media landscape by paying "more attention to news value, to strident messages, to sound bites and pieces of images and visuals" and relying on "charismatic leadership, harsh rhetoric, and stirring issues." (Aalberg & de Vreese, 2017; Amon Prodnik, 2016; Mazzoleni et al., 2003; Mudde, 2004; Sauer et al., 2018, p.25). They effectively garnered attention by the media by relying on a "communication strategy to break taboos and fight 'political correctness' of the elite and mainstream media" (Mudde, 2004, p.554) through a "cascade of false claims, saying the unsayable, transgressing the limits of the permissible and denying the obvious to form an extraordinary arsenal for both marginalizing opponents and mobilizing support" (Sauer et al., 2018, p.26).

It is in this context that 'rational experts' and their specialized knowledge are delegitimized in favor of conspiracies, fears, and anger, and portrayed as forming part of 'the elite' and the establishment (Sauer et al., 2018). It is important to note, however, that as much as right-wing populism is "the result of democratic transformation, citizens' disenchantment, and the mediatization of politics" these parties' and leaders' more 'innovative' communication styles, particularly online, "are at the same time drivers towards more symbolic politics and de-politicization" (Sauer et al., 2018, p.15).

Right-wing populism and human rights

Right-wing populism is often characterized by its 'backlash politics' towards a human rights project that seeks to protect minorities including racialized people, immigrants, women,

and the LGBTQ community (Hopgood, et al., 2018). The pushback on the expansion of human rights stems from the notion that human rights are a mechanism for 'the elite' to favor and "distribute material values to" minority groups and "unaccountable international bureaucrats" at the expense of the 'majority' (Alston, 2017; Bílková, 2018; Koskenniemi, 2021, p.58). The backlash towards burgeoning protections for groups typically seen as 'other' by right-wing populist political movements, however, does not always take the form of a complete rejection of human rights, but rather of the cooptation of human rights language (Dudai, 2017; Hamilton, 2023). This is particularly apparent in the legal realm as "legalization and technocratic governance [have become] the markers of the human rights project's authority" (Mégret, 2022, p.246). Right-wing populist movements have responded to this trend by "exploiting the glaring tensions and ambiguities that have been growing within the [human rights] project" (Mégret, 2022, p. 246), which embolden the "populist charge that human rights are the playthings of 'elites,' who deploy them as trump cards in order to short-circuit the democratic process whenever it suits their interests to do so" (Tasioulas, 2019, p.1205).

Despite the backlash against human rights by right-wing populist actors, in recent years there has been a tendency for right-wing populist movements to adopt some of the language of human rights in order to advance their own agendas and exploit the "existing cracks in the human rights infrastructure" (Hamilton, 2023, p.694). Whereas human rights campaigns often understand liberal equality to necessitate systems of 'reasonable accommodation' and 'affirmative action' to 'level the playing field' so to speak, right-wing populist actors push back against these systems by decrying them as incompatible with Enlightenment liberal principles of limited government intervention and individual rights (Mégret, 2022). Furthermore, as human rights campaigns have frequently relied on 'naming and shaming' as a powerful tool for

condemning human rights violations, right-wing populist leaders foster "nationalist counter-norms that replace shame with pride in rights violations justified by honor or identity" (Brysk, 2018, p.94).

Though right-wing populist movements generally adopt the *language* of human rights, part of their success in advancing their own narrow and formal versions of equality, both socially and legally, lies in these movements' ability to rely on their adept use of affect to garner support. Human rights campaigns have become increasingly shaped by legalization and judicialization, emphasizing "good manners, dry scientific language, emotional neutrality, technical rationality, specialist training, discipline, and the presentation of oneself in an official fashion" (Hamilton, 2023; Kurylo, 2022, p.137). Though this shift was, to a certain extent, necessary for increasing the legitimacy and endurance of human rights, the over-reliance on legal and technical language and tying human rights to the law has the effect of reducing human rights campaigns' widespread support (Hamilton, 2023). As Hunt (2007) points out, human rights campaigns are most effective when they are able to appeal to people's sense of empathy and horror at human rights violations.

Populist discourse, on the other hand, portrays its movements as 'authentic' and reflective of the true 'people,' relying on and recognizing "the importance and the power of human emotions" (Johnson, 2020 as cited in Hamilton, 2023, p.697). Right-wing populist actors, therefore, not only exploit feelings such as fear, anger, resentment, and nationalist pride to justify their own human rights violations but also in their counterarguments to legal human rights claims (Tasioulas, 2019). Though some research in the last two decades on historical human rights movements has pointed to the underlying use of affect and emotional appeals (see Burke, 2017; Goodwin et al., 2004; Hunt, 2007; Nussbaum, 2013), as human rights campaigns continue to

underscore the intellectual, legal, and theoretical dimensions of human rights rather than capitalizing on more affective approaches, they render themselves more vulnerable to counterattack.

Affect

Understanding affect

Since the 1990s, the 'affective turn' that has taken place across the social sciences (Clough & Halley, 2007) has legitimated affects, emotions, and feelings as an expansive dimension of human experience and interaction that can provide insight into the ways in which bodies are organized, marked, perceived, and related (Cifor, 2016; Gregg & Seigworth, 2010; Wetherell, 2012). Though emotions and affects are often dismissed as individual and uncontrollable, they are in fact governed by a shared set of social rules and are, therefore, an important component of sociological analysis (Hochschild, 1979). In fact, affect has become crucial for understanding "socio-political phenomena and community life" (Cossarini & Vallespín, 2019, p.2). Affects, though linked to the concept of emotion, are typically thought of as the "forces or intensities" that circulate *between* and *among* bodies as opposed to being directed at a specific individual (Gregg & Seigworth, 2010, p.2; Zembylas, 2021). This circulation of intensities can inform one's sense of place in the world and how they "process information, form judgments, and react to situations, events, and objects (Rico et al, 2017, pp.444-445). Affect can therefore be considered a category that consists of "emotion and feeling and includes impulses, desires, and feelings that get historically constructed in a range of ways" (Zembylas, 2021, p.7).

Ahmed (2004a) describes 'affective economies' in which emotions do not belong to individuals, "com[ing] from within and *then* mov[ing] outward toward others" (p.117, original

emphasis). Rather, "emotions *do things*, and they align individuals with communities—or bodily space with social space—through the very intensity of their attachments" (Ahmed, 2004a, p.119, original emphasis). As affect circulates, it accumulates in value and strengthens in legitimacy over time, reinforcing the in-group and out-group dynamics wherein certain people and groups are associated with certain affective signifiers (Ahmed, 2004b). As a result, the circulation of affect is implicated in "the complexities, reconfigurations and rearticulations of power, body, history, and politics" (Zembylas, 2021, p.8). Affect is therefore a crucial component in the development, perpetuation and mobilization of power dynamics because as affect circulates and increases in intensity, the boundaries around different groups are reinforced (Ahmed, 2004a; Cifor, 2016).

Understanding affect is relevant to this project because of how affect contributes to the development of human rights claims and for how populist leaders rely on affect to legitimize their claims and mobilize support. With regards to human rights, Hunt (2007) points out that human rights claims rely on emotional appeals in their definitions because a rights claim is only convincing when it "strikes a chord within each person" and "when we feel horrified by its violation" (p.20). Additionally, human rights emerge out of the relations between different groups of people and make assumptions about "what people are like and how they are right and wrong" (Hunt, 2007, p.21). In order to have rights, there must be a balance between viewing people as separate individuals and as fundamentally alike in some ways (Hunt, 2007). As such, the mobilization of affect when defining human rights is important given how affect contributes to the delineation of boundaries between groups of people and, in this case, who is and who is not worthy of having rights.

Affect and politics

In terms of political support, understanding how different political actors use emotional appeal can shed light on why one discourse is more successful than another (Skonieczny, 2018). For example, political actors that infuse feelings like anxiety, fear, desire, or hope in their messaging—as do, for example, populist leaders—are often seen as more relatable to voters (Skonieczny, 2018). Emotions play a key role in political rhetoric in general, as they are used to construct victims, enemies, and 'the nation,' however; populist leaders use emotion deliberately to exacerbate polarization and foster distrust and resentment among the electorate (Cohen, 2019; Schrock et al., 2017). Emotions are also important for collective action insofar as individuals and groups build and reproduce identities to "give meaning to their experiences and contribute to collective action and political participation" (Cossarini & Vallespín, 2019, p.4).

For this dissertation it is important to understand that all politics are about emotions and the way affect is mobilized discursively to shape and garner support for political parties, ideologies, and movements (Cossarini & Vallespín, 2019). Emotions are crucial to political actors for establishing, for example, who is considered a victim as opposed to an enemy, and for constructing perceived political realities (Demertzis, 2019; Graff & Korolczuk, 2022). As such, it is important to go beyond the notion that populism simply attaches emotions to "a non-reflective way of thinking and acting," and instead understand the role of affect in populism as a strategic tool deployed to challenge the liberal political 'consensus at the center' and "expose the limits of our liberal democratic systems" (Cossarini &Vallespín, 2019, p. 5-6).

More so than other political strategies, "to understand the (populist) movement is to discover the feelings which moved people" (Minogue, 1969, as quoted in Demertzis, 2019, p.34). This is not to say that emotion and rationality are inherently opposed. As Tushnet (2014) points out emotion and rationality are actually "inextricably linked" particularly with regards to

the law, as "there is no judgement, moral or otherwise, without emotions to guide our choices" (p.1). That is, it is not that populist actors are irrational, they are simply more inclined to rely on emotional appeal to convey their messages and foster support over relying solely on dry facts and technicalities.

Populist political actors are also more effective at mobilizing “emotional inputs” as compared to other political actors (Tarchi, 2016, p.12). This is because most forms of populism are “involved in interpretative processes or ways of meaning-making that lead to intense emotions” (Hamilton, 2023, p.693). For example, relying on a differentiation between “evil elites and a virtuous populace,” is an inherently emotional populist framing strategy (Schumacher et al., 2022; Ward et al., 2025, p.328). Similarly, right-wing populist political actors are particularly adept at deliberately manipulating and ‘activating’ the emotions of their supporters by fostering polarization, and encouraging the association of emotions such as anger, fear, and resentment with specific contextual changes these supporters may be experiencing or their sense of injustice and victimhood (Campbell & Manning, 2018; Cohen, 2019; Brader, 2005; Graff & Korolczuk, 2022; Hawkins, et al., 2018; Schrock et al., 2017).

Many studies of the role of affect in populism focus on general affective categories like ‘discontent,’ ‘antipathy,’ ‘alienation,’ and ‘frustration’ without meaningfully defining the *specific* emotions underpinning them like hatred, rage, envy, and sorrow (Demertzis, 2019). I therefore emphasize the specific feelings that contribute to identification with right-wing populist framing strategies. Understanding the role of affect requires the examination of ‘political emotions’ which are not necessarily indicative of different affective experiences or emotional states but rather of specific emotions that play a role in creating political realities (Demertzis, 2019). That is, any emotion can acquire political significance. Demertzis (2019) defines these

emotions as "lasting affective predispositions supported reciprocally by the political and social norms of a given society, playing a key role in the constitution of its political culture and the authoritative allocation of resources" (p.37). These political emotions are not necessarily always consciously felt. For example, anger towards a political opponent may actually be a manifestation of suppressed shame (Scheff, 1994). They can be 'self-targeted' (introjected) like shame, pride, fear, or anxiety or 'other-targeted' (extrojected) like admiration, compassion, or anger. Finally, these emotions can be individual or shared (Demertzis, 2019).

Right-wing populism and affect

Right-wing populist rhetoric typically reflects conservative nostalgia for a past era of white prosperity and privilege during a time where traditions are being challenged or are fading (Inglehart & Norris, 2017; Krämer, 2017). This is a 'restorative' nostalgia in which "people want to live within the past in terms of a technocratic exclusionary version" of society (Demertzis, 2019, p.39). What is interesting about the nostalgia called upon by populist leaders is its collective properties. Right-wing populist leaders, specifically, are provoking "a longing for times or situations that one is to experience vicariously, i.e. not in the first hand but through group identifications or mediatized historical accounts" (Demertzis, 2019, p.38). In other words, the prosperity and privilege harkened to in right-wing populist accounts of the 'good old days' is not something all supporters have experienced themselves but rather feel entitled to experience now based on group identification.

Though this type of "backward looking, revisionist political orientation" is also characteristic of right-wing conservative politics more broadly, right-wing populist is unique in its "potential for future optimism" insofar as a right-wing populist leader, the 'true' representative of 'the people' is able to gain power and enact the 'general will' (Capelos et al.

2025; Verbalyte et al., 2025, p.412). In other words, "after telling the people what is wrong with the state of society and who is responsible for generating pervasive insecurity, populist leaders offer a positive outlook towards the future grounded in the reassurance of security attainment/restoration" (Bonansinga, 2022, p.100). A more reactionary conservative politics and more violence-oriented authoritarianism typically lack this element of possibility for a future in which the 'will of the people' is enacted and represented by a right-wing populist leader who characterizes themself as "a strong leader" with "exceptional qualities [that] are precisely what the country needs in a state of crisis" (Bonansinga, 2022, p.100; Verbalyte et al., 2025).

Populist leaders frame policy issues in terms of emotions like anger, fear and resentment and present themselves as the sole representative of their supporters' will (the will of 'the people') (Skonieczny, 2018). The right-wing populist leader is therefore presented as the only person capable of realizing the return to the past and empowering these supporters with the happiness and self-confidence they feel they have lost (Peters & Protevi, 2017; Zembylas, 2021). These leaders mobilize their supporters by provoking backlash against changes that are perceived to erode long-standing cultural norms through appeals to supporter's anger, resentment, and, ultimately, fear of those "who threaten not only to take the 'benefits' of the nation away, but also to destroy 'the nation'" (Ahmed, 2004b, p.12; Brader, 2005; Inglehart & Norris, 2017).

Though right-wing populism capitalizes on the emotions that their supporters have typically been feeling for long periods of time, right-wing populist leaders see an opportunity to 'activate' these emotions, targeting them towards particular contextual changes and their supporter's sense of injustice in order to mobilize support (Brader, 2005; Hawkins et al, 2018). Right-wing populist leaders are not typically seeking to mobilize the most vulnerable or the worst off in a given economic and political climate, but rather those groups "suffering material

and status losses" (Cohen, 2019, p.9). In other words, right-wing populism seems to appeal primarily to "those citizens who perceive themselves to have lost in some regard during the process of globalization—lost jobs, lost cultural capital, lost national identity" (Sheets et al., 2016, p.309).

In order to reinforce the boundaries between the 'true' people, 'the elite,' and anyone who falls outside of the formulation of 'the people,' Petrov (2020) argues that both right- and left-wing populism rely on the "radicalization of the emotional element in politics" (p.479). For example, left-wing populist leaders and movements also rely on nostalgia as an affective tool, albeit in different ways than their right-wing counterparts. Left-wing populist movements rely on 'radical' and 'reflexive' nostalgia which "claims the past as a means for remaking the present, not as a refuge, and hence radical nostalgics do not wish to return to the to the past, but instead to use it to cope with perceived historical injustices" (Demertzis, 2019, p.39).

Though both right- and left-wing populist movements rely on constructing a sense of 'proud victimhood' among 'the people,' those on the right have more effectively mobilized the concept (Campbell & Manning, 2018; Graff & Korolczuk, 2022). This is likely due to the ways in which the right is able to "'create reality,' rather than merely present it and argue about it" (Graff & Korolczuk, 2022, p.30). While the right draws on passions, desire, and hopes, and manipulates emotion to mobilize political engagement, the left often relies on rational arguments that can fail to mobilize the electorate even if those arguments are true and factually correct (Graff & Korolczuk, 2022).[23] Additionally, left-wing populist movements seek to use emotion to create a collective subject rooted in an understanding of "social struggles and grounded in

[23] The distinct ways that left- and right-wing populist movements mobilize affect are explored below in the discussion of specific emotions like anger, shame, and resentment.

everyday life," that cannot be reduced to national identity and ethno-nationalism, as in right-wing populist movements (Agustín, 2019, p.129).

Right-wing populist political actors mobilize affect to reinforce exclusionary racial, cultural, and nationalist definitions of 'the people' who are feeling resentful, angry, and fearful by constructing a strong national identity that considers all outsiders (typically minority populations and immigrants) to be a source of danger (Ahmed, 2004b; Zembylas, 2021). Specifically, by capitalizing on affective states of resentment, fear, and anger, right-wing populist leaders reinforce the notion that the unified, common will of 'the people' is ignored in favor of the interests of 'corrupt' elites and minority groups "who do not really work and instead live off others" (De Cleen, 2017; Engesser et al. 2017; Halmai, 2019; Müller, 2017, p.593). 'The people' is portrayed as those who lose out or are the victims of 'the other' and policies focused on 'the other's' needs (Stanyer, et al. 2017). Ultimately, right-wing populism is particularly effective as these parties and movements "instrumentalize fear and mistrust, transforming it into electoral support, and they overproduce mistrust as a necessary environment for their radical and authoritarian project" (Sauer et al., 2018, p.23).

Negative affect

Research shows that populist politicians are more inclined to use negative emotions to appeal to the public than mainstream politicians (Ernst et al., 2019; Lindholm et al., 2025; Nai, 2021; Ward et al., 2025; Widmann, 2021). Support for populist movements and leaders often emerges from feelings of cultural discontent related to the perceived effects of, for example, immigration, multiculturalism, and gender equality on one's own positionality in society (Rhodes-Purdy et al., 2023; Ward et al., 2025). Additionally, because the anti-elitism inherent to populism reinforces the perception of "a negative state of the world and a fundamental desire to

overhaul the system" (Ward et al., 2025, p.327). In fact, according to Ward et al. (2025), "populism thrives where people experience negative affect" (p.324) because, by underscoring perceived threats to "people's way of life, agency, and political influence" right-wing populist leaders effectively respond to supporters' notion that "things are headed in the wrong direction" and their desire for widespread, rapid change to the status quo (Ward et al., 2025, p.327).

Feelings of anxiety and resentment among the supporters of right-wing populist movements are often rooted in the "fear of losing one's identity, or a fear of the future in general" (Van Herpen, 2021, p.48). Right-wing populist leaders are often inclined to capitalize on this fear, anxiety, and resentment to encourage anger towards 'the elite' and 'the other' who are portrayed as being to blame for supporters' current circumstances (Martella & Bracciale, 2022; Ward et al., 2025). Right-wing populist leaders are also known for a communication style that is characterized by "direct appeals to the people, a rejection of the convention of politics and an emphasis on threat or crisis" in a way that is particularly appealing to those experiencing negative affect regarding their circumstances (Ward et al., 2025, p.328).

Anger

Anger plays a critical role in all political discourse, because 'angry speech' is the mechanism through which the powerless in a given political order communicate their claims that they have experienced injustice (Lyman, 2004). Anger is also increasingly recognized as an "important resource of collective mobilization and empowerment," and acknowledging this anger can often lead to productive dialogue about governments and their actions (Lyman, 2004; Wahl-Jorgensen, 2018, p.768). Anger emerges "when individuals and/or collectives encounter physical or psychological restraints and blocks to need satisfaction and goal achievement," which, as explored previously, many encountered in the wake of the 2008 Global Financial

Crisis (Demertzis, 2019, p.39). When anger is used to question the legitimacy of power, liberal societies—whose citizens are meant to be rational, impartial, and dispassionate—often disregard and suppress anger because it is deemed both irrational and a threat to the dominant political order (Lyman, 2004; Wahl-Jorgensen, 2013). However, anger is actually a useful political tool insofar is it "helps mobilization and resistance against deprivation of resources or unfavorable conditions" (Demertzis, 2019, p.39). Though anger is a necessary means of constructing the 'us' versus 'them' dynamics central to cultivating solidarity within a political party's base of support, in liberal democracies this "anger must be organised, channeled and harnessed in particular ways" so as not to disrupt political and social order (Wahl-Jorgensen, 2018).

Anger is closely associated with blame due to the fact that its object is typically other, specific people or groups who are seen as responsible "wrongdoings against one's power, status, and/or self-esteem" (Demertzis, 2019, p.40). This means that angry people find external sources of accountability and blame others for the unfavorable situations and circumstances in which they find themselves (Demertzis, 2019). As such, anger is considered a "highly social emotion" (Schieman, 2006, p.495) due to the way it is linked to feelings that there has been a "violation of fairness as well as the transgression of a sense of justice" (Demertzis, 2019, p.40). Blame is crucial to the antagonistic way in which populism frames the distinction between 'the people' and 'the elite' as 'the people' are portrayed as blameless in contrast to corrupt 'elites' (Sauer et al., 2018). As a result, "populism is inherently about attributing blame to others while absolving the people of responsibility" (Hameleers et al. 2017, p.871). This allows 'the people' to maintain a "positive self-concept" by attributing all responsibility to corrupt 'elites' (Hameleers, 2018, p.2180). Blame is attributed by populist leaders by using negative emotions like anger to

emphasize the need for outrage toward the corruption and failures of the government (Hameleers et al., 2017).

Shame is also deeply intertwined with anger insofar as feelings of shame can transform into feelings of righteous anger, and anger can manifest as a result of suppressed shame (Jasper, 2011; Scheff, 1994). Shame often arises as one experiences feelings of inferiority when they negatively compare themselves to others, as well as a reaction to a failure to feel recognized (Demertzis, 2019; Graff & Korolczuk, 2022). Additionally, in the wake of the 2008 Global Financial Crisis, shame was particularly associated with feelings of "actual or anticipated losses for which individuals blame themselves" (Salmela & von Scheve, 2018, p.448). In the context of right-wing populism, when shame is left unacknowledged, "it transforms fear and insecurity into anger, resentment, and hatred against perceived 'enemies' of the precarious self" and associated groups, such as refugees, immigrants, sexual minorities, the long-term unemployed, political and cultural elites, and the 'mainstream' media" (Demertzis, 2019; Salmela and von Scheve, 2018, p.434). With left-wing populism, however, shame *is* acknowledged and therefore allows "individuals to self-identify as aggrieved and humiliated by neoliberal policies and their advocates" (Salmela and von Scheve, 2018, p.434). This kind of shame is distinct from that which transforms into anger because it encourages people to form emancipatory bonds with people who feel the same, as opposed to repressing and remaining in one's shame (Salmela & von Scheve, 2018).

Given anger's universal political utility, it is not necessarily the presence of anger that is unique to populism, but rather that populist leaders (particularly on the political right) are adept at capitalizing on existing anger and manipulating it to target a specific 'elite' and 'other to galvanize support. In fact, Rico et al. (2017) argue that both right- and left-wing populist leaders

and their supporters are primarily driven by anger. Anger is useful in right-wing populist appeal because it helps right-wing populist leaders shape the opposition between 'the people' and 'the elites' by highlighting the ways in which "frustrating events" and shifting dynamics are not personal failures but rather "externally cause, and unfair" (Rico et al., 2017, p.445). The moralistic and confrontational nature of right-wing populist claims, therefore, strongly appeals to individuals who are looking for a source of blame for threats to status and identity, particularly as the right-wing populist leader is portrayed as having the capacity to rectify or reverse the unfair and illegitimate event (Rico et al., 2017). Though anger in and of itself is not an indicator of a propensity to support populist political framing strategies, when angry citizens also feel both personally powerless to participate in politics and as though the system is unresponsive, they are more likely to "support 'anti-systemic' populist parties" (Demertzis, 2019, p.39).

Donald Trump's appeal emerged through the construction of a common identity centering shared grievances framed as emerging directly as a result of 'the elite' and minority 'others' (Wahl-Jorgensen, 2018). These grievances primarily took the form of economic anger stemming from the effects of globalization, and 'cultural backlash' as a reaction by primarily "older, white male, religious, and less educated parts of the population" to progressive changes in the country's values (Lamont et al., 2017; Wahl-Jorgensen, 2018, p.767). Trump's rhetoric encouraged the white working class to reorient their feelings of shame from a lack of economic success into anger towards political elites framed as the cause of all economic troubles (Schrock et al., 2017). Though Trump capitalized on the specific circumstances of the United States, support for populist leaders in general is often motivated by similar "disenchantment with the ability of political institutions to effect social change" (Wahl-Jorgensen, 2018, p.770). This disenchantment easily translates into 'the people' versus establishment 'elite' narratives central

to populist discourse, as the populist leader portrays themself as the sole entity capable of representing the will of 'the people.'

Fear

Fear emerges among supporters of right-wing populism as a result of anxiety and insecurity stemming from the economic uncertainty and precarity that is prevalent in the context of rapid globalization, modernization, and capitalism (Salmela & Von Scheve, 2017; Skonieczny, 2018). Whereas anger emerges in response to familiar threats and is governed by feelings of grievance and injustice, "fear is experienced in response to novel, unfamiliar stimuli" (Rico, 2024, p.3). Many who occupy relatively secure economic positions *feel* insecure because of the multitude of changes that threaten to destabilize their economic and social identities (Rico et al., 2017; Salmela & Von Scheve, 2017). This perceived economic precarity also serves to exacerbate the fear that immigrants will unduly benefit from resources at the expense of 'the majority' (Levinger, 2017; Salmela & Von Scheve, 2017). Ultimately, fear of an uncertain future encourages people to look to the past, leading them to resonate with right-wing populist rhetoric "offering backwardly oriented utopias and historical narratives that glorify traditional communities with ethnic, national, and cultural homogeneity and victorious battles of those communities in the past" (Levinger, 2017; Salmela & Von Scheve, 2017, pp.577-578).

Donald Trump's rhetoric in the 2016 election sought to incite fear in the white working-class that their concerns about the increasingly unattainable American Dream and feelings of being left-behind were valid and indicative that 'the nation' was not only under attack by forces such as increased immigration and an allegedly failing U.S. economy, but at risk of losing status among other nations (Schrock et al., 2017). This narrative allowed Trump to position himself as the only candidate willing to discuss the 'real' situation in the U.S. but also as the only candidate

capable of 'making America great again.' As such, fear was an important tool for motivating supporters and for legitimizing Trump's proposed agenda.

Resentment and ressentiment

Resentment is a "negative reactive attitude" that emerges when a person feels that someone has responded to them with "indifference, insult and injury" (Demertzis, 2019, p.40). It is the feeling that others unjustly hold a higher position in the social hierarchy and that other people or groups are responsible of depriving that person of their ability to rise in the social hierarchy and enjoy privileges (Demertzis, 2019). It is also a moralistic attitude because it is "premised on the moral responsibility of the wrongdoer and on a built-in sense of justice" (Demertzis, 2019, p.40). Resentment is a more simplistic version of *ressentiment,* which is closely associated with support for populist politics, particularly right-wing populism (Demertzis, 2019). While the source of resentment can be more general, ressentiment emerges, specifically, from perceived political powerlessness and injustice, and is a persistent emotional state that combines bitterness, resentment, hostility, and frustration (Papaioannu, 2025). Furthermore, resentment is more of a short-lived emotion that prompts immediate action, while "*ressentiment* exerts a more enduring influence, accumulating over time" and is characterized by feelings of powerlessness to act on or address negative emotions (Papaioannu, 2025, p.2; Salmela & von Scheve, 2018).

Ressentiment is conceptualized as "the moralizing revenge of the powerless" that can emerge in one of two scenarios (Brown, 1993, p.400). In the first instance, a strong state commitment to *freedom* has emboldened and removed restrictions on the rich and powerful at the expense of the disadvantaged, breeding ressentiment in the form of mitigating this power through the welfare state. In the second instance, a strong state commitment to *equality* demands

government intervention and economic redistribution thereby causing ressentiment in the form of "neoconservative anti-statism," as well as racism and claims of victimhood as a result of things like "reverse racism" (Brown, 1993, p.400). In the context of right-wing populism, ressentiment emerges as a result of the latter, with leaders and their supporters making moral claims of acting in the name of protecting freedom. Ressentiment brings together rage, righteousness, and revenge as a means to replace the hurt one feels as a result of a perceived injustice and inflict similar hurt on the perceived perpetrator of that injustice (Brown, 1993; Capelos et al., 2025). Right-wing populism mobilizes ressentiment as it relates to the nostalgic nature of right-wing conservativism and the feelings of vulnerability and lost privilege expressed by many on the political right (Berlant, 1997; Capelos et al., 2025; Krämer, 2017).

Ressentiment is an important mechanism for understanding how those claiming victimhood are moralized in the context of indignation and disgust towards the current political context (Trigiani & Boler, 2021). Ressentiment emerges primarily among those who "experience (a) fear and insecurity about their identity, work, and entire life" and "(b) alienation and displacement at the loss of social bonds" (Salmela & Von Scheve, 2017, p. 571). This moralization of the victim therefore occurs when people are encouraged "to view their insecure circumstances as the fault of guilty and less deserving social groups, and self-serving elites who coddle them, not as the product of broad social, economic, and political forces" (Cohen, 2019, p.9). This is particularly relevant to this project as actors on the political right argued that Jack Phillips was a victim of infringement on his religious freedom by excessive state interference in an effort to expand equality for the LGBTQ community. Rather than portraying Phillips in terms of his opposition to LGBTQ rights, he was portrayed as a champion for the protection of religious freedom.

Positive affect

There are also positive emotions that are mobilized in populist framing strategies as populist leaders position themselves as the solution and promising to ensure future well-being (Ward et al., 2025). In particular, we see nostalgia, nationalistic pride, solidarity, and hope mobilized by right-wing populist parties in addition to the above-mentioned negative emotions (Betz & Oswald, 2022; Bonansinga, 2022; Busher et al., 2018; Hamilton, 2023; Verbalyte et al., 2025; Ward et al., 2025). This is because participating in or supporting right-wing populist movements, though often motivated by fear, anger, and resentment, "can allow people to manifest, express, and maintain their rage, cope with intolerable feelings of humiliation and defeat, feel excitement about the damage that might be caused to smug professional politicians, get revenge for years of betrayal and neglect, and experience hope that nostalgic visions of the past might still be realized in the present" and future (Busher et al., 2018, p.402; Reicher & Haslam, 2016).

For example, though the negative emotions that right-wing populist leaders exploit are reinforced amongst supporters as a result of dissatisfaction with the current status quo, the resultant nostalgia for 'the good old days' is not itself a negative emotion (Betz & Oswald, 2022; Kenny, 2017). Instead, nostalgia provides "a positive sense of reassurance and comfort for those profoundly troubled by" the perceived, ongoing social, economic, and cultural destabilization they are experiencing (Betz & Oswald, 2022, p.126). Ultimately, relying exclusively on emotions like frustration, anger, and resentment contributes to a reductive description and understanding of those who participate in and support right-wing populist politics (Busher et al., 2018; Müller, 2016).

Pride and solidarity

A sense of pride is often associated with feelings of nostaligia, typically manifesting as a "collective in-group pride associated with […] flag-waving nationalism" (Busher et al., 2018). This is because the past serves as a source of nationalist pride due to the romanticized conception of 'the golden age,' as well as evidence of the nation's potential and fated greatness (Taş, 2022). People often resonate with right-wing populist movements when they feel as though their demands and grievances are dismissed or ignored and that they are effectively silenced when seeking to express their concerns and experiences (Pilkington, 2016; Zembylas, 2021). Right-wing populism offers a political alternative in an increasingly narrow policy spectrum, by giving a mainstream voice to arguments that were previously relegated to the margins (Busher et al., 2018; Pilkington, 2016). As a result, supporters become emboldened to be 'loud and proud' about their exclusionary, nostalgic political opinions (Pilkington, 2016).

Additionally, similar to the framing strategies deployed by right-wing populist actors globally, Donald Trump's speeches offer supporters a feeling of recognition, defined as "the experience of being treated as an equal, such that one's voice, wishes and perspectives are taken seriously" (Elad-Strenger & Kessler, 2025, p.456). This effectively counters the sense of misrecognition felt among supporters that right-wing populist actors attribute to 'elites' and the 'establishment.' The recognition that right-wing populist actors provide to their supporters often takes the form of dividing the concept of 'the nation' into "the virtuous 'ordinary people' and the evil or inferior 'others'" (Elad-Strenger & Kessler, 2025, p. 457). This allows people who feel their positive sense of self being threatened to consider themselves to be valued members of the nation, viewed favorably compared to minorities and other 'outsiders' (Elad-Strenger & Kessler, 2025).

While fear and anger often focus on the perceived 'danger,' pride shifts the focus to "the qualities, and courage of the 'endangered'" (Bonansinga, 2022, p.90). Right-wing populist leaders frequently "glorif[y] the ordinary people's values, virtues, and merits" prompting the development of a collective pride, as well as providing comfort and a sense of dignity to those struggling with sense of uncertainty and insecurity (Bonansinga, 2022, p.90; Taş, 2022). Pride can also subsequently energize and boost the confidence of a collective to the point where they are motivated to take action to address the perceived' threats' they face (Bonansinga, 2022). Furthermore, pride contributes to the moralistic quality of populism in which a leader praises the virtues of 'the people' as they face unfair, uncertain, and precarious circumstances caused by an 'evil enemy'—often the minority 'other' in addition to 'the elite' in right-wing populism. Right-wing populist leaders praise the "redemptive power of the people," their inherent good, and the "optimistic view in which they are able to come together and overcome nefarious elites" (Ward et al., 2025, p.328).

This *us* versus *them* mentality that is common in populist framing strategies also results in feelings of solidarity—defined as a sense of "mutual acceptance, cooperation, and mutual support in times of need" (Banting & Kymlicka, 2017 as cited in Demasi et al., 2025, p.559)—with others who feel similarly misrecognized, left behind, or unfairly treated (Demasi et al., 2025). Similarly, solidarity is fostered as right-wing populist movements reinforce supporters' sense of vulnerability in terms of a threatened group identity as a result of unjust treatment (Abts & Rogenhofer, 2025). In other words, it is not simply an individualized sense of injustice that attracts people to right-wing populist messaging but the injustice that threatens a shared identity.

Hope

Similarly, hope becomes a significant mobilizer of political action insofar as it allows a collective to "turn fear into anger and move [that anger] into collective action" (Capelos & Demertzis, 2018, p.9). As Ahmed (2004b) points out, politics isn't possible without hope, particularly because without the hope that particular leader or movement can successfully improve someone's circumstance, anger can result in despair. This is because hope "consists in the aspiration and expectation of a positive goal and involves imaginary creativity, cognitive flexibility, mental exploration of novel situations, risk-taking, [and the] importance of the desired outcome […] which is neither impossible nor certain" (Capelos & Demertzis, 2018, p.9). When people feel insecure, hope contributes to their ability to "channel a positive sense of unity to tackle the threat (Bonansinga, 2022, p.90).

As mentioned above, right-wing populist movements often center around a future optimism in which a leader successfully brings back 'the good old days,' shaping a future for the nation in which the threats faced by 'the people' will be neutralized and security will be restored (Bonansinga, 2022). It is this yearning for and optimism that such a future exists while people are experiencing difficult circumstances that generates feelings of hope. In right-wing populist framing strategies, this better future is made possible by positioning the charismatic leaders as a 'champion' for or 'savior' of 'the people' who is the only one capable of triumphing over their perceived enemies (Bonansinga, 2022).

Ultimately, understanding the mobilization of affect is a crucial component of understanding how right-wing populist leaders legitimate their messaging and garner widespread support. Affect is weaponized as a means to delineate certain groups as threatening 'others' and certain groups as included in the 'true people' who belong and are worthy of rights and protection. As such, exploring the way affect appears in both court documents and X (Twitter)

data is an important dimension of understanding the ways right-wing populism manifests in the current United States political context. By analyzing affect in the context of the *Masterpiece Cakeshop* case rhetoric, this project sheds light on the strategic ways affect is used in official discourse, as well as how it manifests in more colloquial discourse. This ultimately improves our understanding of the extent to which institutions and the public reflect the same uses of affect as the right-wing populist government and leaders in the United States.

The following chapter outlines the methodological approach taken for this dissertation. This is followed by an in-depth analysis of the extent to which right-wing populist themes emerge in court documents from the *Masterpiece Cakeshop* case and X (Twitter) data from Jack Phillips' supporters, and subsequently a sentiment analysis of the court documents and X (Twitter) data to better understand the affective framing of this human rights claim by the political right.

Chapter 3 - Methodology

The data

This project consists of two core components: a document analysis and a social media analysis. For the document analysis, I gathered court documents pertaining to the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* from its filing in 2012 through the end of June 2018 immediately following the Supreme Court ruling. I analyzed court proceedings and petitions filed on behalf and in support of Masterpiece Cakeshop in both lower courts (opening and reply briefs, notices of appeal, and briefs in support of appeals filed by Jack Phillips' defense, Alliance Defending Freedom) and the Supreme Court (petition for writ of certiorari and supporting brief filed by Alliance Defending Freedom to the Supreme Court, opening and reply briefs also filed by Alliance Defending Freedom to the Supreme Court, and the court's oral arguments transcript and opinion), as well as all Amicus briefs filed in support of Masterpiece Cakeshop (Table 1).[24] These documents were gathered from Jack Phillips' lawyers', the Alliance Defending Freedom, case webpage,[25] as well as the Supreme Court's website.[26]

Table 1. Overview of Documents Collected

Document Type	Document Count
Court Documents	13
Amicus Briefs	50

[24] See Appendix A for a complete, detailed list of court documents and Amicus Briefs submitted on behalf of Jack Phillips
[25] Alliance Defending Freedom. (n.d.). Masterpiece cakeshop v. Colorado Civil Rights Commission. https://adflegal.org/case/masterpiece-cakeshop-v-colorado-civil-rights-commission
[26] SCOTUSblog. (2018, June 4). Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission. https://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/

Documents were analyzed at the paragraph rather than document level because this allows for more nuance to be analyzed than if looking at the document level, while also providing more context than would be available if looking at the sentence level. I used R[27] to break each document down into paragraphs and create a spreadsheet containing each paragraph from all court documents, identified by date, type (Amicus Brief, lower court document, or Supreme Court document) and organization name (to be able to identify the Amicus Briefs which were all filed on the same date). On the other hand, documents were examined in their entirety for the sentiment analysis (as will be explored in chapter 6) as this provides a more comprehensive understanding of a document's overall tone. R was a useful tool for preparing my data for analysis as it allows for fast and efficient manipulation of large quantities of text-based data. As such, I was able to quickly develop code to automatically break the documents down into paragraphs and input the paragraphs into a spreadsheet. The ability to analyze large amounts of text efficiently also made R an appropriate tool for dictionary-based sentiment analysis (described below) which I used to explore affect in my data.

For the social media analysis, I used the academictwitteR package in R[28] to gather X (Twitter) data through the site's Application Programming Interface (API) related to the *Masterpiece Cakeshop* case. R interfaces with the X (Twitter) API, allowing users to search for specific tweets that meet various criteria such as date range, language, and associated terms. For my project, I filtered for tweets posted between July 19, 2012, when the case was first filed and June 30, 2018, covering the weeks immediately following the Supreme Court decision. The

[27] R is a free, open-source programming language and software environment for statistical analysis.
[28] The academictwitteR package is an extension in R designed to facilitate easy interaction with Twitter's API in order to run detailed queries for downloading tweets meeting certain criteria such as included terms or hashtags, time frame, language, etc. Since Twitter became X in 2022, accessing large volumes of tweets has become increasingly difficult. Because I had already downloaded the X (Twitter) data necessary for this analysis, this project was unaffected by this transition, however; future research seeking to apply similar methodologies will face challenges acquiring X (Twitter) data from official channels like the API.

tweets were gathered by filtering for the hashtags #JusticeforJack, #JackPhillips and #MasterpieceCakeshop and the key words “Masterpiece cakeshop” and “Jack Phillips” (Table 2). Tweets that were not in English, retweets and tweets with images were discarded.

Table 2. Overview of X (Twitter) Data Collected

Dates	**Query**	**Tweets**
07/19/2012 - 06/30/2018	“#JusticeforJack”, “#MasterpieceCakeshop”, “#JackPhillips”, “Masterpiece Cakeshop”, “Jack Phillips”	39,057

Once I had compiled a spreadsheet of tweets according to the above-listed criteria, I filtered my spreadsheet of tweets to identify a set of ‘key actors’’ tweets that would be analyzed alongside the court documents. The narrative surrounding Jack Phillip’s position in the *Masterpiece Cakeshop* case was largely shaped by certain key actors, including the baker’s lawyers—the Alliance Defending Freedom—and the organizations who filed Amicus Briefs in support of Phillips. These organizations not only shaped the legal discourse supporting Jack Phillips and his cake shop, but also played a role in shaping public conversations, particularly by their active promotion of Jack Phillips and analysis of the case on X (Twitter). Additional actors emerged as playing an important role in the narrative of support for Jack Phillips by regularly engaging with the hashtags “#MasterpieceCakeshop”, “#JackPhillips” and “#JusticeforJack,” as well as the terms “Masterpiece Cakeshop” and “Jack Phillips”. I defined regular engagement as tweeting in support of the baker *four or more times*, including all Tweets by organizations that had filed amicus briefs in support of Jack Phillips (Table 3).[29]

[29] See Appendix B for a complete list of key actors included in the analysis.

Table 3. Tweets by Key Actors

Query	Tweets
"#JusticeforJack", "#MasterpieceCakeshop", "#JackPhillips", "Masterpiece Cakeshop", "Jack Phillips" four or more times or part of an Amicus Brief	643

Looking at judicial and social data sources is crucial for gaining a comprehensive understanding of how human rights claims are constructed in the context of a right-wing populist political climate because it can point to how populist discourse, particularly affective framing, emerges in formal language, as well as in less curated, more informal social media posts. Specifically, it can shed light on patterns indicative of right-wing populism that are consistent across source types, as well as the ways in which source type might change the extent to which right-wing populism manifests.

I ultimately chose to only analyze discourse in support of Jack Phillips because I was primarily interested in examining the extent to which people who support right-wing populist movements and their agendas rely on right-wing populist framing strategies when articulating their support for certain human rights claims. In the context of vitriolic homophobic and transphobic rhetoric and policy proposals, and Donald Trump's right-wing populist politics, I felt it was important to examine how the political right, specifically, is framing its counterattack on LGBTQ rights when analyzing the religious freedom-oriented discourse surrounding the *Masterpiece Cakeshop* case. Focusing only on rhetoric from Jack Phillips' supporters points to the ways in which the political right seeks to weaponize constitutionally enshrined rights like religious freedom and freedom of speech to circumvent the legally protected rights of minority groups which, as discussed earlier, rely on the *interpretation* of constitutional rights (Greene,

2021). Understanding the nuances of how a human rights case is socially constructed by supporters of right-wing populism in a right-wing populist political context is an important first step. An area for future research would be a comparison of discourse between those supportive of one side of a human rights debate versus the other. In the case of the *Masterpiece Cakeshop* case, this would entail comparing discourse by those supportive of the baker to that of actors and individuals supportive of the gay couple.

I also chose not to include media articles, particularly given the entanglement between far right politics and the media that has become increasingly prevalent since the 2010s. Specifically, the media has contributed significantly to far-right discourses, ideologies, and politics becoming "accepted as 'normal' or treated as, or at least close to, the procedural or institutional and otherwise defined socio-political 'mainstream'" (Krzyzanowski & Ekström, 2022, p.721). Even as journalists and the media face attacks by right-wing populist political actors in terms of their legitimacy, accusations of publishing 'fake news,' and restrictions to journalistic free speech, the media has played an active role in propelling the success of right-wing populist movements globally (Krzyzanowski & Ekström, 2022; Wright, 2021). In particular, much of the nationalist, nativist, exclusionary, and authoritarian discourse used by right-wing populist leaders in direct challenge to liberal democratic norms have been normalized because of the journalistic coverage and framing of these messages (Brown & Mondon, 2021; Ekström et al., 2022; Krzyzanowski & Ekström, 2022).

This normalization became clear during the 2016 election cycle, wherein mainstream journalists from outlets like the *Washington Post*, the *New York Times*, *Politico*, and *Time* relied on tools such as objectivity, balance, impartiality, and "moderate, euphemistic language that failed to call things by name" (Zelizer, 2018, p.147). For example, the *New York Times* referred

to outright lies from Trump as 'controversies,' while *Time* normalized his refusal to meet with the press immediately following the election (Zelizer, 2018, p.147). During his campaign, Donald Trump actively sought to subvert the news cycle through his use of Twitter rather than relying on "the ordinary connectors of media and government" like press conferences (Zelizer, 2018, p.146). He also denigrated widely shared American norms like legitimate and fair elections, embraced anti-democratic ideals through "intolerance, name-calling, bullying, disregard for conflicts of interest, falsehoods, extremism, [and] self-aggrandizement," and generally engaged in what "journalists were slow to label as over-the-top behavior" (Zelizer, 2018, p.146). This contributed to questions among the electorate about the legitimacy of the media, as journalists constructed "an economy in which even the critique of what [Trump] said repeatedly validated the necessity of his being seen" (Zelizer, 2018, p.147). Once in power, Donald Trump and other similar right-wing populist leaders around the world have sought to control what is published in the media by restricting press access[30] and exerting influence over large media organizations[31] (Krzyzanowski & Ekström, 2022).

In order to avoid the possible bias these entanglements could impose on my project, I chose to focus on discourse directly from legal and public actors rather than articles *about* the discourse from these actors in order to have a less mediated perspective on their framing

[30] In February 2025, Donald Trump issued a policy limiting who would be allowed to provide coverage on various meetings and press conferences. Notably, he denied access to a cabinet meeting to reporters from the Associated Press and Reuters, long established media outlets. He also added conservative independent podcasters, content creators, and outlets like Breitbart News and Axios to join the pool of reporters granted access to press conferences on a rotating basis (Oliphant, 2025; Stelter, 2025; Stokols, 2025). On May 23, 2025, Peter Hegseth, the Secretary of Defense, first restricted journalists' access to information while inside the Pentagon by issuing a memo stating that press would require official approval and escorts from Office of the Assistant to the Secretary of Defense for Public Affairs to enter certain areas that were previously unrestricted. On September 18, 2025, a second memo was published by Pentagon spokesperson, Sean Parnell, that journalists must also obtain authorization to publicly release any information obtained at the Pentagon (Parnell, S., 2025; Hegseth, P., 2025).

[31] On September 15, 2025, days after the murder of conservative activist Charlie Kirk, comedian Jimmy Kimmel's show was pulled from the air after he made comments that the alleged murderer's political leanings may have aligned more with the political right despite efforts to portray him as a 'leftist.' This raised widespread questions about freedom of speech and censorship of the media (Montanaro, 2025).

strategies. Additionally, given how the case progressed through the courts over a period of six years, including news sources would have gone beyond the scope of feasibility as a result of the sheer amount of coverage the case received during that time frame.

Analysis

Measuring right-wing populism

In order to respond to my central question regarding the social construction of human rights in the context of right-wing populism, it is important to choose a definition of right-wing populism with which to align my research. I rely on a definition of right-wing populism as a discursive style that mobilizes a two-dimensional framework to articulate a politically conservative worldview. This involves a *vertical* antagonism with a corrupt establishment elite seen as pandering to special interests and minorities holding power over a predominantly white, Christian nationalist, xenophobic 'people' (De Cleen & Stavrakakis, 2017). *Horizontally*, antagonism emerges between 'the people' and all 'others' seen to threaten the integrity of the nation and 'national identity' (Brubaker, 2020; Obradović et al., 2020). This dissertation conceptualizes the use of populist framing strategies as existing on a spectrum rather than there being a definitive threshold of populist versus non-populist framing. As my findings demonstrate, the application of populist framing strategies in an institutional and public context is inconsistent. Not all of the discourse can be considered as reflective of right-wing populism, particularly given the challenges associated with differentiating between, for example, language and framing that is typical in legal discourse, such as lawyers framing their client as the victim in a particular case, and similar right-wing populist framing strategies reinforcing narratives of 'the people's' victimhood. However, there are instances when right-wing populism appears more clearly. For example, when references to a 'people' (specifically 'Americans' or 'all Americans')

is defined in exclusionary, right-wing populist terms that exclude certain Americans (like the LGBTQ community or Muslim Americans) or when the 'othering' of the LGBTQ community extends beyond an argument that the gay couple in the case is incorrect to an argument that the LGBTQ community as a whole 'undeserving' of rights and seeks to impose their views on Christian Americans.

Overall research process

My dissertation research relied on two core methodological tools to understand how human rights cases are articulated in a right-wing populist political context, as well as to examine the role that affect plays in this framing: text analysis and sentiment analysis. I used text analysis to examine court documents and X (Twitter) data to understand how human rights were framed, generally speaking, by Jack Phillips' supporters and to determine the extent to which right-wing populist framing strategies appeared in this discourse. This answered my first two research questions: 1. How are human rights claims socially constructed by different social and legal actors in the context of right-wing populism? and 2. How do differently situated social, legal, and political actors, working at different scales of social and political engagement, contribute to shaping populist discourse? I used sentiment analysis to analyze the affective orientation and overall tone of the court documents, key actor tweets, and tweets by the general public in order to answer my third research question: How is affect mobilized as a tool to construct human rights claims emerging from the political right?

Methodological techniques

Qualitative text analysis

Qualitative text analysis was used to examine the themes that emerged from the court documents, key actor tweets, and tweets from the general public. After using R to break the court

documents down into paragraphs and identifying the key actors in the X (Twitter) data, I compiled two spreadsheets—one of court document paragraphs and key actor tweets, and one of tweets by the general public. Though I originally intended to code them according to which of Mudde and Kaltwasser's (2012) key elements of populism appeared ('the people,' 'the elite,' 'the other,' and the 'general will'), I determined that a more effective approach would be to organize my analysis around an inductive coding guided by the key elements of the case itself—religious Americans and Christian business owners, the LGBTQ community, and the perceived role and influence of the courts and the government on the arbitration of rights. This approach removed the presupposition that right-wing populist framing strategies would necessarily appear in the data, allowing me to inductively identify themes as they emerged, rather than approaching the data with narrowly defined, pre-determined codes and a fixed understanding of what I would find.

Once I identified the themes associated with the main elements of the case, I went back and qualitatively analyzed the court document paragraphs and tweets associated with each theme again, applying a right-wing populist lens to understand the extent to which institutional and public actors rely on and interact with right-wing populist framing strategies typically associated with leaders of right-wing populist movements. For example, I looked at the court document paragraphs and tweets associated with religious Americans and Christian business owners, articulated by supporters as the 'victims' in the *Masterpiece Cakeshop* case, to highlight instances where the Alliance Defending Freedom or key actors framed this group as the 'true people' and the extent to which this group's needs and perspectives were articulated as representative of a 'general will.' Similarly, I examined whether or not the LGBTQ community, vilified as 'vindictive bullies' deliberately seeking to persecute Christian Americans, was framed

in terms of 'the other' associated with right-wing populist framing strategies. Finally, I looked at the role of the courts and the government, often accused of being 'the elite' by right-wing populist movements, to determine the extent to which this held true in the context of the *Masterpiece Cakeshop* case.

I analyzed the court documents and key actor tweets together and, as similar themes emerged for both I intermixed quotes from both data sources throughout my analysis rather than presenting quotes from the court documents followed by quotes from key actors. I then separately conducted a similar analysis of tweets by the general public. By breaking down my analysis as such, I was able to distinguish findings in more formal discourse in the context of the court documents and key actor tweets from more colloquial, public discourse.

Sentiment analysis[32]

As explored in Chapter 2, affect is often thought of as the "forces and intensities" that circulate among bodies establishing and reinforcing in-group and out-group dynamics rather than belonging to or being directed at individuals (Ahmed, 2004b; Gregg & Siegworth, 2010, p.2). From this perspective, affect is considered a "non-conscious experience of intensity: […] a moment of unformed and unstructured potential" that "plays an important role in determining the relationship between our bodies, our environment, and others" (Shouse, 2005, p.1). As such, affect also serves as an umbrella, encompassing feelings, emotions and sentiments wherein feelings are the sensations that can be labelled based on past experiences, emotions are the projection or display of a feeling, and sentiments are the resulting, relatively permanent, emotional dispositions towards certain objects, people, groups, or situations (Munezero et al., 2014; Shouse, 2005).

[32] The benefits and limitations of sentiment analysis are examined in Chapter 6.

Sentiment, feeling, and emotion are often used interchangeably but are slightly distinct insofar as sentiments "are more stable and dispositional," tend to be held for a longer period, and are directed towards an object (a person, thing, condition, place, or event) (Munezero et al., 2014, p.104). For example, one can have a sentiment of anger towards something without actually being in a state of anger (the emotion) or actively feeling angry (Munezero et al., 2014). Whereas affect is more abstract and, therefore, more difficult to directly identify in text, emotions, feelings, and sentiments can be more readily identified and analyzed in texts (Munezero et al., 2014). For the purposes of this dissertation, I examine sentiment as having positive or negative polarity and a source (the person or group holding the sentiment), or pertaining to specific sentiment like anger, joy, or sadness. When the term affect is used it is as an umbrella term that encompasses feelings, emotions, and sentiments, as well as the relationships between them.

It is important to note that a sentiment analysis—explained in detail below—only offers an entryway or a starting point to understanding affect. While I am able to draw important conclusion about the overall tone of a document (positive or negative) and how certain specific emotions like joy, anger, and sadness appear in the data, and the extent to which this tone and use of sentiment aligns with the literature regarding what types of affect appear in right-wing populist rhetoric and with what frequency, sentiment is only one component of affect. In other words, a sentiment cannot offer a full picture of how affect is used, as sentiment alone cannot capture the complexities of how affect shapes the relationships among people, their environment, and others.

Sentiment analysis is a computational method for analyzing affect in text; specifically falling under Natural Language Processing (NLP), wherein computers are used to understand

and interpret text. It combines quantitative and qualitative approaches by associating words (qualitative, subjective information) with a set of emotions and either positive or negative polarity (a quantitative value). Sentiment analysis allows me to determine the prevalence of different emotions and the overall tone of a text corpus. By quantitatively associating words in the text corpus with emotion words and polarity, sentiment analysis can be used to better understand that author's emotional state while writing, their attitude towards a particular object, or the emotional message they wish to convey to the reader (Hovy, 2015; Khoo et al., 2012; Nasukawa & Yi, 2003). Drawing on guidance from Silge and Robinson (2017), the three main steps for conducting a dictionary-based sentiment analysis in R include: (1) creating a *corpus* of identified texts; (2) breaking each text in the corpus down to the word level and 'cleaning it' by removing textual elements like punctuation and 'stop words' such as 'and,' 'but,' and 'or', as well as custom words related to the specific analysis at hand; and (3) applying a *lexicon*. This approach builds on Hadley Wickham's (2014) principles of 'tidy data.' According to Wickham (2014), "the principles of tidy data provide a standard way to organize data values within a dataset" in order to improve replicability and efficiency in the process of preparing data to be analyzed (p.1). Data is considered tidy and ready to be analyzed once "each variable is a column, each observation is a row, and each type of observational unit is a table" (Wickham, 2014, p. 4). In a dictionary-based sentiment analysis this means that a text is 'tidy' when the documents (the observational unit) are placed into a table in which each word is a new row.

1. The first step of a sentiment analysis is to identify the relevant texts for analysis and grouping them together into a corpus—texts grouped together for cross-document analysis. For the purposes of this research, I chose to create one corpus of the court documents used for analysis in Chapter 4, including all court documents filed by Jack Phillips and his lawyers from

the Alliance Defending Freedom in both lower courts (decisions and appeals by Phillips' defense) and the Supreme Court (oral arguments and decision), as well as amicus briefs filed in support of Jack Phillips. Each document in the corpus was identified by type of document (lower court, Supreme Court or Amicus Brief), date it was filed, and organization name. I then created a second corpus of the X (Twitter) data analyzed Chapter 4 from key actors and the X (Twitter) data analyzed in Chapter 5 from the Jack Phillips' supporters in the general public. Each tweet was tagged by user and date and whether it was from a 'key actor' or the 'general public.' The court document and X (Twitter) corpora were analyzed separately.

For the X (Twitter) data, I coded each tweet as 1 if it should be included in the analysis and 0 for those to be excluded. Tweets that were excluded were those pertaining to something unrelated to the *Masterpiece Cakeshop* case, those clearly written in support of Craig and Mullins as opposed to Jack Phillips or that did not express an opinion, and those containing only hyperlinks. Ultimately 9,764 tweets were included in the analysis, 421 of which were from key actors.

2. Once a corpus is created, each text is broken down to the word level (also called 'tokenization') and stored in a data frame. This is a table in which each row consists of a word (or 'token'), with a column denoting the text in which that word is found, a column for the date that text was published, and a column indicating how many times the word appears in a given text. Prior to Elon Musk's acquisition of X (Twitter), there was a function in R specifically developed to tokenize tweets, which was equipped to interpret X (Twitter) information like hashtags more effectively than the standard word-level tokenization. This function was removed when Musk limited access to X (Twitter) data for researchers. As such, R's understanding of how to appropriately tokenize hashtags (particularly when containing multiple words together) is

limited. This poses a challenge insofar as it makes analyzing the sentiment of hashtags more challenging because R will not recognize it as a word from the dictionary of tagged words, and therefore will not ascribe it a polarity or sentiment. A majority of the hashtags that I came across in my analysis, however, were variations of '1A' (indicating the First Amendment), 'Masterpiececakeshop' and 'JusticeforJack' which—other than the word 'justice'—would not have been on the list of words ascribed a polarity or sentiment, so the effects of not being able to evaluate the sentiment of hashtags are minimal in the context of the overall analysis.

Because the data frame includes every single word that appears in each text, it is important to conduct a cleaning process. This primarily involves removing 'stop words' such as 'the,' 'and,' and 'but' which do not hold value in a sentiment analysis. A list of custom words is typically also created for removal from the table. This list includes words specific to the given analysis that are likely to appear repeatedly in the included texts but do not hold negative, positive, or affective value in this context. For this analysis, I removed words like 'Masterpiece,' 'cakeshop,' 'couple,' 'Phillips,' 'Jack,' 'cake,' and 'business.'[33] Additional cleaning steps involve expanding abbreviations and contractions and removing information like hyperlinks and punctuation.

3. I chose to conduct a dictionary-based sentiment analysis for this project. As such, once each corpus was cleaned, each data frame is joined with a 'lexicon'—or list of words with an assigned positive or negative value— in order to tag each word in my text sources (court document and X (Twitter) data) according to polarity or specific emotion. There are numerous established lexicons available for public use that take different approaches to scoring words as positive, negative, or neutral, or tagging them as related to a specific emotion. For the purposes

[33] A complete list of custom words that were removed from the analysis can be found in Appendix C.

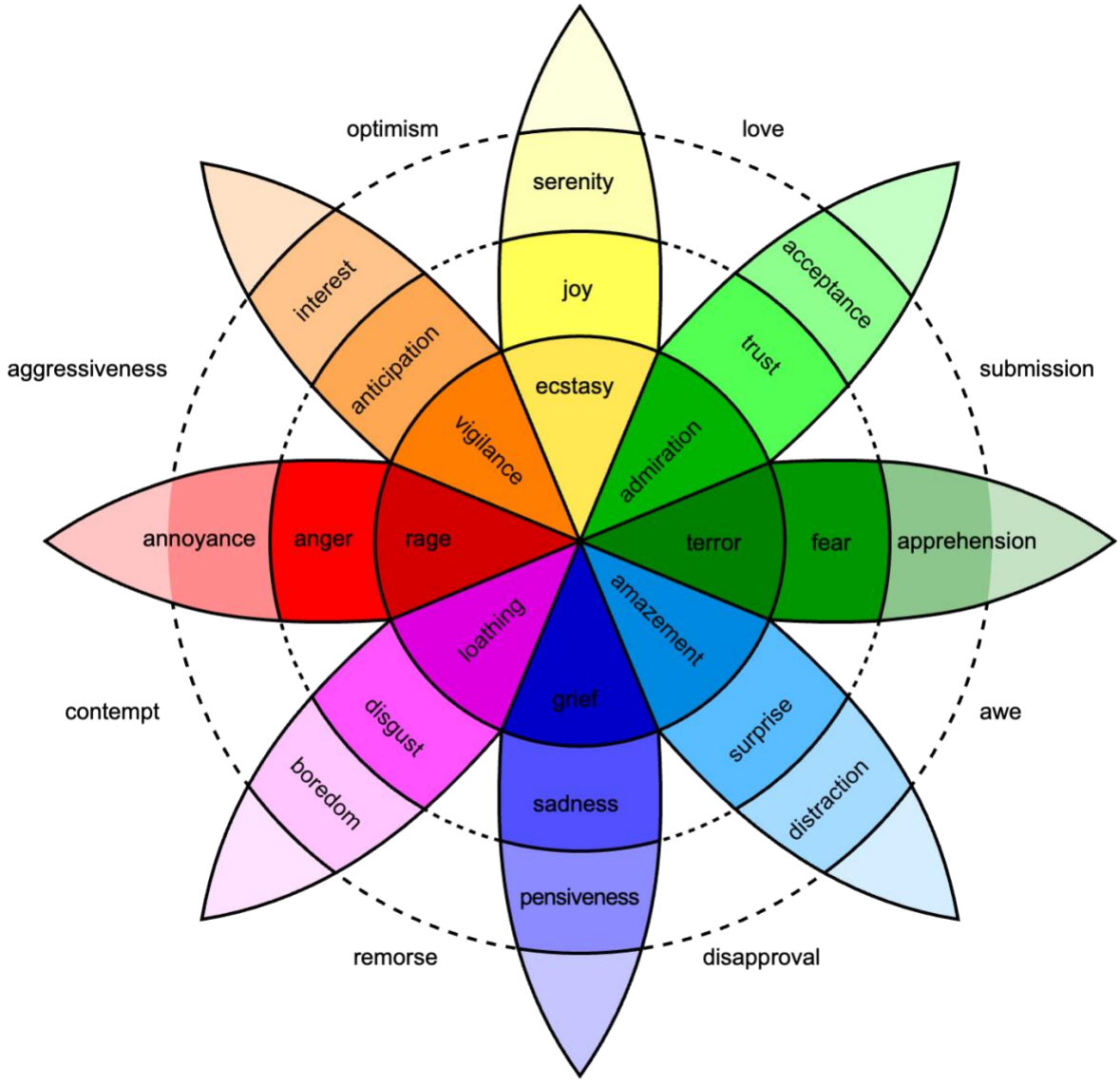
of this analysis I used the Bing lexicon developed by Minqing Hu and Bing Liu (2004), and the National Research Council (NRC) lexicon developed by Saif Mohammad and Peter Turney (Mohammad & Turney, 2013a).

The Bing lexicon categorizes words as either positive or negative, giving users a sense of the general sentiment of a text overall (Hu & Liu, 2004). This list of 6,786 'opinion words' was developed by Hu & Liu (2004) as a means of identifying the overall tone of customer reviews in an efficient way. The authors included and tagged "words that are primarily used to express subjective opinions" as either positive or negative (Hu & Liu, 2004, p.171). Understanding polarity in this binary way is useful for this project, given the research on the use of positive versus negative language in populist framing strategies. As demonstrated by Ward et al. (2025), populist leaders are more inclined than non-populist leaders to rely on negative language. When using the Bing lexicon as the one's chosen dictionary for sentiment analysis, users often also calculate a net sentiment—an overall score indicating *how* positive or negative a text was as opposed to just comparing the use and number of negative or positive words—by subtracting the number of negative terms from the number of positive terms. In order to compare net sentiment between, for example, different types of court document or over time, it is important to correct for the length of the document. Doing so adjusts for the possibility that a document has, for example, a higher net sentiment than another document simply because it is longer and therefore has more positive words (Tatman, 2017).

The NRC lexicon is a crowdsourced lexicon which tags words not only as positive or negative, but according to one of eight emotions: anger, fear, anticipation, surprise, acceptance, rejection, joy, or sadness (Mohammad & Turney, 2013a). These emotions were thought by American Psychologist Robert Plutchik (1980) to be the eight primary emotions that serve as the

foundation for all other emotions. He subsequently developed a wheel of emotions based on these primary eight, depicting how all other emotions are a variation on intensity of one of the primary eight emotions (Plutchik, 1980) (Figure 1).

Figure 1. Plutchik's Wheel of Emotion



Note: Robert Plutchik's wheel of emotions, by Jim McKeeth, 2026, via Wikimedia Commons. Public Domain.

Plutchik's (1980) theory of emotion has prompted the development of myriad different iterations of this 'wheel of emotion' some with fewer basic emotions (see Wilcox, 1982) or

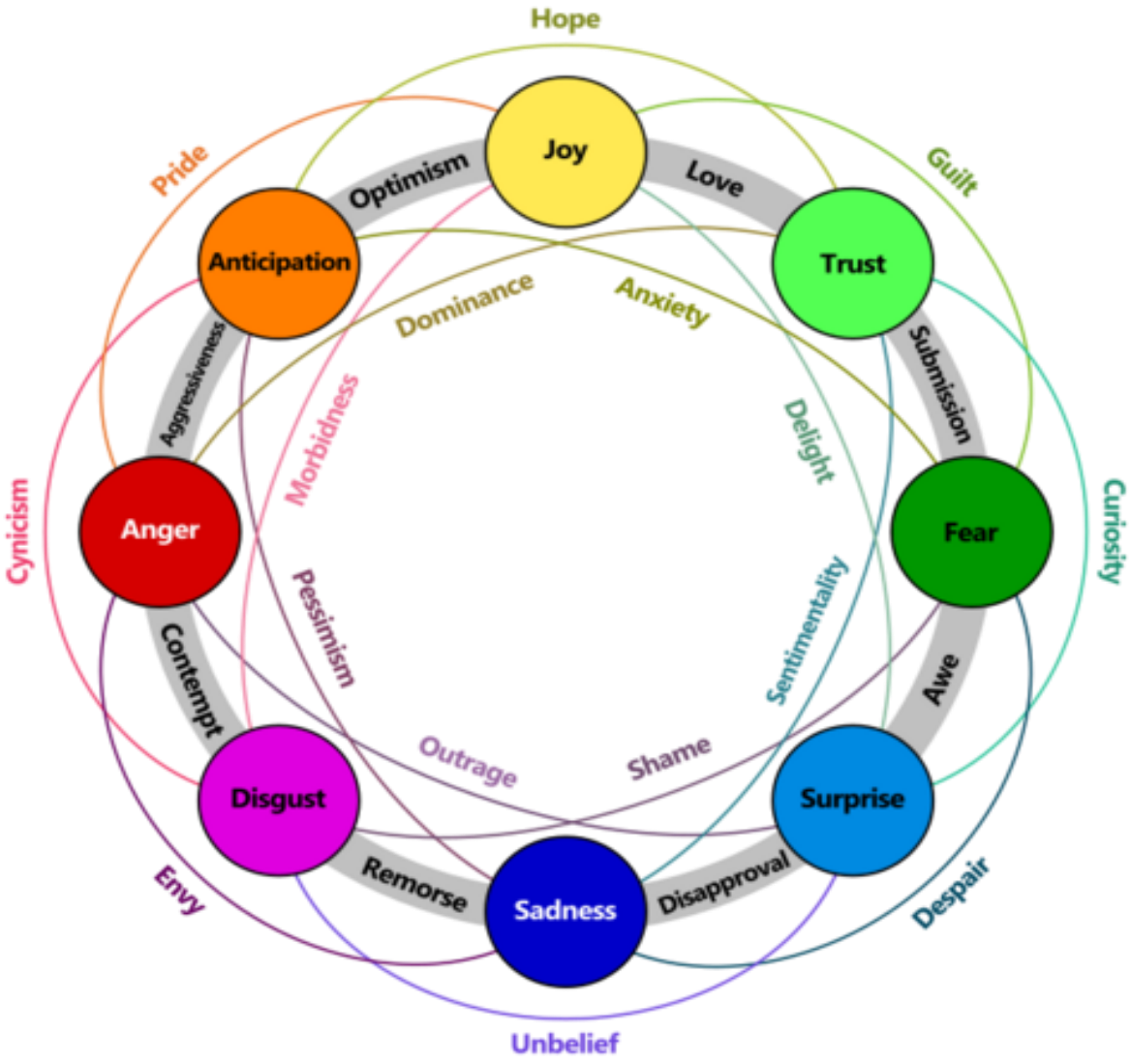
different ways of grouping or categorizing emotions (see Sacharin et al., 2012). Despite the variations, these models rely on the notion that there is a universally identifiable set of basic emotions (Ekman, 1992). There is, however, some debate regarding the universality of basic emotions, as well as the ways in which Plutchik (1980) and others argue that they combine into more complex emotions. Specifically, researchers argue that both the designation of an emotion as primary or basic and the interpretation of emotional cues are culturally dependent (Ortony & Turner, 1990; Russell, 1991). Given that Plutchik's (1980) model was derived from a Western-focused understanding of emotions and the fact that my research focuses on Western text sources, there is still value in analyzing sentiment in the court documents and X (Twitter) data related to the *Masterpiece Cakeshop* case using the NRC lexicon. Additionally, the NRC lexicon, which relies on Plutchik's (1980) configuration of eight primary emotions, remains the only lexicon used for dictionary-based sentiment analysis that attempts to explore specific emotions in text rather than just polarity (whether a word has positive or negative connotations).

It is important to note that Plutchik's (1980) wheel of emotion is a simplified visualization of emotions, as emotions typically do not have clear boundaries or exist in isolation (Mohammad & Turney, 2013a). As such, Plutchik also described how one can understand more complex emotions by looking at combinations of two of the eight main emotions, which he called dyads (Figure 2).[34] Here we see that hope is a combination of trust and anticipation, while pride combines anger and joy, and shame is a combination of disgust and fear. As explored previously, right-wing populist actors are prone to relying on basic negative emotions like anger and fear as well as more complex emotions like shame and resentment/ressentiment, hope and pride in their framing strategies. Busher et al. (2018) point out the importance of recognizing that

[34] For a table breakdown and visualization of the 24 dyad pairs see Appendix D.

it is rare to experience a single emotion at a time and, therefore, important to "focus our attention on how multiple, and at times seemingly conflicting, emotions and affects cluster, interact, vacillate, enable, overlap with, replace or displace one another" when examining political discourse generally, as well as right-wing populist 'backlash politics' more specifically (p.403).

Figure 2. Plutchik's 24 Dyad Emotions



Note: Reprinted from ChaoticBrain, under CC BY-SA 4.0 via Wikimedia Commons.

Though the NRC lexicon tags words according to Plutchik's (1980) eight primary emotions as opposed to the more complex dyadic emotions, understanding how 'basic' emotions are mobilized in court documents and X (Twitter) data can still shed light on the use of affect in the social construction of human rights cases. Despite the importance of looking at the more complex dyadic relationships between emotions when seeking to understand how affect can be mobilized to increase the awareness and legitimacy of and support for different causes, examining the use of basic emotions is a useful starting point. In terms of understanding how the human rights arguments are constructed and articulated in the context of right-wing populism, basic emotions continue to be relevant insofar as right-wing populist political actors rely on less complex anger and fear to mobilize support.

Additionally, once the NRC lexicon has been applied to the text sources and the prevalence of the basic emotions is clear, I can return to the data to manually analyze areas where the specific words driving the prevalence of a basic emotion appear. This manual follow-up analysis can point to how more complex dyadic emotions emerge discursively. For example if a word tagged as being associated with 'joy' appears in conjunction with a word categorized as 'anger,' I can interpret the extent to which the dyadic emotion 'pride' is being conveyed.[35] This allows for a more complete understanding of how both basic and dyadic emotions are implicated in the social construction of human rights in the context of a right-wing populist political context. Specifically, it can underscore the extent to which right-wing discursive articulations of a human rights argument mobilize affect in ways that echo the use of affect by right-wing populist political leaders.

[35] A complete list of the words included in the NRC lexicon and how they are tagged can be found here: Mohammad, S. M., & Turney, P. D. (2013b). *NRC emotion lexicon*. https://doi.org/10.4224/21270984

Queer feminist ontology

This project is feminist insofar as the subject matter itself can shed light on the functioning of oppressive mechanisms of power. Collins (2000) discusses power dynamics as existing within a *matrix of domination* that is characterized by a structural, disciplinary, hegemonic, and interpersonal domain (D'Ignazio & Klein, 2020). These domains work together to uphold the privilege of dominant groups while oppressing minoritized groups. This research project primarily focuses on the *hegemonic domain* in which oppressive ideas are circulated in the realm of culture, media, and ideas, thereby enabling the organization and administration of oppression through the implementation of oppressive policies that occurs in the structural and disciplinary domains (D'Ignazio & Klein, 2020). The project will also, to a certain extent, examine the *interpersonal domain* which pertains to everyday experiences of privilege and/or oppression insofar as I am also interested in understanding how individuals on the political right collectively articulate their perceived victimhood in the context of the religious freedom debate.

A feminist ontology emerges from experiences of oppression and is oriented towards both challenging hegemonic positivist research strategies and using research in action against subordination (Stanley, 1990). Additionally, this ontological and epistemological orientation is realized through five key principles that feature prominently in the literature on feminist methodologies: (1) deconstructing hierarchies of power (see Code, 1993; Ghaziani & Brim; 2019; Naples, 2003; Smith, 1987; Zavos & Biglia, 2009), (2) considering insider versus outsider positionality (see Collins, 1990; Gallagher, 2008; Naples, 2003; Smith, 2021), (3) reflexivity (see, DeVault, 1999; Letherby, 2003; Nencel, 2014; Reinharz, 1992; Rose, 1997; Walter & Andersen, 2013), (4) acknowledging othered perspectives (see Bogic, 2017; Collins, 1990; Collins & Bilge, 2020; Crenshaw, 1989; May, 2015; Zuberi & Bonilla-Silva, 2008), and (5)

recognizing experiences and absences as valid forms of knowledge and data (see DeVault, 1999; Hancock, 2007; Jackson & Mazzei, 2012; May, 2015; Patterson, et al., 2016). Finally, a research project is feminist in content, form, and/or process (D'Ignazio & Klein, 2020).

A feminist orientation to research is important for this project because power dynamics and historical legacies of oppression lie at the heart of the debate between religious freedom and LGBTQ rights. Furthermore, engaging in a feminist approach challenges me to examine not only the power dynamics inherent in the case study, but also to examine power in the context in which I am collecting data, my data sources, the objectives of my project, and my own positionality and privilege. The impetus for this project is a frustration with the current political climate in the United States where, not only has the LGBTQ community faced prolonged discrimination, but any legal gains towards equality are also persistently under attack. In the context of vitriolic homophobic and transphobic rhetoric and policy proposals and Donald Trump's right-wing populist politics, I feel compelled to examine how the political right is framing its counterattack on LGBTQ rights by analyzing the religious freedom-oriented discourse surrounding the *Masterpiece Cakeshop* case. An analysis of this case study points to the ways in which the political right seeks to weaponize constitutionally enshrined rights like religious freedom and freedom of speech to circumvent the legally protected rights of minority groups which, as discussed earlier, rely on the *interpretation* of constitutional rights (Greene, 2021).

This project is also feminist in form as I work to challenge both how data has frequently been used as a tool for maintaining an oppressive status quo and hegemonic positivist arguments that require exclusively quantitative data in order to be considered valid and legitimate (D'Ignazio & Klein, 2020). The specific methods I have chosen to use for analysis accomplish this goal in several ways. First, by choosing to analyze text, I am validating and legitimating

discourse as a valid body of knowledge and source of data. By not only relying on quantitative, statistical analysis to draw conclusion about my research question, I further challenge the positivist worldview that exclusively values objectivity and measurement (Hesse-Biber & Yaiser, 2004; Ramzanoglu & Holland, 2002). It is also a feminist methodological strategy to explore the role of affect in the social construction of human rights. In a Western society that often positions reason and affect in contention with one another, "bringing emotions back into political analysis has been described as a return of the repressed" (Demertzis, 2019, p.35). My mixed-methods approach acknowledges that both 'objective' statistics and 'subjective' qualitative assessment are equally valuable for comprehensively understanding a problem and being able to work towards addressing it.

With regard to my specific methods, I am engaging in what D'Ignazio and Klein (2020) call 'data feminism,' which they describe as "a way of thinking about data, both their uses and their limits, that is informed by direct experience, by a commitment to action, and by intersectional feminist thought" (p.8). A central feature of data feminism is the idea that in order to understand findings and identify potential biases, a researcher must connect data to the historical and ongoing sources of oppression that inform its contents (D'Ignazio & Klein, 2020). Similarly, data feminism centers the principle of co-liberation, recognizing that oppressive systems harm all of us (D'Ignazio & Klein, 2020). My project examines human rights claims not only in the immediate right-wing populist political context but traces their origins back to the establishment of liberalism and liberal democratic systems for governing human rights. As a result, my research does not argue that a reformation and reinvigoration of liberalism and its human rights frameworks can better protect marginalized communities, but rather that discrimination and violence are central to liberal democratic systems. I intend for my research to

shed light on these historical legacies of oppression to prompt reflection on how we might reimagine a system of human rights that is not borne out of violent exclusion.

Despite the fact that I am not conducting surveys or interviews, it is still important to my research that I consider my insider/outsider positionality and practice reflexivity throughout the research process. I must start from my own experiences to identify sources of bias and better be able to understand my project at each stage of the research process from reflecting on my choice of topic to choosing mechanisms for analysis and reporting (DeVault, 1999; Letherby, 2003; Reinharz, 1992). As a white queer woman, I am personally affected by right-wing attacks on LGBTQ people in the United States and therefore can be considered an outsider with regards to the individuals who have contributed to the discourse I am analyzing. Because I am interested in exploring the right-wing populist constructions of religious freedom claims, I must acknowledge that this positionality might be a source of bias in my analysis, prompting me to either over-identify populist framing, or be unduly critical of those voicing opinions portraying religious freedom as existing in opposition to LGBTQ rights.

Emulating the feminist epistemological emphasis on Kimberlé Crenshaw's (1989) theory of intersectionality and Collins' (2020) articulation of the 'matrix of domination' will mitigate this by encouraging me to recognize the diverse ways that people can experience both privilege and oppression along different axes of their identity. The individuals who have contributed to the discourse I will be analyzing are not homogenous in identity or experience, and it is important to consider their various possible positionalities when examining court documents, policy briefs, press releases, and Twitter posts. Additionally, I must recognize that my perspective is inherently limited. I am approaching this research as a middle-class, cisgender, white woman who does not have the lived experience of being transgender (arguably the most legislatively targeted LGBTQ

identity in the United States at the moment), nor can I speak to experiences of living in a country where it is illegal to be gay. The fact that I am able to examine debates about LGBTQ rights at all emerges from a place of privilege that is important to acknowledge.

Finally, in order to acknowledge the gaps in my data, I must also recognize that I am only examining half of the debate between religious freedom and LGBTQ rights. Though focusing my analysis on the political right and their claims to religious freedom is an important strategy for understanding human rights claims in the context of right-wing populism, it is important to recognize that left-wing human rights claims (in this case that of LGBTQ rights) are also being constructed in strategic ways in response to the prevalence of right-wing populism. This is an equally important component for understanding how human rights claims are socially constructed, however; it falls outside the scope of this research project.

Another important absence to recognize is that of sample. As mentioned previously, X (Twitter) users are not fully representative of the general population.[36] Rather, the average X (Twitter) user is more educated, more likely to live in an urban area, and more economically privileged than the general population (Ernst et al., 2017). Furthermore, curated court documents may not give a comprehensive, unbiased perspective on the right-wing argument in this debate given that these narratives therein are expertly crafted and edited to reflect more 'official,' 'politically correct' legalistic discourse.

Limitations of populism and the far right as a field of study

Populism in and of itself is a notoriously challenging concept to define, with limited consensus in terms of what the phenomenon means or represents (Mudde & Kaltwasser, 2017). When attached to far right or extreme right politics, the use of the term populism serves to blur

[36] The benefits and limitations of using X(Twitter) as a representation of the 'public sphere' is explored in Chapter 5.

the underlying politics as it is "less stigmatizing than the [terms] it is meant to replace, such as fascism or extreme right" (Collovald, 2004 as cited in Mondon, 2022a, p.884). Using populism as a framework can often have the effect of "abstraction and deradicalization of radical politics" (Maiguashca, 2019; Mondon, 2022a, p.885). This abstraction is particularly true in the erasure or downplaying of racism and the ways in which radical right parties are frequently founded on exclusionary principles (Mondon, 2022a).

The study of right-wing populism can be considered a limited field as a result of the ways in which it has historically ignored the role of racism as a central component of the societal structures in which right-wing populism operates, beyond more ideologically-based identity politics. Race as an *identity* plays a role in this dissertation insofar as 'the people' as defined by Donald Trump and in the context of the *Masterpiece Cakeshop* case are defined in terms of their whiteness, Christianity, heterosexuality, and citizenship. Race and racism as a *structural* phenomenon (see Bonilla-Silva, 1997; Bonilla-Silva, 2026; Mondon, 2022a; Mondon, 2022b), however, is a crucial facet through which to understand human rights and the social context in which they are articulated, which, in the context of the broader right-wing populist political climate in the United States underpins the primacy of white Christianity specifically in the *Masterpiece Cakeshop.*

Studies of right-wing populism have typically approached racism from the perspective that it is a strictly ideological, illiberal phenomenon (Mondon, 2022a). From this perspective, racism is simply an "individual-level animosity or hatred towards people of color" (Bonilla-Silva & Ray, 2015, p.59), and outright expressions of racism are "out of line with the contemporary liberal order and consensus" (Mondon & Winter, 2020, p.10). As Hesse (2004) argues, there is a "conceptual double bind" wherein racism is acknowledged as "residuum, consigned to

pathology, [and] a profound moral deviation from the western liberal and democratic ethos and ethnos" as opposed to a practice serving as "a *political technology* of Empire," central to governance, state practice, and institutional inequality (p.10, 13). This not only reduces racism to the attitudes held by individuals and groups but also relegates racism to a static remnant of the past "that has no material basis in contemporary society" (Hesse, 2004; Bonilla-Silva, 1997, p.468). *Extreme right* groups and political parties often do blatantly espouse this type of overt racist ideology, often coupled with violence. However, the assumption that racism is an ideological remnant of a past era serves to render those who *are* racist as 'incorrect' or 'irrational,' rather than understanding the rational foundations on which racialized systems were built (Bonilla-Silva, 1997).

Understanding the structural nature of racism stems from understanding that racialized social systems come from the categorization of people into different races in an inherently hierarchical way (Bonilla-Silva, 1997). While in the United States, for example, this began with overtly racist practices and mechanisms used to subjugated Black people during slavery, these practices have become more covert and indirect over time but continue to perpetuate a system in which Black people's life chances are lower than white people's (Bonilla-Silva, 1997). The structure of racism changes over time based on struggles at different levels among different races as a result of fundamentally differing interests (i.e. a desire to maintain or transform the racial order) (Bonilla-Silva, 1997). Interestingly, at the heart of what Mills (1997) called the 'Racial Contract' is the notion that the "social contract tradition that has been central to Western political theory, is not a contract between everybody ('we the people'), but between just the people who count, the people who really are people ('we the white people')" (Mills, 1997, as cited in Mondon & Winter, 2020, p.52). This also happens to be a central tenet of right-wing populism;

that 'the people' is not comprised of everyone but rather those who are deemed to truly belong to 'the nation.'

Far right parties are often more indirect or covert in their racism, straddling the space between the illiberal and the liberal, and the extreme versus the mainstream (Mondon & Winter, 2020). These parties are often the ones that become successful right-wing populist movements by virtue of positioning themselves in contrast to more extreme right, overt racist beliefs and practices. However, these right-wing populist parties espouse the more 'liberal' form of racism that emerges as a legacy of the inequalities inherent to liberalism.[37] For example, the United States Constitution was praised for its protection of individual liberty despite not extending that liberty to slaves. It was not until the aftermath of the French Revolution when slaves demanded liberty from the French and it became clear that slavery could not be "part of the liberal plan" that laws to abolish slavery were put in place for strategic political reasons (for example, to gain an edge over the British and Spanish Empires) rather than as a matter of principle (Mondon & Winter, 2020, p.52). Liberalism is touted as the only ideology that can protect individual rights, even as many living in liberal democracies continue to suffer violations or a lack of recognition of their rights (Mondon & Winter, 2020). It is the liberal leaders and elites who often perpetuate racial, gender, and class inequalities who are later praised for any progress made towards equality (Mondon & Winter, 2020). Though many liberal actors *have* fought against inequality and exclusionary practices,

> We must move beyond the hegemonic idea that liberalism and racism […] are antithetical, and that liberalism is therefore necessarily the logical opponent to the far right, as is often argued in the mainstream media and parts of academia. Instead, we must

[37] The history and foundations of liberalism as related to human rights are explored in Chapter 2.

> understand the mechanisms at play within liberalism, how it is deployed, and the way in which racism remains anchored to and travels through it today. Illiberal racism is in fact essential to the existence of, and tolerance for, liberal racism, acting as a diversion from more systemic and diffuse forms of racism that remain central to our liberal societies (Mondon & Winter, 2020, p.57).

Race and racism go beyond identity, skin color and conscious intention; they instead reflect "the ways in which a set of epistemological tropes, locations, assumptions and commitments naturalize racialized accounts" of the world (Sabaratnam, 2020 as cited in Mondon, 2022a, p.881). As a result, whiteness must be understood not as an "'identity' so much as a 'standpoint' rooted in structural power" (Sabaratnam, 2020 as cited in Mondon, 2022a, p.881). Because "racial domination takes place in the everyday" and is implicated in the very foundations of societal structures and systems (Bonilla-Silva, 2026, p.370), it is impossible to separate a study of the social construction of human rights from the implications of race and racism for how human rights, broadly speaking, came to be, and how the constitutional rights to free speech and religious freedom are articulated by the political right in the context of right-wing populism in the United States. As explored above, racism is also a significant factor insofar as it shapes the contours of many right-wing populist movements, through more covert 'liberal' racist framing strategies, as well as more explicit 'illiberal' racist rhetoric or actions (Mondon & Winter, 2020).

In the *Masterpiece Cakeshop* case, the embedded nature of racism in a society's economic, political, and ideological structures (Bonilla-Silva, 2026) points to how and why white Christians specifically become synonymous with 'religious Americans' and 'the people' in this case and the United States more broadly, as opposed to those of diverse religious convictions

more generally. The idea that Christianity, specifically, is a "benign cultural force rather than a religious one" is a theme in liberalism that is increasingly evoked by right-wing populist movements (Moffitt, 2020, p.78). In the United States, practices associated with Christianity "become so routinized and naturalized within [the] social order that they are taken for granted and no longer seen as contingent political constructions" (Cesari, 2024, p.270). Christianity, in other words becomes the norm and the backdrop against which social and political dynamics play out.

Here, Christianity also becomes inextricably linked to "the triumph of liberalism" (Moffitt, 2020, p.78). In particular, it is Christian culture that "'managed to create the freedom and tolerance that is the foundation for democracy' against 'fundamentalist religions - especially Islam'" (Dansk Folkeparty, 2009 as cited in Moffitt, 2020, p.78). In the *Masterpiece Cakeshop* case and right-wing political rhetoric in the United States more broadly, references to protecting 'religious freedom' and 'religious Americans' exist only within the confines of what Brubaker (2016) calls "Christian Secularism" (Brubaker, 2016 as cited in Moffitt, 2020, p.78). It is only Christianity, in its perceived equivalence with mainstream culture, freedom, and tolerance that is included, in contrast to religions like Islam which are perceived to be "dangerous all-encompassing religion[s]" or "totalitarian ideolog[ies]" (Moffitt, 2020, p.78).

In fact, many argued that the case likely would have been ruled on differently if the baker were, for example, Muslim. This is particularly true given the 5-4 Supreme Court ruling in the *Trump v. Hawaii* (2018) case that allowed Trump to carry out his travel ban against several Muslim-majority countries only weeks after the *Masterpiece Cakeshop* case was decided. Specifically, Justice Sotomayor pointed to the distinct double standard applied to Christianity versus Islam, arguing: "unlike in Masterpiece, where the majority considered the state

commissioners' statements about religion to be persuasive evidence of unconstitutional government action, the majority here completely sets aside the President's charged statements about Muslims as irrelevant" (*Trump v. Hawaii*, 2018, Sotomayor dissenting). This points to the underlying dynamics of racism and white religious supremacy central to the *Masterpiece Cakeshop* case and the broader political context at the time.

Ultimately, my study can shed light on how oppressive narratives that seek to uphold the status quo are articulated. I hope that by engaging in my research in the ways described above, I can contribute to the literature on populism that seeks to "question what is meant by democracy beyond normative and limited hegemonic understandings and take [the] power structures" that lie at the heart of liberal democratic societies "into account more seriously" (Mondon, 2022b, p.10). Democracy as understood through the study of populism often ends up reinforcing what Rancière categorized as "policing" or "a statist and societal process of rounding up people in a community through a hierarchized distribution of place and functions" and "organizes a distribution of the sensible […] mak[ing] some subjects audible, visible, and others completely imperceptible" (Ranicère, 1995, as cited in Mondon, 2022b, p.10). I hope instead to contribute to Rancière's "politics," defined as "the process of disrupting and overturning the order of the police by asserting the equality of anyone with anyone" (Rancière, 1995, as cited in Mondon, 2022b, p.10). This entails a "constant reflection on how we, as academics, study populism, what our positionality in power struggles is and what vision of the world we are putting forward" (Mondon, 2022b, p.10).

By improving our understanding of, specifically, how right-wing populist framing is implicated in the social construction of human rights, I hope to contribute to human rights organizations' capacity to craft effective counter arguments that mobilize support for diverse

groups' rights. More generally speaking, however, I hope that shedding light on how right-wing populism capitalizes on existing dynamics of exclusion and oppression that stem from our liberal democratic system, researchers and activists alike can continue to reimagine our systems and frameworks for human rights in ways that substantively meet the needs of the most vulnerable and marginalized.

Chapter 4 - Key Actors

In this chapter I explore how key actors supportive of Jack Phillips[38] shaped the public and legal narrative surrounding the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case, analyzing the extent to which populist framing strategies were employed in both court documents and tweets. Analyzing the discourse used by key actors can shed light on the extent to which right-wing populist framing strategies were used to further the arguments of the case legally and when discussing support of Jack Phillips publicly. This chapter begins with a discussion of the relationship between right-wing populism and human rights to better understand how, in cases like the *Masterpiece Cakeshop* case, human rights claims are often seen as competing interests operating in a zero-sum game. I then provide an overview of the relationship between constitutional democracies and right-wing populism to foreground how constitutions are not always dismantled (or 'commandeered') but often 'circumvented' through right-wing populist discourse to right the perceived weaponization of these documents by political elites who seek to pander to minority interests (Blokker, 2018; De Cleen, 2017).[39] This is important in the *Masterpiece Cakeshop* case insofar as key actors' arguments centered the Constitution as the ultimate arbiter of rights, claiming that the rights enshrined therein are more fundamental and important to national identity than more 'novel' rights related to issues like reproductive health, women's rights and LGBTQ rights.

Finally, I conduct a text analysis of court documents filed in support of Jack Phillips and tweets by key actors. The full distillation of the methodological approach used in this chapter is contained in Chapter 3. This analysis seeks to understand how the context of rising right-wing populism in the United States translates into the discursive framing of a human rights claim

[38] A justification for why I chose to only analyze discourse from Jack Phillips' supporters is included in Chapter 3.
[39] The different approaches to constitutions by right-wing populist actors are explored in more depth in Chapter 2.

being argued by those on the political right. The analysis shows that the legal and colloquial discourse from key actors surrounding each element of the case does often draw on populist framing strategies, however; it does so inconsistently. For example, there are references to 'Americans' and 'all Americans,' in addition to claims of victimhood for religious Americans that evoke the populist framing of 'the people.' There are also clear attempts to 'other' the LGBTQ community accusing them and the courts of infringing on First Amendment rights. However, some of the language that could be interpreted as populist in nature is also characteristic of legal argumentation generally. Generally speaking, articulations of 'the people' appeared most clearly in relation to the portrayal of religious Americans and Christian business owners and 'the other' in relation to the LGBTQ community, while the courts and government institutions are often portrayed as an 'elite' whose objectives must be brought into alignment with the will of the people.

For example, the emphasis on religious Americans uses framing strategies that could be seen as populist—namely, centering this group as the 'true people' in need of protection from the 'threat' of minority 'others'—however, in the context of a courtroom, it is common to focus heavily only on the community at hand as the victim and holder of rights. In religious accommodations cases in the United States, there is often not only an emphasis on religious Americans as victims, but on the implications of ruling against religious Americans for *all* Americans (see *Groff v. DeJoy,* 2023; *Dobbs v. Jackson Women's Health Organization*, 2022; *Dr. A v. Hochul,* 2022; *Equal Employment Opportunity Commission v. Walmart,* 2021; *Stormans v. Weisman,* 2016; *Burwell v. Hobby Lobby*, 2014). As such, though there are some instances where the use of populist discursive practices is clear, there are times when key elements of the case—the perceived role of the courts and the government in the arbitration of rights, religious

Americans and Christian business owners, and the LGBTQ community—are framed in ways that are common in a courtroom setting, and may have been framed the same way in the absence of a right-wing populist political context.

That said, it is important to recognize that the legal system does not operate in a vacuum and, particularly in the contemporary American legal landscape, it is inextricably linked to the political landscape. Given the mutually reinforcing relationship between political leaders, institutions, and discourse among 'the people,' even framing strategies used by conservative actors that may be generally common in a legal setting must be analyzed in the context of similarly right-wing conservative political leaders' frequent use of right-wing populist framing strategies when discussing the tensions that exist between religious freedom and LGBTQ rights. The Alliance Defending Freedom (ADF)—the legal actor representing Jack Phillips—is an openly and outspoken right-wing conservative legal organization that has regularly aligned itself with Donald Trump's political opinions and policies, and legally advocated for conservative right-wing Christian rights claims. My analysis is therefore rooted in an understanding of these connections and the likelihood that Trump's right-wing populist framing strategies has an influence on how the ADF constructs their claim that Jack Phillips's right to religious freedom and freedom of speech have been infringed upon.

As such, this analysis requires striking a balance between acknowledging the ways legal arguments are typically articulated regardless of surrounding politics and recognizing the impacts of the right-wing populist political context within which these concepts are articulated. I achieved this balance by organizing my findings around the key elements of the case—religious Americans and Christian business owners, the LGBTQ community, and the perceived role of the courts and the government in the arbitration of rights—as opposed to the core elements of

populism—'the people,' 'the elite,' 'the other,' and the 'general will"—allowing for articulations of populism to emerge more organically in the data where relevant. Ultimately, the findings point to the ways in which constitutions, often as a result of their exclusionary foundations, serve to protect the interests of some at the expense of others.[40] This is relevant in the context of right-wing populist movements, given how, when a populist leader seeks to manipulate a constitution to carry out their agenda, these exclusionary foundations are a useful foundation for justifying actions in the name of a 'people' defined by clear exclusions.[41]

Human rights claims and right-wing populism

Human rights claims consist of demands and allegations by diverse social and demographic groups that their fundamental freedoms are being unduly infringed upon and demands that these freedoms be protected. They are inherently "claims about how [people] deserve to be treated in the public sphere" (Kazyak et al., 2018, p.2). Advocates and those making human rights claims across the political spectrum in the United States reference the Constitution as the source of their undeniable freedoms, which can place rights claims in tension with one another (Kazyak et al., 2018). This is especially true as political actors mobilize human rights causes for political gain (Bílková, 2018; Kazyak et al., 2018; Kováts, 2018). In an increasingly polarized United States, religious Americans and those "who reject organized religion as authoritarian and hypocritical, especially with respect to sexuality" increasingly see "the other's values as threatening and incomprehensible" (Movsesian, 2019, p.713).

[40] As explored in the Liberal Human Rights section of the Theoretical Framework in Chapter 2, constitutions—particularly like those with long histories in countries like the United States and France—are often developed in a context where not everyone is deemed to be 'human' or deserving of rights. As a result, while the rights of some (typically white Christian men) are enshrined within the constitution, others are subsequently rendered more vulnerable.

[41] The different relationships that populist leaders can have with a constitution are explored in Chapter 2.

In his broader policy platform and speeches, Donald Trump capitalized on this tension between religious freedom and equality for women and sexual minorities, establishing a hierarchy of rights with religious freedom at the top and equality initiatives for minority groups at the bottom (Haynes, 2020). In fact, Donald Trump's secretary of State, Mike Pompeo, established the Commission on Unalienable Rights in 2019 which sought to "protect and promote 'fundamental' or 'unalienable' rights, said to be foundational in both the United States' 'founding principles' and the 1948 Universal Declaration of Human rights (UDHR)" (Haynes, 2020, p.8). While these rights—most importantly freedom of religion or belief—were portrayed by the Commission as emerging from the Declaration of Independence and 'natural law,' and therefore essential and worthy of domestic and international protection, other 'novel' human rights like reproductive health, and LGBTQ equality were said to be 'inessential' and unworthy of "international oversight" (Haynes, 2020, p.10).

Though human rights projects have always been characterized by struggle rather than consensus, as right-wing populism has expanded across the globe, we have increasingly seen government efforts to "challenge and dilute existing human rights standards" and institutions that seek to protect human rights (Alston, 2017, p.4). Additionally, many people, particularly those adversely affected by "globalization-driven economic change," feel as though "they have no stake in the human rights enterprise" which is perceived to be unduly protecting "'asylum seekers', 'felons', 'terrorists', and the like" (Alston 2017, p.6). Right-wing populist leaders are therefore often inclined to make "repeated appeals to the preferential treatment (allegedly) accorded to certain groups at the expense of the majority" (Bílková, 2018, p.155).

Understanding how human rights claims are framed in the context of right-wing populism is particularly important because when right-wing populist actors and institutions vilify elites for

prioritizing certain (minority) rights (Alston, 2017; Bílková, 2018), it contributes to the environment in which polarized rights claims clash and compete. It also contributes to the 'us vs. them' mentality that is central to right-wing populism's scapegoating of 'the other' as an enemy that must "not only be excluded from the community," but has "to be publicly despised, humiliated and, if need be, mistreated" (Bílková, 2018, p.154). The result is a zero-sum game in which expanding the rights of some is seen as infringing upon the rights of others, establishing hierarchies wherein some rights are deemed more important than others.

Constitutional democracies and right-wing populism

In many constitutional democracies, laws and norms originate and gain legitimacy from the country's constitution. Though constituent power ('the people') is responsible for the initial determination of the norms and laws enshrined in a constitution, once established, constitutional institutions become influential themselves (Pin, 2019; Scholtes, 2019). As a result, many right-wing populist leaders become skeptical of how well constitutions represent 'the people' and their 'general will' in the present moment. Right-wing populism in the United States has an interesting relationship with constitutionalism, given that the country's founding centered around a constitution. In the United States, conservative ideology, broadly speaking, advocates for an 'originalist' reading of the Constitution in all questions of norms and laws. In other words, conservative leaders, institutions, and individuals reinforce the importance not only of the Constitution, but of the Constitution as we deduce the Founding Fathers intended the text to mean in 1776.

In the context of right-wing populism, this means that where legal questions arise, those rights that are explicitly enshrined in the Constitution must take precedence over all other laws that rely on interpretations of the Constitution—deductions of what the text means in the context

of and at the time when it is interpreted (Greene, 2021). 'Originalism,' as such, contributes to the right-wing populist arguments that though "human rights once enshrined the most basic principles of human freedom and dignity"—as demonstrated in documents like the U.S. Constitution—in more recent human rights frameworks with expanded rights for diverse groups, "the sheer quantity and variety of rights, which protect virtually all human interests […] deviates attention and resources away from those human rights that are truly fundamental" (Bílková, 2018, p.162). This aligns with the strategies of some right-wing populist leaders globally who seek to adjust dominant interpretations of their constitutions to reinforce narratives of "tradition, the preservation of the past, identity, ethnicity, religion, and skepticism toward the future" (Pin, 2019, p.233).

In the following sections, I analyze the themes emerging from the tweets of key actors discussing the *Masterpiece Cakeshop* case, as well as court documents. The themes that emerged center around the courts and government influence, religious Americans and Christian business owners, the LGBTQ community. Within these themes I examine the extent to which traditionally populist formulations of 'the people,' 'the elite', 'the general will,' and 'the other' are present.

The courts and government influence

In the *Masterpiece Cakeshop* case, key Jack Phillips supporters vilify the government as an 'elite' group that has manipulated the Constitution to serve the interests of minority 'others' like the LGBTQ community and is 'coercing' speech by imposing same-sex marriage laws on all Americans (Alliance Defending Freedom, *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 2017). Specifically, that "the state of Colorado did not treat Phillips with 'neutrality,' but rather 'hostility,' due to the religious beliefs underlying his claims" (@FRCdc, 2018). However, these actors see this court case as an opportunity, wherein "the Supreme Court

has a chance to rule that the government has no authority to force Americans like Jack Phillips to use their artistic talents to celebrate events they morally oppose. #JusticeForJack" (@tperkins, 2017). Rather than accusing constitutionally established institutions of operating at the behest of 'the elite' government, Jack Phillips' supporters call on the Supreme Court to challenge the 'elitist' support of minority interests by supporting the baker and by extension First Amendment rights. The Supreme Court decision is seen as a victory for religious Americans as well as a righting of past 'wrong' and 'unfair' decisions by the court such as in *Employment Division v. Smith* in 1990,[42] and *Jack v. Gateaux, Ltd.* in 2015.[43]

This is interesting, given that right-wing populist leaders question the legitimacy of courts and their ability to represent the true 'will of the people' insofar as these institutions emerge from the static norms that serve as the basis of a country's constitution (Blokker, 2018). However, the *Masterpiece Cakeshop* case emerged in the context of a right-wing populist leader already being in power and having engaged in appointing loyalists to the courts in order to use them to more effectively carry out their agenda. As such, the discourse surrounding the opportunity for the Supreme Court to support the 'will of the people' by ruling in favor of religious freedom is more a reflection of the *expectation* that the reformulated, now conservative-leaning, Supreme Court will rule in alignment with Donald Trump's right-wing populist agenda. This particular framing of the Supreme Court's chance to make the 'right choice' is also a reflection of the fact that "populists are not generally 'against institutions' […] They only oppose those institutions that, in their view fail to produce the morally […] correct political outcomes.

[42] *Employment Division, Department of Human Resources of Oregon v. Smith* was a United States Supreme Court case in 1990 that ruled against an employee who had used peyote as part of a religious ritual, in violation of state law, and was therefore fired and denied unemployment benefits.
[43] *Jack v. Gateaux Ltd.* was a 2015 case before the Colorado Civil Rights Division in which the court ruled that a secular baker could decline to bake a cake displaying an offensive message denigrating same-sex relationships under the First Amendment.

And that happens only when they are in opposition" (Müller, 2016, p.62). In other words, "populists in power are fine with institutions—which is to say *their* institutions" (Müller, 2016, p.62). Right-wing populist leaders are in favor of institutions that align with *their* interests and secure *their* power (Petrov, 2020).

Populist actors in liberal democracies frequently vilify 'the elite' for weaponizing the constitution and its institutions in order to impose progressive measures surrounding LGBTQ rights, gender equality, and reproductive rights (Blokker, 2018; De Cleen, 2017). These 'minority,' special interest rights are seen as threats to rights like free speech and freedom of religion which are constructed as being more fundamental to national identity, culture, and security (Brysk, 2019; Gostin et al., 2020). As a result, right-wing populist leaders capitalize on their supporters' nostalgic fantasies of past status and power, allowing them to express feelings of anger towards policies and laws perceived to exclude them from social, economic, and cultural privilege (Anderson, 2017; Inglehart & Norris, 2017; Zembylas, 2021). The *Masterpiece Cakeshop* is a representation of this clash between religious freedom and freedom of speech—explicitly enshrined in the Constitution—and 'special interest' rights of the LGBTQ community.

As a result, in the discourse surrounding the *Masterpiece Cakeshop* case, the decision favoring Jack Phillips is lauded by key supporting actors as representing the interests of everyone by ensuring anew that the First Amendment and the Constitution "is for all Americans at all times" (@emilieADF, 2018). A case like *Employment Division v. Smith* wherein an employee was fired for adhering to their religious practices was merely a misjudgment that could be righted by siding with Jack Phillips and his religious beliefs, while *Jack v. Gateaux Ltd.* wherein the Supreme Court allowed a secular baker to refuse to bake a cake with a message he disagreed with had actually set a precedent that must be adhered to no matter the content of the message

being refused. What this means in practice is that the Supreme Court should (and in this case, ultimately did) ensure that the First Amendment and the Constitution continue to uphold a status quo in which 'the people,' as represented by religious Americans in this case, are able to live out their religious convictions freely, while 'the other' is forced to endure subsequent discrimination and exclusion. Jack Phillips' supporters articulate a moralistic desire to uphold "the Constitution and the Supreme Court's own precedents [which] deeply respect the freedoms of all—even those whose opinions are unpopular" (@Heritage, 2017). The 'all' depicted here, however, is implicitly referring to only to all of those who are included within 'the people.'

The general will of 'the people' in this case centers around calls for the protection of freedom, guaranteed under the First Amendment, that is being threatened by 'elites' and their support of 'minority' interests. Specifically, that the Supreme Court decision is "a victory for Jack Phillips and our nation's long cherished freedom of following one's deeply held beliefs without fear of government punishment," as it "breathe[s] a bit of life back into religious-liberty jurisprudence" (@FRCdc, 2018). The Supreme Court decision is seen as a victory insofar as it represents a constitutionally established institution deviating from the will of the 'corrupt elites' in government to represent the general will of the 'true people.'

Arguments on behalf of Phillips can be seen in the context of the 'originalism' described above, as they seek to afford primacy to constitutional freedoms over anti-discrimination and public accommodations laws at all costs. The Foundation for Moral Law (2017) argued in their amicus brief,

> the [Colorado Court of Appeals (CCA)] has twisted the newly-minted right to same-sex marriage into an imaginary right of same-sex couples to force others to promote their

same-sex weddings. Worse, the CCA has elevated this supposed right above the constitutionally enumerated rights of free exercise of religion and free speech (p.5).

This argument represents supporters of Phillips' attempts to portray the relatively new right to same-sex marriage as contributing to over-expanded civil rights that force religious individuals to compromise their values. In their amicus brief, the Foundation for Moral Law (2017) points to the enshrinement of religious freedom and free speech rights in the Constitution to directly contrast with rights like same-sex marriage which emerged from an *interpretation* of the constitutionally enumerated rights. As stated in an amicus brief by 479 Creative Professionals (2017):

> while societal winds are susceptible to shifts, the First Amendment is supposed to be the constant. It should protect those who decline to promote same-sex marriage, along with those who want to promote same-sex marriage. Indeed, this historically-based freedom is (or at least, should be) for everyone, regardless of viewpoint (p.30).

This quotation demonstrates the hierarchization of rights that is often seen in right-wing populism (Greene, 2021; Haynes, 2020; Kazyak et al. 2018), wherein the First Amendment is part of the fabric of American identity and enshrined in the country's most sacred of founding documents; the Constitution. Rights like that of same-sex marriage, on the other hand, are portrayed as part of the "societal winds" (Brief of Amici Curiae 479 Creative Professionals, 2017, p.30) that shift and reflect the ever-changing predominant social viewpoint at a given time.

The petitioners and Amici Curiae not only accused the courts of unduly expanding the rights of the LGBTQ community, but of forcing religious Americans to agree and comply with such societal trends and government policies that are deemed favorable. Phillips' advocates argued, "governments may not interfere with someone's expression simply because they find his

message harmful and demeaning" (Brief of Amici Curiae Sherif Girgis, 2017, p.4). The shared understanding among the petitioners and Amici Curiae was that "consideration must be provided for those like Jack Phillips in a landscape increasingly hostile to his views" (Brief of Amici Curiae Restoring Religious Freedom, 2017, p.15). The need to protect opinions and viewpoints regardless of whether they are broadly perceived to be socially acceptable is portrayed by Phillips' supporters as central to the general will and interests of 'the people'—both religious Americans and others—who hold views that counter the mainstream.

As such, the question of preventing discrimination through public accommodation laws is reduced to a simple disagreement—a "good-faith difference of opinion" (@MNFamilyCouncil, 2018)—in which the LGBTQ community and its supporters are portrayed as unreasonably trying to force "Americans" to condone same-sex relationships. As Emilie Kao from Alliance Defending Freedom (@emilieADF, 2017) argues "We live in a big, diverse nation… we don't have to agree on questions of sexual morality… What we should be able to agree on is our freedom, as Americans, to live out the ideals that are most important to us." Jack Phillips and religious Americans are constructed as victims in this case by virtue of their beliefs that run contrary to what the government deems to be socially appropriate views. In their amicus brief in support of Jack Phillips, the Becket Fund for Religious Liberty (2017) argued:

> by enforcing the Colorado Anti-Discrimination law against Phillips without regard to his free speech rights, the government is telling him to 'get with the program' in a way that badly distorts the marketplace of ideas by strengthening service providers who toe the government line and financially crippling those who refuse to say what the government demands (p.24-25).

Jack Phillips' supporters argued that forcing conformity with dominant 'social trends' victimizes those who dare to oppose these trends. In particular, "while first amendment protections for Phillips would not undermine any of the legitimate purposes of sex or sexual orientation non-discrimination statuses, a ruling against him would undermine his equal status in civil society" (Brief of Amici Curiae Ryan Anderson et al., 2017, p.37). In their amicus brief, Ryan Anderson et al. (2017) similarly argue, "First Amendment rights […] protect the dignity of the human person as people try to live life in conformity with what they believe to be the truth, particularly the truth about morality and the divine. A ruling against Phillips would therefore threaten his dignity" (p.34-35). In a system seen as preaching tolerance towards minority groups like the LGBTQ community, Jack Phillips argues "that the government is forcing me to choose between providing for my family and employees and violating my relationship with God. That is not freedom. That is not tolerance" (@ADFLegal, 2017). Petitioners and Amici Curiae thereby sought to establish that creating a hierarchy that places sex and sexual orientation non-discrimination laws above the constitutional rights to freedom of speech and religion relegates religious Americans to second-class status.

This example represents the right-wing populist strategy of criticizing contemporary human rights movements as serving particular groups and promoting particular agendas as opposed to their original purpose of "protect[ing] the people [and] reflecting the concerns of the majority of society" (Bílková, 2018, p. 161). By framing their own rights claims around the First Amendment and, specifically, the intersection of freedom of speech and freedom of religion, the political right in the United States has increasingly been able to find loopholes to progressive rights efforts focused on protecting minorities. In the case of the *Masterpiece Cakeshop* case, despite public accommodations laws preventing discrimination in places of business, the right

has engaged with right-wing populist framing strategies in order to emphasize the perceived primacy of First Amendment protections over other equality-focused laws to allow business owners to deny service based on their religious convictions. This clash between right-wing populist rights claims and more progressive, left-wing rights claims effectively stalls progress towards equality. As the political right becomes more adept at arguing for religious-based exemptions, it becomes possible for anyone opposed to equality—in other words those harboring racist, anti-immigrant, sexist, homophobic, or transphobic sentiments—to side-step equal rights protections in the interest of their religious beliefs.

In light of the perceived clash between civil rights laws and religious freedom, Jack Phillips' case rested on the argument that "government entities are not free to employ non-discrimination and public accommodation laws as a means to compel creative professionals to 'modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own'" (Brief of Amici Curiae 479 Creative Professionals, 2017, p.29). In his opinion concurring in part with the judgment of the Supreme Court's 2018 decision, Justice Clarence Thomas goes so far as to state that a ruling against Phillips "flouts bedrock principles of our free-speech jurisprudence and would justify *virtually any law* that compels individuals to speak" (p.2, emphasis added). Once again, a ruling against Phillips is portrayed as something of a 'Pandora's box' that would allow the constitutional freedom of religion and right to free speech to be regularly circumvented.

In several instances, amici curiae reference the words of James Madison, a founding father, to confirm the precedence of religious freedom over all other rights (Brief of Amici Curiae Center for Constitutional Jurisprudence & National Organization for Marriage, 2017). James Madison had argued, "the free exercise of religion is, by its nature, an inalienable right

because a person's beliefs 'cannot follow the dictates of other men' and because religion involves a 'duty towards the Creator'" which implied that "in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance" (Madison, 1785, as cited in Brief of Amici Curiae Center for Constitutional Jurisprudence & National Organization for Marriage, 2017, p.14). For Madison, "the right to Free Exercise of Religion […] precedes civil society and is superior even to legitimate government" (Brief of Amici Curiae Center for Constitutional Jurisprudence & National Organization for Marriage, 2017, p.14).

Overall, Jack Phillips' supporters attempt to caution against a ruling that would allegedly undermine the First Amendment by affording primacy to civil rights and public accommodation laws. Clarence Thomas argued in his opinion concurring with the 2018 Supreme Court decision that "when a public accommodations law 'ha[s] the effect of declaring… speech itself to be the public accommodation,' the First Amendment applies with full force" (p.3). In other words, neither the government, nor the court has a right to enforce a public accommodation law when the resulting accommodation or service constitutes an expressive act or speech. Ultimately, Jack Phillips' supporters demand that the right to freedom of religion and speech be prioritized over anti-discrimination and public accommodations laws. Accordingly, "state law rights cannot trump constitutional rights" because "legislatively created 'equality' rights do not justify the suppression of free expression" (Colorado Civil Rights Commission Department of Regulatory Agencies, *Charlie Craig and David Mullins v. Masterpiece Cakeshop,* 2014, p.7). Not only did Jack Phillips' lawyers and advocates construct a hierarchy of rights by emphasizing an originalist perspective, this hierarchy—most notably the protection of the First Amendment above all else—was portrayed as representing the 'common interests' of all Americans to protect the

Constitution and the rights enshrined therein from the shifting social trends and 'political correctness' that characterize the contemporary human rights project.

Religious Americans and Christian business owners

The *Masterpiece Cakeshop* case centered around the rights of religious Americans and creative professionals, specifically those of free speech and freedom of religion. Central to the claim that everyone has a right to freely practice religion and the right to freedom of speech and expression without government or judicial interference is the argument that there is "a constitutional right of personal identity for all citizens, including the right to identify by the religious beliefs and practices central to one's identity" (Brief of Amici Curiae Christian Business Owners, 2017, p.9). Those particularly wronged by the Colorado Civil Rights Commission decision against Jack Phillips were those living at the intersection of those two identities — Christian business owners. This group of people is particularly victimized by a government portrayed as hostile to religious conviction, because "artists like Jack Phillips & [Barronelle Stutzman] who cherish marriage as a God-ordained institution face a terrible choice: [their] faith or [their] livelihood" (@MNFamilyCouncil, 2018).

Public accommodation laws protecting patrons from discrimination in businesses open to the public are perceived by Jack Phillips' supporters to be in direct conflict with the right to freedom of religion and free speech which, as constitutionally protected rights, are seen as more fundamental aspects of American identity that should be upheld above all other laws. Christian business owners, in particular, are painted as martyrs "fighting for their freedom not to participate in ceremonies that violate their beliefs" (@AlbanyUpdate, 2017) in the face of laws that benefit only a small minority. Jack Phillips is constructed as the representative of religious

Americans, particularly religious business owners and creatives, and is touted as "the cake artist who courageously stood for the religious liberties of every American" (@MAFamilyInst, 2018).

In this case, religious Americans and Christian business owners are seen as victims of a government that has become unjustly hostile towards religious expression, in favor of protecting the interests of minorities like the LGBTQ community. Their argument about this alleged hostility was strengthened in the aftermath of *Obergefell v. Hodges* (2015) because this case was seen as not being just about marriage equality but about the "furtherance of 'a tolerant citizenry'" (Brief of Amici Curiae Texas et al., 2017, p.2). The *Obergefell* decision held that the Constitution does not allow for the prohibition of same-sex marriage but simultaneously "direct[ed] that the free-expression and free-exercise rights of private individuals who disagree with same-sex marriage should be 'given proper protection'" (Brief of Amici Curiae Texas et al., 2017, p.2).

Because the *Obergefell* case had emphasized the need to recognize the right of religious groups and individuals to advocate that same-sex marriage is wrong, the application of Colorado's Anti-Discrimination Act (CADA) as it stood would violate the Constitution by "forc[ing] Mr. Phillips to 'condone' same-sex marriage by both his active assistance and his symbolic expression, seriously compromising his ability to 'advocate with the utmost, sincere conviction' against such marriages" (Brief of Amici Curiae American College of Pediatricians et al., 2017, p.4). Specifically, Amici Curiae pointed to the language in *Obergefell* that people's "right to live their lives and conduct their businesses free from government coercion to act contrary to [their] decent and honorable [religious or philosophical] beliefs should be protected" (Brief of Amici Curiae Concerned Women for America, 2017, p.7). By ruling against Jack

Phillips, the lower courts, and by extension the government, were contradicting themselves and unduly discriminating against religious business owners who opposed same-sex marriage.

With regard to their arguments pertaining to the violation of free speech, Jack Phillip's lawyers and advocates were adamant that the First Amendment right to free speech applied not only to the dissemination of speech but also to the creation of expression more broadly. In other words:

> just as the government may not compel the dissemination of expression, it equally may not compel the creation of expression. Compelling a creative process is no less an intrusion—and perhaps a greater one—on the 'individual freedom of mind' that the First Amendment protects. Accordingly, the government may not enact content-based laws commanding a speaker to engage in protected expression: an artist cannot be forced to paint, a musician cannot be forced to play, and a poet cannot be forced to write (Brief of Amici Curiae United States, 2017, p.10).

Petitioners and Amici Curiae argued that Phillips' cake design business constituted a form of speech and expression "whose liberty is safeguarded by the first amendment" (Brief of Amici Curiae International Christian Photographers, 2017, p.20). The Cato Institute, Reason Foundation, and Individual Rights Foundation (2017) argued in an amicus brief that "the art of baking and decorating cakes, particularly wedding cakes, exhibits all the characteristics of other expressive formats that this court has recognized as constitutionally protected," (p.7) particularly given that producing a wedding cake would be perceived to imply 'condoning' the ceremony.

Petitioners sought to expand the implications of the case to apply not only to the protection of religious freedom and expression, but to the rights of all people who wish to protect

their right to *not* speak or express themselves when the message is offensive to them. Specifically, petitioners argued to the Colorado Supreme Court:

> the legal principle Phillips seeks to vindicate would not only protect him, but also ensure that a gay tailor could decline to create a jacket embossed with messages favoring marriage between one man and one woman, or that a black tailor could decline to make shirts displaying the confederate flag. Freedom from compelled speech is a fundamental right all citizens enjoy, not just those with 'acceptable' beliefs (*Masterpiece Cakeshop v. Charlie Craig and David Mullins,* 2015, p.12).

Not only would ruling against Phillips stifle the rights of religious objectors to, for example, same-sex marriage, petitioners argued it would effectively force all creatives to produce morally or politically objectionable messaging. This strategy effectively grouped Phillips and religious Americans' plight of compelled speech under public accommodation and anti-discrimination laws together with the experience of racialized people who might object to producing an overtly racist message.

As a result, it was argued that Phillips could not, in any way, be coerced by the government to produce a cake for Craig and Mullins' wedding—a ceremony he objected to on religious grounds. Creative professionals "ought not to face punishment just because [they] want to promote ideas and events consistent with [their] own views," in the same way as authors, writers, and artists (Brief of Amici Curiae 479 Creative Professionals, 2017, p.23). Though lower courts had ruled in favor of Craig and Mullins, in part by arguing that Phillips' expression was not protected by the First Amendment given its production as part of a large-scale business, supporters of Phillips argued that "the Constitution broadly guarantees liberty of religion and conscience to citizens who participate in public life according to their moral, ethical, and

religious convictions" (Brief of Amici Curiae Family Research Council, 2017, p.1). Religious Americans should thereby be permitted to express themselves, whether for profit or not, in ways that align with their religious beliefs as protected by the First Amendment.

The emphasis on one particular group as the wronged party in a case is a common court room tactic designed to connect the suffering of an individual to that of a broader social group. As a result, though religious Americans and Christian business owners could be seen as a manifestation of the populist construct of 'the people,' it is also possible that this framing would still occur in the absence of a right-wing populist political context. Some of the rhetoric surrounding the case, however, more clearly aligned with populist style framing. For example, the Supreme Court decision in favor of Jack Phillips in 2018 allowed key supporters of the baker to express the sentiment that "this is a victory for the Constitution" (@theFAMiLYLEADER, 2018) which had finally been *properly* upheld, and that "Jack Phillips' win at #SCOTUS was a win for *all Americans*" (@ADFLegal, 2018, emphasis added). Though the Heritage Foundation argued, "everyone ultimately benefits from robust freedom of speech and religious liberty" (@Heritage, 2017), it is clear that *everyone* and *all Americans* does not include LGBTQ Americans whose right to live free from discrimination may be infringed upon when freedom of religion and freedom of speech negate the protections of public accommodations laws.

Additionally, populism centers around a moralistic antagonism between 'the people' and 'the elite,' wherein "'the people' is discursively constructed as a large powerless group" (De Cleen and Stavrakakis, 2017, p. 310) who feel as though they have been 'forgotten' or 'left behind' and that their demands have not been heard or acknowledged by way of normal liberal democratic processes for long periods of time (Laclau 2005; Ostiguy & Moffitt, 2021; Zembylas, 2020; Zembylas, 2021). Though the focus on religious Americans could very well have been a

normal emphasis in legal terms, it also evokes some of these populist sentiments of a particular group comprising the 'true people' who have been wronged by an 'other' that is supported by an 'elite.' In fact, the Minnesota Family Council argues, "the Supreme Court's decision will profoundly affect *real people*. Their stories matter. Their freedom matters, too. #ReligiousFreedom #JusticeForJack" (@MNFamilyCouncil, 2017, emphasis added). By referring not only to 'the people' but specifically to the '*real* people,' the Minnesota Family Council is alluding to the perception that the advancement of LGBTQ rights is progress for an abstract or unworthy 'other,' to the detriment of the deserving 'people.'

Similarly, according to the Phillips' lawyers, the Alliance Defending Freedom (@ADFLegal, 2018), "there's a real cost for following conscience. Credible death threats, harassment, and financial loss can be an everyday reality for someone peacefully living out their biblically formed views on important realities like marriage and life." This claim effectively argues that the baker and other religious creatives are being 'othered' themselves by "radical LGBT activists attacking [their] First Amendment rights [who] do not consider cake designs to be free speech at all" (@txvalues, 2017). Many of Jack's advocates argued that "in its refusal to protect Jack from discrimination, the Commission demeaned Jack's religious beliefs as being discriminatory and not worthy of government protection" (Brief of Amici Curiae National Center for Law and Policy, 2017, p.1). This statement implies that religious Americans, like Jack, are being 'othered' by a government more interested in pandering to minorities than in protecting constitutional rights to free speech and free exercise of religion.

In particular, "if the government rules against religious freedom in Masterpiece Cakeshop v. Colorado Civil Rights Commission, it will serve to marginalize those who hold beliefs outside of the favored viewpoint" (@FaithWorkEcon, 2017). Any ruling against Jack Phillips is

perceived as reinforcing a system in which 'unpopular' or 'non-mainstream' viewpoints, in this case religious opposition to same-sex marriage, are punished for not confirming to the expectations of the government and society writ large. The Family Research Council argued in their amicus brief:

> this case is not really about LGBT rights or discrimination. That smokescreen obscures the invidious inequality Colorado has created. Citizens who graciously serve, interact with, and employ LGBT persons, but oppose redefining the institution of marriage, are now treated as unequal. Colorado imposes crippling penalties to punish a dissenting view of marriage. This blatant viewpoint discrimination is anathema to the first amendment. (2017, p.24).

This quote exemplifies how, again, Phillips is constructed as a victim in a system that is perceived as wanting to undermine constitutional protections in favor of civil rights. As such, the Supreme Court decision was seen as a direct challenge to "government hostility towards people of faith which has no place in our society!" (@azpolicy, 2018), and as "the U.S. Supreme Court's affirmation of the First Amendment rights of religious individuals" (@CLS_HQ, 2018). This claim to victimhood and othering by the group claiming to be the 'true majority' mirrors "a broader trend of right-wing populists presenting themselves as victims of the liberal establishment and defenders of free speech stifled by political correctness" (Graff & Korolczuk, 2022, p.29).

Specifically, this exemplifies the right-wing populist tendency to couple "the self-flattering sentiments of national pride in the distant past" with "the self-pitying discourse of collective victimhood in the recent past" (Taş, 2020, p.133). In the United States, "populism headed by Donald Trump successfully mobilized a politics of white victimhood" wherein he

"explicitly catered to a moral panic around the construction of whiteness as victimhood" (Taş, 2020, p.133). Whether or not the group claiming victimhood is a minority is not what makes this strategy populist. Rather, it is the "appropriation of such victimhood" as being a reflection of the binary between "the oppressing elite and the oppressed people" (Taş, 2020, p.133-134). In this context those constructed as 'the elite' perpetuate unjust harm, "justify[ing] [the people's] moral superiority and the [elite's] wickedness simultaneously" while also portraying the 'victim' as "a passive recipient of the injustices" that "cannot be held responsible for his own behavior or actions" (Taş, 2020, p.134). As a result, in the *Masterpiece Cakeshop* case, Jack Phillips' victimhood stems not only from his Christianity but—in the context of the United States—from his *white* Christianity.

Finally, though right-wing populist framing is often seen as antithetical to pluralism in its exclusionary, homogenous definitions of 'the people' and its vilification of multiculturalism and diversity (Galston, 2018; Ron & Nadesan, 2020), Jack Phillips' supporters somewhat ironically argue, "religious hostility by the government has no place in a pluralistic society […] Mutual tolerance is critical to a free society" (@KWaggonerADF, 2018). This emphasis on pluralism is interesting as it calls for tolerance of religion while ignoring the implications of broad-sweeping religious exemptions to public accommodation laws for LGBTQ Americans. In other words, "mutual tolerance" (@KWaggonerADF, 2018) is more about tolerance for and protection of the rights of 'the people' not of every American (or person living in the United States).

This demonstrates a misrepresentation of pluralism—wherein 'mutual tolerance' is important only insofar is 'the people's' rights are respected—that actually does still align with populist thinking. This misrepresentation of pluralism continues the right-wing populist anti-pluralist tendency for there to be "less spaces left for minorities" who "are often presented as

traitors to the real will of the nation" (Riedel, 2017, p.291) as Jack Phillips' supporters continue to ignore the discriminatory nature of religious exemptions to serving LGBTQ people. In other words, it is only "when minority rights are in conflict with majority rights" that "populism leads to coercion aimed at oppressing the values and interests of the minority" (Riedel, 2017, p. 293). By ignoring the implications of religious exemptions to public accommodation laws on minorities, Jack Phillips' supporters are effectively excluding minorities from any understanding of pluralism in favor of constructing a homogenous 'majority' whose rights take precedence above all else. This exemplifies the populist majoritarian tendency to construct 'the people' as an "uncompromised majority" that "leaves no room for minorities who are considered as the 'non-people'" (Fournier, 2019, p.365). Furthermore, this particular misrepresentation of pluralism by Jack Phillips' supporters also echos the right-wing populist tendency to "defend an extreme form of majoritarian democracy, in which minority rights can exist only as long as the majority supports them" (Mudde, 2007, p. 156).

It is possible that the focus on religious Americans and Christian business owners, and the delineation of the boundaries around who belongs to these groups may have been a result of lawyers underscoring these groups as the wronged parties in the case. However, given the alignment of many key actors with Donald Trump's political opinions and policies, it is likely that Trump's right-wing populist framings of 'the people' as an exclusionary group of hardworking, white American citizens who are victims to the elite's expansion of rights for minority groups, are reflected in the ADF's strategic legal arguments, as well as other key actors' public statements.

Where the framing of the wronged parties in the *Masterpiece Cakeshop* case more clearly emulates right-wing populist framing strategies is in the use of sweeping generalizations about

'all Americans,' defined in narrow, exclusionary terms, benefiting from the Supreme Court decision. Though generalizations about 'all Americans' very clearly exclude many from that construction, this aligns with right-wing populist constructions of 'the people.' As Moffitt (2020) points out, "the populist construction of 'the people' is often purposefully vague and works to strengthen populist movements because the flexibility, openness, and indeterminacy of the concept means that "any number of political demands, struggles, identities, and appeals can be inscribed or read into it: basically, 'the people' can mean whatever you want it to mean" (p.101). We see that Phillips' supporters and lawyers want people to resonate with claims about 'all Americans,' they are just particular about who is *actually* included in that categorization. Additionally, the way in which religious Americans and Christian business owners are portrayed as victims despite representing the interests of 'all Americans' follows the right-wing populist strategy of constructing 'the people' as victims of a corrupt 'elitist' system that seeks to prioritize the rights of minorities of the those of the 'true' majority.

The LGBTQ community

The emphasis on the right to practice religion free from government or judicial intervention or coercion also led to claims that Phillips' denial of service to Craig and Mullins did not amount to discrimination against them because of their homosexuality. Instead, Phillips had simply "declined to participate (directly or in-directly) in their same-sex wedding because, whether one agrees with him or not, for religious reasons he viewed that ceremony as reflecting a moral choice—a choice that, also for religious reasons, he could not support" (Brief of Amici Curiae Council for Christian Colleges and Universities (CCCU), 2017, p.34). This implies that for religious individuals, there is a distinction between such an objection and outright discrimination. Jack Phillips and his supporters construct this argument by differentiating

between one's *identity* and one's *actions* or *behaviors*. This distinction allows religious Americans to argue that they can legally object to 'condoning' a same-sex couple's actions (getting married) by refusing to, for example, bake a wedding cake, while still being accepting and tolerant of one's identity (being gay). The distinction between an objection to actions and discrimination allows Jack Phillips and his supporters to continue to portray the baker (and other Christian business owners) as a benevolent businessman seeking only to live out his sincerely held religious beliefs.

While Christian business owners might believe that "all men are created equal […] they reserve the liberty to abstain from affirming that all *conduct* of men is equal" when such conduct "violates the religious faith central to their identity" (Brief of Amici Curiae Christian Business Owners, 2017, p.22, emphasis added). The Colorado Court of Appeals "held that [the Colorado Anti-Discrimination Act] forbids cake artists from declining requests for reasons 'closely correlated' to a protected characteristic" (Writ of Certiorari Reply Brief for Petitioners, 2017, p.24). By arguing that Phillips would have been willing to sell Craig and Mullins a cake for any other purpose than a wedding, the petitioners sought to separate LGBTQ identity from LGBTQ conduct. In so doing, the petitioners were able to defend Phillips' denial of service as unrelated to Craig and Mullins' LGBTQ identity. The rights of individual Americans to choose if and how to condone *actions* and *behaviors* is the crux of Phillips' defense. In fact, Jack Phillips supporters adamantly claimed that "Jack's disagreement is not to the person, it's to the event he is requested to create for. There is a clear distinction" (@ADFLegal, 2017). They claimed that "Jack Phillips isn't discriminating against a protected class. He serves gay customers. He's refusing to advance a message" (@FRCdc, 2017)—one that condones same-sex marriage—by creating a wedding

cake for a gay couple, and that "support for marriage as the union of husband and wife isn't anti-gay" (@RyanTAnd, 2017).

Similarly, petitioners and Amici Curiae also argued that public accommodation laws—designed to protect minority groups from discrimination and ensure their access to services—could not be extended to a bakery like Phillips'. This is because, "these businesses are not monopolies providing essential services for life. They operate in an economy of thriving competition, where consumers can find another provider with little to no trouble at all" (Brief of Amici Curiae Thomas More Society, 2017, p.22). In fact, from this perspective, Craig and Mullins could not claim to be discriminated against under this premise because they could have sought business elsewhere in a competitive market (which they ultimately did, successfully). Jack Phillips' supporters aimed to convince the court that in cases where there is a competitive market in which services can readily be sought elsewhere, exceptions to state anti-discrimination laws can and should be granted because they do not constitute "a threat to meaningful participation in commercial life" (Brief of Amici Curiae Law and Economics Scholars, 2017, p.14).

At the same time that Jack Phillips' supporters claimed they were discriminated against on the basis of their religious convictions and negated the claims that they were anti-gay or discriminating against the LGBTQ community, they simultaneously argued that "disagreements are not necessarily discrimination" (@ADFLegal, 2017). In other words, the LGBTQ community was falsely claiming that "religious beliefs [are] merely a cover for discrimination" (@CWforA, 2018) in order to advance their perceived agenda of forcing everyone to accept their sexual orientation. They claimed to not "question same-sex couples' right to live out their beliefs. All [they] ask is the same freedom to live out [their] own" (@FRCdc, 2018), alluding once again to

the perceived double standard imposed by the government to protect the interests of a minority 'other' in direct opposition to the rights of 'the people.'

In discussion about the *Masterpiece Cakeshop* case, 'the other,' though explicitly alluding the LGBTQ community itself, also included any American who supported the LGBTQ community. This more expansive 'othering' stemmed from the perspective that all Americans "want a society that is tolerant of different viewpoints" (@emilieADF, 2018), while the LGBTQ community and their supporters are only interested in advancing their own interests at the expense of the rights of 'the people.' The Heritage Foundation vilified activists for allegedly extending the rights afforded in the 2015 *Obergefell* decision beyond its scope of recognizing same-sex marriage federally, going so far as to argue "it's no longer about a government affirming a right and a recognition of same-sex marriage. It's now about requiring private citizens to affirm that as well" (@Heritage, 2017).

As Biblical Signs (@BiblicalSigns, 2017) argues, "#LGBT and #GayMarriage advocates are always shouting about #Freedom and complaining about discrimination, yet they don't believe in freedom for #HolyBible believers and they discriminate against Christians like #JackPhillips of #MasterpieceCakeshop on a daily basis. #Hypocrites." Phillips' supporters state that LGBTQ activists "have argued same-sex marriage doesn't affect anyone but those getting married" (@ADFLegal, 2015). By allegedly forcing their values on religious Americans, LGBTQ rights supporters are accused of applying "a double-standard in the application of anti-discrimination laws […] with hostility to religion" (@RyanTAnd, 2017), by failing to protect the rights of religious Americans to act in accordance with their faith.

Ryan Anderson of the Heritage Foundation (@RyanTAnd, 2017) claimed that LGBTQ activists and supporters knew they were being hostile to religion by opposing Jack Phillips, and

their continued emphasis on the narrow nature of the Supreme Court decision "suggests that deep down they know they're wrong, and so they have to change the facts to make the case better for them."[44] Religious Americans and anyone concerned with upholding constitutional rights and freedoms are thereby portrayed as "the common people [who] are neglected […] ignored or, even, discriminated against" in the face of minority groups "clamouring for more and more rights" (Bílková, 2018, p.161).

Insofar as the LGBTQ community is construed as the clear minority 'other' whose rights are infringing on those of 'real people' and 'all Americans,' they are also portrayed as an illegitimate victim. In this case specifically, Craig and Mullins (and by extension the whole LGBTQ community) are seen as wrongfully claiming they were discriminated against given that they could have sought the same services elsewhere. This serves to reinforce the narrative that religious Americans and Christian business owners are the true victims, wronged by expanding minority rights. Additionally, Craig and Mullins, as well as all LGBTQ rights supporters are portrayed as perpetrators who have weaponized a Supreme Court decision that only legalized same-sex marriage to serve the purpose of forcing 'all Americans' to agree and comply with LGBTQ rights writ large.

Conclusion

This chapter has considered how the key elements in the *Masterpiece Cakeshop* case were framed by the key individuals and actors shaping the conversation. Through a review of court documents and X (Twitter) data, I demonstrate that although some of the framing strategies

[44] The decision in the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case was considered narrow not because of the number of justices that decided in favor of or against Phillips, as many assumed. The decision is considered narrow because of the scope of the decision. Specifically, the justices decided *not* to make a determination about the scope of anti-discrimination laws, but rather ruled in favor of Phillips only on the grounds that the Colorado Civil Rights Commission had not argued their case with religious neutrality.

used were typical of legal arguments in religious accommodations cases (such as the emphasis on the universal victimization of religious Americans), some were more clearly aligned with right-wing populist framing strategies. Additionally, statements made about 'religious Americans' and the implications of religious freedom for 'all Americans' must be examined while acknowledging the reality of the right-wing populist political context in which this case made it to the Supreme Court. Allusions to 'the people,' 'the elite', and 'the other,' however typical in the context of legal discourse, take on new meaning when articulated by groups like the Alliance Defending Freedom who have vocally supported Donald Trump's right-wing populist rhetoric and policies.

For example, though the portrayal of and emphasis on religious Americans as the wronged party likely would have remained similar in the absence of a right-wing populist political context, the construction of this group as a victim in the context of the case but also as a result of a government and society seen as determined to force a 'politically correct,' progressive agenda upon them is distinctly right-wing populist in nature. This is because highlighting the role of a government that is 'disconnected' from the lived experience of the 'majority' of Americans in favor of the LGBTQ community reflects the right-wing populist strategy of pitting a government 'elite' against the 'true people' by catering to the rights and needs of an 'other.' This emphasis on portraying the desire to reinforce religious freedom as representing the desires of 'all' Americans or a 'majority' of Americans is also a right-wing populist strategy insofar as it represents the effort to project the needs of 'the people' as the needs of a "(silent) majority" (De Cleen, 2017, p.350). Right-wing populist leaders make a concerted effort to homogenize a moral, unified citizenry as the 'majority' whose 'generally will' is not being represented because of

"*outside actors"* like 'the elite' and 'the other' "who seek to frustrate, derail, paralyze, or corrupt" it (Müller, 2017, Oklopcic, 2019, p.209).

Similarly, the delegitimation of Craig and Mullins'—and by extension the LGBTQ community's—claims to victimhood on the basis of there being a competitive market with easily accessible alternatives to fulfill the cake request likely would have remained the same in a different political context. However, the narrative that LGBTQ rights are being unduly and unfairly expanded at the expense of constitutionally enshrined rights and freedoms, again, mirrors right-wing populist framing strategies in which 'the people' claim that a minority 'other' and their rights are being favored by the government 'elites.' Finally, while the government is vilified for choosing to expand minority rights rather than protect constitutional rights, the case was seen as an opportunity for the courts to fulfill their true purpose and protect the rights enshrined in the United States' founding document.

Interestingly, the way in which Jack Phillips' lawyers and other key actors frame this opportunity for constitutional protection and the redemption of the Supreme Court also emulates certain elements of populism. The United States Constitution was established in 1787 by a group of cisgender, heterosexual white men for the benefit of 'the people.' As history has long demonstrated, 'the people' who were to be represented by this founding document did not include people of color, LGBTQ Americans, or women. By unilaterally underscoring the primacy of constitutionally afforded rights like freedom of speech and religion, these key actors are reinforcing the notion that some Americans make up 'the people' who are worthy of having their rights and freedoms protected above all else, while certain minority 'others'—those who have historically and presently been excluded—must accept that 'the people' for whom the country's systems and institutions have been developed do not represent all Americans.

As previously discussed, when the state (and its institutions) becomes the ultimate arbiter of rights, the most vulnerable continue to be exploited and marginalized by the most privileged who seek the freedom to live as they please without government interference (Brown, 1995; Pettit, 2000). Just as Phillips' advocates condemn attempts by the LGBTQ community and perceived 'elites' to force conformity with a socially progressive agenda, they demand conformity with the neoliberal, exclusionary status quo. Here, right-wing populism manifests in key actors' use of liberal exclusions and the erasure of 'otherness' to their advantage. The *Masterpiece Cakeshop* case is an example of the need to recognize the exclusionary nature of liberal systems as those already privileged within them demand these systems work exactly as intended to protect the rights of some over others.

Chapter 5 - The Public

This chapter shifts from a focus on key actors to an analysis of the discourse surrounding the *Masterpiece Cakeshop* case from the perspective of the 'general public' as represented by general users on X (Twitter). In a 'relational' approach to populism, the role of the general public in constructing meaning and shaping a populist movement is considered to be equally important as the rhetoric emerging directly from a populist leader (Maly, 2018; Ostiguy & Moffitt 2021). This is because, while a populist leader is responsible for crafting their claims in particular ways, 'the people' "are not voiceless masses […] but practice agency in regards to choosing to accept, reject or modify claims made to them" (Moffit, 2016 as cited in Ostiguy & Moffitt, 2021, p.52). As such, the success of a populist leader depends on the interplay between populist leaders and 'the people' they claim to represent (Ostiguy & Moffitt, 2021). I am interested in understanding the extent to which the populist political context and rhetoric emerging from populist leaders like Donald Trump during the Supreme Court case might affect the ways in which people interacting informally and publicly—represented here through tweets—might adopt populist framing strategies in their rhetoric. Numerous studies have characterized communication via social media as a newer form of interpersonal interaction in the digital age (see Candrasari, 2019; Datu et al., 2025; Gil de Zuñiga et al., 2020; Papathanassopoulos & Negrine, 2019; Sevingnani, 2022), thus X (Twitter) is a useful platform to capture the ways in which people communicate and interact with one another about the *Masterpiece Cakeshop* case.

This chapter begins with an analysis of how the 'public sphere' has been reimagined and transformed by the rise in popularity of digital and social media. The rules for engagement, particularly around political content, have fundamentally and dramatically changed as debate and deliberation increasingly circumvents 'traditional' news media sources, instead occurring on

social media sites like X (Twitter). I then explore the unique relationship between populist actors and social media. Understanding the changes brought about by social media engagement and its effects on political movements and events, particularly as articulated by populist actors, lay the foundation for why X (Twitter) is chosen as a representation of the 'general public's' discourse on the *Masterpiece Cakeshop* case in this project. I then articulate the limitations of considering X (Twitter) to be a representation of the 'general public' as a result of the typical user demographic, overall limitations to access, and the implications of the shift from Twitter to X for conducting similar analyses in the future. I then conduct a text analysis of tweets by the general public in support of Jack Phillips. The full distillation of the methodological approach used in this chapter is contained in Chapter 3.

I found that the baker's supporters' arguments and comments largely mirrored those of the key actors in the case. For example, the need to protect the First Amendment, the portrayal of religious Americans and Christian business owners as the true victims of the case, and the argument that the Craig and Mullins had no case because they could have sought service elsewhere appeared prominently throughout the data. Similarly, the left-leaning state government is portrayed as unduly overextending its power in the interest of 'minority' rights, at the expense of 'real' American interests. Finally, the court is portrayed as having fulfilled its duty and obligations to protect constitutional rights above all else, despite the shortcomings of the narrow ruling. Before beginning the analysis, I explore the ways in which social media and the internet more generally have contributed to the development of a 'digital public sphere' and the impacts of this transformation of modes of communication on how we understand political engagement. I then provide an overview of how populism manifests on and is shaped through social media interactions.

A digital public sphere

Though there are myriad theories of the public sphere that can differ dramatically with regards to the types of communication that are seen as desirable components, it is, generally, thought of as:

> a communicative space in which matters of common relevance are discussed by those affected and interested in a way that fulfills a number of […] normative criteria: Statements should consist of arguments, supported by an appropriate reasoning whose validity can then be checked by others. The best arguments should prevail. Participants should try to understand the other's arguments and aim to see the situation from their point of view. Everybody should be honest and open, making a sincere effort to come to a joint conclusion. All interested parties should be allowed to participate, and it should be possible to discuss all kinds of issues. (Schafer, 2015, p. 323).

The public sphere provides "a network for communicating information and points of view" that "coalesce into bundles of topically specific public opinions" (Habermas, 1996, p.360). Ultimately, this is how social interaction is organized through communication (Sevignani, 2022).

The first major structural transformation of the public sphere occurred with the emergence of commercial mass media which, as a result of the over-simplification of coverage and the publication of only a small selection of issues and arguments biased by economic and political pressures, reduced deliberation and violated many of the norms of the public sphere. During elections, for example, there were strict regulations for news media when it came to ensuring equal coverage of all parties and political points of view (Papathanassopoulos & Negrine, 2019). As Jürgen Habermas (1989) pointed out, mass media were strongly influenced by power dynamics, privileging "powerful and institutionalized actors while excluding smaller

institutions and civil society" (Schafer, 2015, p. 323). Additionally, these sources of media were "one-way, linear, centralized, and non-transparent" where gatekeepers in the form of professional journalists "possessed non-public access to their sources and disseminated news" to an audience that lacked avenues for providing feedback on or interacting with these sources (Sevignani, 2022, p. 91-92).

More recently, with the massive growth in popularity of online or social media, ranging from websites and blogs to social networking sites, the digital public sphere has begun to take shape and in ways that have profoundly altered the way people, society, and media act and interact (Papathanassopoulos & Negrine, 2019). Digital media has had a profound effect on the public sphere by diversifying mass media "into participatory, interactive, net-like, decentralized and transparent communication processes" (Sevignani, 2022, p.91). Perhaps even more so than with the transformation of the public sphere prompted by the advent of commercial mass media, interaction in the digital public sphere has moved even further away from the democratic characteristics of civil communication seen by many researchers as central to a functioning public sphere.

For example, not everyone is granted equal participation in online communication; there is a tendency toward emotional, confrontational, and antagonistic communication, and there is questionable authenticity in online debate as a result of search algorithms and filters (Schafer, 2015). In online interaction, "participants often meander off topic, use unpleasant or abusive wording and ad hominem attacks, make claims not backed up by arguments or abstain from rational argumentation altogether, and use their social position in the given platform to delegitimize opposing views, or drive away opponents" (Schafer, 2015, p.327). However, scholars are also optimistic about how online media and communication afford greater

accessibility of information and empowerment of individuals to voice their opinions (Schafer, 2015; Sevignani, 2022).

As sites like X (Twitter) have transformed from "channels of communication between interested parties into arenas of political engagement," there is a need to reimagine how we study political processes and the 'audiences' of political communications (Kreiss, 2015; Papathanassopoulos & Negrine, 2019, p.79). Political discourse has long relied on professional journalism to craft the contours of political debate and disseminate candidates' messaging to the electorate through newspapers and television (Chadwick, 2013). In the last decade, however, political communication has shifted into a "hybrid media system" wherein traditional journalism—which has had to adapt to new media consumption patterns—is inevitably intertwined with social media interactions (Chadwick, 2013; Zuñiga et al. 2020, p.587). Within this hybrid system, people are often consuming content from a source like television while simultaneously providing their own commentary via platforms like X (Twitter). Though news media historically monopolized coverage of political processes like elections with strict rules of engagement and coverage, "communication in the contemporary age takes place across many platforms, albeit some more public than others, and is produced by a number of diverse actors, some institutional but many not" (Papathanassopoulos & Negrine, 2019, p.80).

While voters in the past were typically passive consumers of news, the hybridity of the new media system has transformed them into a combination of consumer and producer (Chadwick, 2013). X (Twitter) is particularly salient in this shift as this type of communication engages everyone from political actors to journalists, to the public in a seemingly more direct form of communication (Papathanassopoulos & Negrine 2019, p.79). Though retweets or sharing of political content is sometimes "not even done with much forethought," it can be meaningful

for campaigns in terms of exposure and the development and expression of public opinion "away from institutional political settings" (Kreiss, 2015, p.132). Those who succeed and gain power in this hybrid system are those who are able to blend together 'old' and 'new' media in ways that shift and shape the flow of information to suit their own objectives (Chadwick, 2013; Moffitt, 2018).

Social media and populism

Social media is a particularly useful communication tool for populist political actors,[45] given the opportunities it provides for communicating in an unmediated way, interacting and engaging more directly with 'the people' than 'mainstream' competitors who rely on traditional media, and mobilizing messages quickly and to a broad audience, all at a low cost (Jacobs et al., 2020; Moffitt, 2018; Zuñiga et al., 2020). In fact, social media is sometimes seen as favoring populist over establishment movements and leaders by offering "a channel for the populist yearning to 'represent the unrepresented', providing a voice to a voiceless and unifying a divided people," particularly in contrast to allegedly biased, 'pro-establishment' mainstream news media outlets (Gerbaudo, 2018, p.746). In other words, social media sites allow leaders to circumvent traditional media to deliver their political messaging to the public (Perez-Curiel, 2020). Because populism is a resource for articulating antagonism between 'the people,' 'the elite,' and 'the other,' it is most often identified by examining oral, written, and visual communications of "individual politicians, parties, social movements, or any other actor that steps into the public sphere (including the media and citizens)" (Reinemann et al., 2017a, p.13). Rhetoric is used to appeal to and identify with specific groups defined as 'the people,' as well as to construct a

[45] As Moffitt (2018) notes, however, non-populist actors like Barack Obama and Justin Trudeau have also made use of and benefited from social media as a communications tool.

leader as the only person able to represent the unified, common will of 'the people' (Jagers & Walgrave, 2007).

Populist actors are particularly adept at mobilizing social media to *appear* directly connected to 'the people' by communicating in ways that appear more 'genuine' than mainstream political figures (Moffitt, 2018). For example, in 2016, Donald Trump used a provocative style of communication, relying on "impoliteness, political correctness […] over-the-top capitalisation and exclamation marks" to indicate that his tweets were 'real' and more truthful and courageous than Hillary Clinton's more curated and 'artificial'-seeming posts (Krämer, 2017; Moffitt, 2018, p.35). However, it is important to be cautious about overemphasizing the 'direct' nature of social media communications (Moffitt, 2018). Because populist political actors rely on a "deep revulsion against institutions that come between the people and their actions, and a craving for direct unmediated expression of the people's will," arguments that social media is a form of 'direct' communication with 'the people' risks invigorating the populist conflation of social media communication with direct democracy and representation (Canovan, 1999, p.13; Moffitt, 2018).

Ultimately, social media is a *platform for communication* rather than "a political relationship between a political representative and their alleged 'people'" (Moffit, 2018, p.35). Similarly, populist social media communication as with any form of political representation, is never fully 'unmediated,' but rather a "complex process of mediated claim-making between populist leaders, audiences, constituencies, and media" (Moffitt, 2016, p.96). The populist leader who communicates through social media is, therefore, only one aspect of the process of defining and unifying 'the people' (Moffitt, 2018).

Right-wing populist political actors and their supporters alike use online platforms as a means for "recruiting disaffected citizens" by advocating for the people against allegedly corrupt establishment elites and ostracizing 'others' who do not fit into definitions of 'the people' (Engesser et al., 2017a, Gerbaudo, 2018, p.747). On these platforms, the predominant strategies "draw attention to the claims, behavior, and the alleged character of the outgroups and their members" and deny outgroups' right "to make political claims - often just by pointing to the outgroup's allegedly unjustified sense of entitlement" (Krämer, 2017, p.1299).

Research on the populist uses of social media have typically centered X (Twitter) and Facebook (Jacobs et al., 2020). It is important to differentiate between these two platforms because each one represents a different facet of the population and is therefore mobilized in a unique way to best target that particular audience (Jacobs et al., 2020). X (Twitter) is often considered a more "'elite' medium" insofar as its users are typically "opinion leaders" like journalists (Jacobs et al. 2020, p.614; Jacobs & Spierings, 2016). Additionally, a 2015 study by Duggan, et al. found that "the average Twitter user is younger, better educated, more urban and higher in socio-economic status than the average population" (Ernst et al., 2017, p.1352). Facebook, on the other hand, has a much broader user base and is more socially mixed (Bossetta, 2018; Ernst et al. 2017). This project focuses on X (Twitter) because of the accessibility of data and the ability to more effectively filter content to gather only relevant posts. X (Twitter) is also an appropriate data source because of the ways in which both institutional and non-institutional actors engage with political information and news in this informal, public forum (Papathanassopoulos & Negrine, 2019).

Limitations of X (Twitter) as 'the public'

As mentioned above, not everyone has equal access to social media or even the internet, meaning participation in the digital public sphere is fundamentally unequal as some groups are excluded (Papacharissi, 2002; Schafer, 2015). As Fuchs (2014) points out,

> stratification patterns created by age, ethnicity and class shape the use of digital media and cause information gaps to widen rather than narrow...stratification no longer so much concerns physical access to the internet, but rather the use of this technology and the skills required for this use. As long as there is a stratified society, information inequality will exist" (Fuchs 2014, p.190 in Papathanassopoulos & Negrine, 2019, p.86-87).

Specifically, X (Twitter) users tend to fall into higher income brackets than users of other social media sites and are more likely to be between the ages of 18 and 29 and have at least a university education (Gottfried, 2024; Pew Research Center, 2021). Additionally, X (Twitter) users tend to be more liberal and pay more attention in general to politics than non-users (Mellon & Prosser, 2017).[46] However, research has also shown that, though men typically use X (Twitter) in political discussion at higher rates than women, during periods when gender is salient politically women of all races close this gender usage gap (Oden et al., 2024).

Though X (Twitter) may not always be representative of the *entire* public sphere, its influence on communication, and politically oriented communication in particular, is undeniable. It is a crucial space to analyze political formation and discourse. This is particularly true for populist political discourse, given the engagement of populist leaders on the platform. Additionally, studying the communication of general X (Twitter) users in the context of right-wing populism is relevant, given the capacity of populist movement to "focus the attention of an otherwise dispersed people" (Garbaudo, 2018, p.5).

[46] The extent to which this is still true for Elon Musk's X (Twitter) is explored further below.

The importance of X (Twitter) as a microcosm of the 'public sphere' for research might, however, be shifting since Elon Musk took over the site in 2022, renaming it X. First, though Musk's advocacy for "free speech absolutism" gained some support among X (Twitter) users, many users migrated away from the site to emerging, similar platforms (such as Threads, Blue Sky, and even Truth Social) out of concerns for "the potential proliferation of unreliable information" (Radivojevic et al., 2025, p.1). Many users left the site or followed influential public figures, experts, and celebrities who left the site (or were banned for violating community guidelines when Musk took over), choosing digital environments that more closely aligned with their political ideologies (Radivojevic et al., 2025).

Among those who continue to use X (Twitter) there has been an increasingly partisan shift in how the site is perceived, according to Pew Research Center (2025). In a survey conducted in early 2025, Pew Research Center found that fifty-one percent of Republican users describe their time on the site as positive overall and only eleven percent felt their time on the site was negative overall. On the other hand, only twenty percent of Democratic users felt their time on the site was positive, while forty percent felt it was negative overall (Faverio & Anderson, 2025). Additionally, the survey found that overall, thirty-one percent of X (Twitter) users felt the platform favors conservative over liberal views. This was particularly true of Democratic users (55%) compared to Republican users (13%) (Faverio & Anderson, 2025).

A similar study conducted by Pew Research Center in 2023, found that sixty percent of Americans who had used X (Twitter) in the last year had taken a break for several weeks or more during that time (Faverio, 2023). Women were more likely than men to have taken a break in the past year (69% compared to 54%), while Black users were more likely than White or Hispanic users to have taken a break (67%, 60%, and 54%, respectively) (Faverio, 2023). Finally, among

current or recent users, Republican men were the most likely to say they would use the platform in a year (51%) compared to Republican women (35%), Democratic men (42%), and Democratic women (29%) (Faverio, 2023). These surveys demonstrate important partisan and demographic shifts in X (Twitter) users since Elon Musk acquired the site. With Republican men much more likely to continue using the site, along with feelings that the site favors conservative perspectives and the general exodus of users, public figures, experts, and celebrities from the platform, it is possible that X (Twitter) has become even *less* representative of the general population since Elon Musk took over. This has the potential to skew research conducted using recent X (Twitter) data in favor of particular perspectives, particularly as only twenty-two percent of adults say they ever use X (Twitter) (Gottfried, 2024).

Second, X (Twitter) has allowed developers and research free access to its data through an application programming interface (API) since it launched in 2006. In 2020, it sought to facilitate academic research specifically by launching an academic track for its API. In 2023, however, Musk announced that X (Twitter) would be ending free access to its data, effectively disrupting the myriad research studies being conducted on crucial issues such as misinformation and manipulation campaigns, the pandemic, social movements, hate speech, threats, and violence (Blakey, 2024). The lack of public access to X (Twitter) data, coupled with the exodus of users in the wake of the transition to X, might "render Twitter/X data less valuable for research about public opinion and media effects" (Blakey, 2024, p.33). Many of these concerns, however, apply more to future research endeavors. By gathering my data prior to Musk's purchase of Twitter, and by focusing on tweets through 2018, predating the mass exodus from the site, I avoided many of these drawbacks. As a result, despite challenges with the demographic representation of X (Twitter) that have existed since its launch, the data gathered from the site is still an effective

source for studying discourse surrounding the *Masterpiece Cakeshop* case insofar as it represents 'the general public.'

The following analysis has been organized around the key elements of the case—religious Americans and Christian business owners, the LGBTQ community, and the perceived role of the courts and the government in the arbitration of rights—as it was in the previous chapter. Within each element, the analysis is presented according to the themes that emerged when looking across the X (Twitter) data.

Religious Americans and Christian business owners

Acting in accordance with one's beliefs

Similar to the discourse from key actors explored in the previous chapter, protecting the rights of religious Americans and Christian business owners emerged as a prominent theme in the discourse on X (Twitter).[47] The first theme that emerged was the notion that people cannot and should not be forced to act against their beliefs in any context. Specifically, that "the State should not compel speech from its citizens - especially when they have religious convictions against the speech" (@Lord_Kappa, 2017). X (Twitter) users were adamant that to force Jack Phillips to bake a cake for a gay wedding was a violation of the First Amendment right to freedom of religion. This was particularly true for religious business owners and creatives because, "the government has no authority to compel you or me to promote messages or use our creative skills and talents to participate in events that violate our sincerely held beliefs. #MasterpieceCakeshop" (@JennaEllisEsq, 2017).

LGBTQ Americans were disparaged in this case because Jack Phillips' supporters argued that "It's not about #JackPhillips doing the #rightthing. It's about him doing what HE feels is

[47] It is important to note that when arguments are made in the name of religious Americans, this category distinctly refers to predominantly White, Christian Americans as the victims in this case.

right. #Gays do what THEY feel is right and BOTH are ok, so why is that any different? He can say no and they can go somewhere else. No one has to be forced to like anyone" (@misslv007, 2017). In other words, because gay Americans are allowed to live freely and openly in the way that suits them, Jack Phillips should be treated in a way that allows him the same freedom. Others voiced similar frustration with what they perceived to be a double standard favoring the rights of LGBTQ Americans over others, arguing, "Should a gay baker be required by law to design a cake with the message, "God hates fags"? Of course not! Why then, should a Christian baker be required by law to bake a cake for a same-sex wedding?" (@FreeSpeechHQ, 2017).

Additionally, the baker's supporters lauded the Supreme Court decision because the "ruling makes clear that state civil rights commissions can no longer force people to violate their #FirstAmendment rights to free exercise of religion, free speech, and free expression" (@TishBowling, 2018). Here, Jack Phillips' supporters are pleased that a perceived wrong—the expansion of state civil rights in violation of constitutional afforded freedoms—has been righted by the *Masterpiece Cakeshop* case decision, which has reinforced the importance of the First Amendment. The difference between state civil rights and constitutional rights is reinforced by an understanding that "our religious freedom doesn't come from the @USSupremeCourt It comes from my God given rights!" (@loladeantonia26, 2018). This discourse relies on right-wing populist framing strategies that construct certain rights—those granted by the constitution—as indispensable to national identity, and under threat by 'elitist' organizations pandering to 'minority special interests' (Brysk, 2019; Gostin et al., 2020).

These arguments point to the ways in which Jack Phillips' supporters continued to afford primacy to constitutional freedoms over other rights. In a political context wherein right-wing rights claims seek to center the alleged interests of 'the nation,' the white, middle-class,

heterosexual, monogamous nuclear family becomes inextricably linked to maintaining 'the nation's' thriving economy (Berlant, 1997). In the *Masterpiece Cakeshop* case, Jack Phillip's supporters adeptly underscored the link between a religious belief in marriage as "a God-ordained institution" (@MNFamilyCouncil, 2017) between a man and a woman for the purpose of reproduction and the Constitutional right to freedom of religion. This emphasized the need for protection of the white, middle-class, heterosexual, monogamous nuclear family over 'other' (LGBTQ) family formations and reinforced a hierarchy of rights that places Constitutional freedoms above all else (Greene, 2021).

Jack Phillips himself highlighted the connections between religious freedom, the nuclear family, and the economy by claiming, "if the highest court in the land banishes my beliefs from the marketplace, that will embolden others to continue treating me with scorn and contempt" (Jack Phillips as quoted by @FreeSpeechHQ, 2018). Here, Jack Phillips frames the perceived threat to his religious beliefs through what he believes would ultimately be a failure of 'the marketplace.' Supporters argued, "THE BAKERY IS A CHRISTIAN COMMERCIAL BAKERY" (@baltotrade, 2018) and "an individual business… should have the right to refuse to express something he doesnt [sic] believe in..." Brendan O'Neill @spikedonline #AmericasTownHall #MasterpieceCakeshop" (@ConstitutionCtr, 2018) emphasizing the belief that a successful and thriving economy relies on the rights of business owners to "refuse any person service for any reason you wish" (@wife_ofbrian, 2017). Jack Phillips and his supporters effectively link the protection of religious freedom (specifically beliefs surrounding heterosexual marriage) from LGBTQ rights to the success of the economy overall. This aligns with Berlant's (1997) argument that the political right constructs its own rights claims through similar linkages between the interests of 'the nation,' the nuclear family, and the economy.

Additionally, Jack Phillips' supporters publicly reinforced these arguments with calls for recognition of the limitations of the government's power, claiming: "We've never given the government the ability to force artists to create artistic expression that goes against what they believe — @AllianceDefends' @JeremyTedesco #MasterpieceCakeshop #SCOTUS #FreeSpeech" (@Tyler2ONeil, 2017). This portrays the government as exercising undue power to extend the rights of LGBTQ Americans in ways that threaten religious beliefs through these and similar claims that "the @ACLU is hell bent on eliminating Christian religion from the public" (@Warbird_Nut, 2017).

Protecting First Amendment rights

The second theme that emerged in the context of protecting the rights of religious Americans and Christian business owners was the perceived clash between expanding LGBTQ rights and rights enshrined in the Constitution like free speech and freedom of religion. Jack Phillip's supporters claimed after the Supreme Court decision in favor of the baker that while "we now know the Obergefell v. Hodges will grant all couples equal rights, […] now Masterpiece Cakeshop v. Colorado Civil Rights Commission has shown that our religious rights won't be infringed by Obergefell v. Hodges" (@TARsCarlisle, 2018). Of importance here is the notion that people should not be forced to agree with the expansion of LGBTQ rights, nor should they feel as though their rights are compromised as a result. In light of the Obergefell v. Hodges ruling, the baker's supporters were adamant that they "were told the new sexual orthodoxy wouldn't impact anyone who didn't want to endorse it" (@FRCdc, 2017). One user implied that "gay rights activists" had misled the public in their fight for marriage equality because they had "said they just wanted to love each other & marry and did not want to force their views on anyone else. #JusticeForJack" (@JohnStemberger, 2017).

In light of expanding 'minority' rights, Jack Phillip's supporters felt that it was particularly important to reinforce and protect their right to have opposing viewpoints. This was articulated through a quote from Clarence Thomas' concurring opinion arguing, ""[T]he fact that [the social acceptance of homosexuality] may be embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view" (@man4praize, 2018). Ultimately, supporters felt that "however convinced one may be of the goodness of redefining the meaning of marriage, the First Amendment remains a legal shield for those who aren't convinced" (@debbywitt, 2017). Expanding LGBTQ rights, and the legalization of gay marriage in particular, are in and of themself seen as imposing on the rights of those who disagree.

The First Amendment is portrayed as directly conflicting with expanding LGBTQ rights, wherein "people should not have to violate their faith beliefs in order to accommodate someone's sexual orientation […] [because it] violates the 1st Amendment Free exercise of religion clause" (@Lady_Penquin, 2018). One person went so far as to claim, "[the Colorado Civil Rights Commission is] treating the baker as a slave w/o the ability to say, 'No.' #MasterpieceCakeshop" (@Lady_Penquin, 2018), while another argued, "bakers also have free speech rights and compelled labor seems like the definition of slavery to me" (@BurkeLynne, 2017). Racialized and extreme, these users' comparisons to slavery were echoed by many others and reflect the overarching sentiment that many of Jack Phillips' supporters expressed; that to allegedly violate the First Amendment right to freedom of religion by requiring Phillips to bake a cake for a gay couple is tantamount to the most profound injustice imaginable.

This comparison to slavery is meant to evoke the image of forced labor, however; it also reflects a perverse application of Achille Mbembe's (2003) concept of necropolitics.

Necropolitics refers to the ways in which sovereignty (or the legitimacy of the state) is demonstrated through "the power and capacity to dictate who may live and who must die" (Mbembe, 2003, p. 11). In an effort to reinforce sovereign power, today's colonial regimes (like the United States) emphasize and celebrate belonging as strong narcissistic bonds which provoke a fear of anyone deemed 'other.' Rather than an external enemy who threatens borders, 'the other' is a natural, intrinsic enemy who is poised to imperceptibly permeate the boundaries of the nation and contaminate those within (Mbembe, 2016). The only means of protecting the state is to suspend rights for perceived enemies in an effort to protect the rights of those seen as belonging—in populist terms, as being part of 'the people.' As a result, 'the other' is effectively deemed disposable and marked for death. In the case of slavery, one becomes a slave as a result of "a triple loss: loss of a 'home,' loss of rights over his or her body, and loss of political status" (Mbembe, 2003, p.21). This is a "process of depersonalization that relies on the suspension of personhood and belonging," or "social death" (Haritaworn, Kuntsman, & Posocco, 2014, p. 6), wherein an entire population ceases to "register within the realm of legal status" (Puar, 2007, p.113).

In this case, the implication is that the state (the Colorado Civil Rights Commission) stripped predominantly white Christian business owners of rights that are seen as fundamental to maintaining one's humanity—religious freedom and freedom of speech. As such, comparing the Colorado Civil Rights Commission's requirement that Jack Phillips bake a cake for Craig and Mullins to slavery is an attempt to liken the baker's experience to the same 'social death' as experienced by a slave. In other words, without broad-sweeping religious freedom that allows one to refuse service to certain demographics, a person loses all legal standing and experiences "the expulsion from humanity altogether" (Mbembe, 2003, p.21). Though Jack Phillips'

supporters attempt to further the narrative that they are victims of a system steeped in anti-religious bias by invoking parallels to slavery, they actually highlight the extent to which they are part of the state-sanctioned 'people,' advocating that the LGBTQ 'other' loses their right to be served in public accommodations (and thereby treated as humans, and with dignity and respect).

The baker's supporters were thrilled at the SCOTUS decision they believed "was NOT a narrow decision, even if 2 liberals joined" and "the practical effect is PLAIN: valid religious objection (which didnt [sic] exist for desegregation) now curtail gay rights. And that is GOOD! #MasterpieceCakeshop #GayWeddingCake" (@ThumpForTrump, 2018). People who supported Jack Phillips felt that, in ruling in favor of Jack Phillips, the Supreme Court had worked exactly as it was supposed to: protecting Constitutional rights from the expansion of 'special interest' rights. To them, the case was "not an #Equality case, or #gay case. It's certainly not a #cake case or #artist case. It's a #Constitutional case on #ReligiousFreedom. It is time to get back to principle of #liberty" (@CommitConserv, 2017). These views reinforce a hierarchy in which "the right to same sex marriage doesn't trump the First Amendment's Free Exercise Clause" (@buildthewall, 2017) because constitutionally afforded rights should be given primacy over all other rights.

The notion that the expansion of 'minority' rights directly conflicts with the rights of religious Americans to live according to their beliefs and the right to freedom of speech is a reflection of the right-wing populist framing that portrays 'minority' rights as a threat to a country's fundamental rights—the foundational rights that are critical to maintaining a country's national identity, culture, and security (Brysk, 2019; Gostin et al. 2020). Furthermore, these sentiments reinforce the notion that religiosity is somehow representative of a 'true' American

identity that must be preserved and protected from special interests like marriage equality. This aligns with right-wing populist framings of multiculturalism as a threat to such identities that are constitutive of the 'true people' and therefore the integrity of the nation (Pelinka, 2013; Zembylas, 2021). Jack Phillip's supporters' tweets reflect a failure to conceive of a pluralist society in which First Amendment and LGBTQ rights can coexist, in favor of a zero-sum game perspective. Right-wing populist leaders frequently capitalize on this understanding of rights and foster feelings of anger and resentment towards laws that supporters feel are threatening their social, cultural, and economic privilege (Anderson, 2017; Inglehart & Norris, 2017; Zembylas, 2021).

The 'majority' as the victim

A third theme that emerged in public discourse related to religious Americans and Christian business owners was the portrayal of the alleged 'majority'—articulated as religious-identified Americans—as the true victims of the *Masterpiece Cakeshop* case who stood to suffer the most, should the Supreme Court have ruled in favor of Craig and Mullins. One of Jack Phillips' supporters argued "I don't care what others morality are. I follow mine and that's all I or Catholic Charities or Jack Phillips want to do. Preventing us from doing so and forcing us to teach, adopt, or bake contrary to our beliefs is unjust" (@DeltaFlute, 2018). This quote reflects the sentiment that "#JackPhillips shouldn't have had to defend his beliefs at #SCOTUS in the first place" because he should have a right to act freely in accordance with his religious beliefs, no matter the circumstances (@family_policy, 2018).

Jack Phillips' supporters believed religious Americans "are ALL Jack Phillips #FreeTheCakeBaker" (@eugenedelgaudio, 2018). In other words, that they are just simple people whose lives have been "turned upside down" (@KeithMillsD7, 2018) by a case that seeks

to erode constitutionally provided rights to religious freedom and freedom of speech. They claim that they are, in fact, the group being treated as "2nd class citizen[s]" as "the attempt to establish a right to equal dignity […] devours constitutional rights, limited government, and ultimately dignity itself" (Nathanael Blake as quote by @BethRS62, 2017). The *Masterpiece Cakeshop* case represented the broader "culture war on religious beliefs" being waged by organizations like the Colorado Civil Rights Commission (@weeklystandard, 2018). Specifically, the baker's supporters argue that the world is an "antichrist system" (@TodayBlues, 2017), wherein "people have to respect the religion and beliefs of everyone else, but if they are Christian then there wrong" (@JorgiePogie, 2017). There is an emphasis placed on the injustice that public accommodations laws impose on religious Americans, with no recognition of the experiences of those being denied service due to their identities.

Religious Americans also underscored the perceived "double standard" (@capitalresearch, 2018) they are subjected to. They argue that 'liberal' clothing designers, restaurants and bakers have not faced scrutiny for their decisions to refuse service to Melania Trump, Sarah Huckabee Sanders (Donald Trump's White House Press Secretary from 2017 to 2019), or religious Americans seeking Bible-related goods. Christian creatives, on the other hand, have been persecuted for denying services that violate their sincerely held religious beliefs. One supporter asked, "aren't these same liberals now cheering the Red Hen the same ones who were hyperventilating with rage at Masterpiece Cakeshop?" (@michaeljohns, 2018) after the restaurant asked Sarah Huckabee Sanders to leave. Other supporters argued, "The Red Hen denied @presssec service, period. That's not what Jack Phillips did to the same-sex couple" (@EugeneBurns61, 2018), staunchly denying that the baker's refusal to bake a cake for a gay wedding could be compared to refusing to serve someone at a restaurant. People on the political

left are vilified as "#StupidLibs [who] #CherryPick [their] 'issues'" (@ProudAm22768540, 2017) and "Hypocritical Mental Liberals" (@LoveNationFirst, 2018). Whereas religious beliefs are considered to be a valid reason for denying someone service, liberal values are not.

Religious Americans evoke populist framing strategies by claiming to represent 'true' Americans—the 'true people'—in their desire to exercise their First Amendment rights while being threatened by an 'other' whose imposing rights are supported and pushed forward by the government 'elite.' As is common in populist rhetoric, Jack Phillip's supporters mobilize the narrative that the *Masterpiece Cakeshop* is only one moment in the broader struggle they have endured to protect their fundamental, constitutional rights. In the context of this case, religious Americans' discourse on X (Twitter) indicates that they perceive the protection of constitutional rights against the expansion of 'minority,' rights, as being in the interest of the 'true' majority of Americans. This reflects similar sentiments as seen in the narratives constructed by key actors in the previous chapter of religious Americans as representing *all* Americans.

The LGBTQ community

The oppressive other

As LGBTQ rights were a central part of the *Masterpiece Cakeshop* case, the portrayal of the LGBTQ community by Jack Phillips' supporters could shed light on the extent to which populist framing strategies were used in public discourse to shape the human rights argument in favor of the baker. The LGBTQ was largely vilified as "vindictive bullies, not victims" (@TheNewRightSide, 2017). For the baker's supporters, "#MasterpieceCakeshop [was] about forcing Christians to get in line with the PC thoughts of the day and violate their religious

beliefs, it's that simple" (@JoeC1776, 2017). The LGBTQ community, in this case, are perceived to be the discriminatory party as opposed to the victims of discrimination by allegedly forcing their 'choices' on someone with a sincere religious conviction. One supporter claimed, "I personally don't care about people's social choices but, it's another thing when people try to force others to support there [sic] choice against an individual's values" (@enuf4me802394, 2018). By demanding that the baker create a wedding cake for a gay wedding under public accommodation laws, Craig and Mullins were seen as discriminating against Jack Phillips on the basis of his religious beliefs. This angered the baker's supporters because, as one supporter argued, "we were told the new sexual orthodoxy wouldn't impact anyone who didn't want to endorse it" (@FRCdc, 2017).

Similar to the rhetoric found in the previous chapter from key actors, the *Masterpiece Cakeshop* is presented in public discourse as representing an attempt by the political left to force religious Americans to comply with 'politically correct' special interests in violation of their First Amendment rights. Specifically, one supporter argued, "you have to understand the left. It's not enough to allow gay marriage and LGBT rights--you have to do what they say when they say it and you have to love it. They don't want everyone to get along, they hate you and insist you submit to their every whim" (@siurredeemable, 2018). Another supporter claimed, "at the core of Masterpiece Cakeshop is a radically revisionist idea: that laws protecting the civil rights of marginalized groups can violate the free-speech rights of the people who refuse to serve them" (@thenation, 2017). This rhetoric supports the idea that the *Masterpiece Cakeshop* case is only one example of organizations like the Colorado Civil Rights Commission and the ACLU, as well as government officials to trying "eliminat[e] Christian religion from the public" (@Warbird_Nut, 2017).

Jack Phillips' supporters went so far as to name the LGBTQ community things like "homosexual fascists" (@FightNowAmerica, 2017), "the #GayGestapo" (@ElenaFelicia47, 2014), "the homosexual gestapo" (@talkradio200, 2018), and "the #LGBT tyrants" (@WeThinkRight, 2018). These supporters' tweets point to the perceived intolerance and hostility coming from the LGBTQ community as a whole towards religious Americans. Specifically, they felt that "proving disdain for religious faith isn't especially challenging these days. The left basically owns their hatred of traditional religious beliefs." (@josephbackholm, 2018). This conflation of the LGBTQ community and 'the left' draws on populist framing strategies wherein the political 'elites' on the left are seen as pandering to 'minority' interests, expanding rights for marginalized groups (the LGBTQ community) at the expense of the victimized 'majority' (religious Americans) (Brysk, 2019; Gostin et al., 2020). Additionally, this discourse draws on the right-wing populist strategy of emphasizing what is seen as an illegitimate sense of entitlement from 'the other' and 'scandalizing' 'the other's' behavior as offensive, unjust and "evidence of discrimination against the 'normal,' majoritarian part of the population" (Krämer, 2017, p.1299).

Specifically, by invoking terms like 'fascists,' 'tyrants,' and 'the gestapo,' Jack Phillips' supporters seek to portray the LGBTQ community as a powerful, coercive force that will go to any length to secure their rights and their power in direct conflict with the rights of 'the people,' and force religious Americans to bend to their will. This is an allusion to leaders like Hitler, with the implication being that being required to serve the LGBTQ community in public accommodations in perceived violation of a Christian business owner's religious conviction is akin to being a targeted community in Nazi Germany. As with the invocation of images of slavery discussed above, this is a perverse comparison to Hitler and the Gestapo, given that the

LGBTQ community as a whole was targeted by the Nazis. Likening the LGBTQ community to the Gestapo, in particular, actually serves to portrays LGBTQ individuals as forming part of 'the other' to whom government 'elites' pander while threatening the rights of the 'true people.'

An illegitimate claim

Similar to the previous theme, Craig and Mullins—and the LGBTQ community as a whole—are portrayed as being an 'illegitimate' victim in the *Masterpiece Cakeshop* case. Not only did religious Americans construct themselves as the true victims of discrimination (as described above), Jack Phillips' supporters sought to delegitimate the claims that refusing to create a cake for a gay wedding constituted discrimination. It is argued that Jack Phillips "didn't kick gay guys out, [he] just refused to serve items outside of specialty" (@twallforall, 2018), while the LGBTQ community is "pushing the homosexual agenda on us" (@TerriGreenUSA, 2018). In fact, Jack Phillips is portrayed as "courageous" for calling out the gay couple for trying to force him to bake a wedding cake in violation of his beliefs (@TerriGreenUSA, 2018). To the baker's supporters, there was a critical difference between refusing to provide a "pre-made product", and as Jack Phillips was argued to have done, "refus[ing] to CREATE something SPECIAL for a ceremony they didn't believe in" (@DrMom25MA, 2017).

Similarly, supporters differentiated between LGBTQ identity and LGBTQ actions. For example, the *Wall Street Journal* reported, the "baker's lawyer says her client is basing decisions on what customers are doing, not who they are" (@WSJPolitics, 2017). The baker's supporters sought to clearly underscore that "there's a critical difference between refusing to serve a gay couple because they're gay... and declining to participate in a gay wedding because it violates your religious beliefs" (@Liz_Wheeler, 2017). Not only was Phillips' refusal to bake a cake not discrimination, "not a single person was ever denied service. An individual didn't want to partake

in a wedding" (@BlackIrishI, 2017). Supporters also felt "it is important to note that Jack Phillips also refused to do Halloween cakes, divorce cakes, and other cakes with disparaging remarks," and forcing Phillips to make the cake resulted in a violation of his First Amendment rights (@donegonecrazy, 2018). These distinctions reflected the general argument by key actors and the public that custom art constituted free speech protected under the First Amendment and that Phillips' sincerely held religious beliefs prevented him from participating in an 'objectionable' ceremony, thereby legally allowing the baker to refuse to bake the couple's cake. By attempting to negate Craig and Mullins' claims to discrimination, the public sought to absolve the baker of any wrongdoing in the case.

The 'public' tweets also emphasized that Craig and Mullins could have easily sought service elsewhere, negating their claim to discrimination. Specifically, "they harassed and sued the baker, when they could have just went to another bakery. The baker was nice and didn't stop them from buying items from his store, he just wouldn't cater a gay wedding because of his beliefs" (@jas7_april, 2017). Furthermore, others expressed frustration in arguing, "#FactsMatter [there was] no note that Artist Baker of Masterpiece Cakeshop refused to sell Gay Couple non-custom-made cake as a compromise" (@CynsTreat, 2017). This was echoed by other supporters who stated, "here's an idea, and I know it's crazy, go to another bakery as there are plenty who will make the cake you want for your event and this baker even offered to refer this couple to several" (@JoeC1776, 2017). These arguments imply that, despite refusing to provide a wedding cake to Craig and Mullins himself, Jack Phillips had, in fact, fulfilled his obligations under public accommodations laws by referring the couple to other bakeries that would be willing to serve them. Ultimately, with some of Jack Phillips' supporters making statements such as: "#DavidMullins & #CharlieCraig at least be honest that it's #Christianity you hate, not a

#WeddingCake that you could easily have had from countless other sources" (@PLVerratti, 2017), Craig and Mullins are again portrayed as the hateful, villainous bullies of the case. This scapegoating of the couple allowed the public to further portray religious Americans as the true victims of efforts to increase multiculturalism and expand 'minority' rights.

Mutual tolerance

The last theme that emerged surrounding the public portrayal of the LGBTQ community by Jack Phillip' supporters centered calls for mutual tolerance. Specifically, according to Justice Anthony Kennedy, "[T]olerance is essential in a free society. And tolerance is most meaningful when it's mutual" (Justice Anthony Kennedy as quoted by @sentence58, 2018). Jack Phillips' supporters emphasized that "the government must respect [the] religious beliefs of #JackPhillips" (@j_chumley, 2018) because "religious conservatism isn't going away. We all have to find a way to live together" (@nytopinion, 2017). Though "liberalism won the same-sex marriage battle" (@nytopinion, 2017), there was a strong desire among Jack Phillips' supporters to have 'liberals' recognize their religious right to disagree with the decision and act accordingly.

These arguments, however, continued to vilify the LGBTQ community as being allowed to push their 'agenda' on the 'innocent' 'majority'—religious Americans—while the 'majority' is prosecuted, as in the *Masterpiece Cakeshop* case for pursuing their beliefs. One supporter argued that "no one has to be forced to like anyone" (@misslv007, 2017), emphasizing that if religious Americans must be forced to accept same sex marriage and let "#Gays do what THEY feel is right" (misslv007, 2017), those on the political right should be afforded the same courtesy. In the aftermath of the Supreme Court decision, these supporters again pointed to the ways in which "this is a win not just for those of us who agree with Jack Phillips. This is a win for all Americans" (@drmoore as quoted by @conradclose, 2018), despite the potential negative

consequences for the rights of LGBTQ Americans. As mentioned previously, right-wing populist leaders and supporters want many people to identify with the use of 'all Americans' as representative of 'the people' in order to legitimize their claims, despite the very clear exclusion of certain Americans and their rights (Moffitt, 2020).

Furthermore, supporters argued, "we need to live in the kind of country where we can be free to persuade one another, not bully each other into silence" (@drmoore as quoted by @conradclose, 2018), implying again that LGBTQ Americans and their allies are bullies pushing their agendas on 'innocent' religious Americans in violation of their constitutional rights. Additionally, this narrative implies that the freedom to persuade or change someone's opinion applies to a 'debate' about whether or not LGBTQ people deserve the right to be served and not discriminated against in public accommodations. This, again, minimizes the importance of certain (civil) rights as compared to constitutionally enshrined rights. These calls for mutual tolerance from Jack Phillips' supporters also perpetuate a narrative that the LGBTQ community are interested only in preserving their own interests at the expense of other Americans. This discourse relies on right-wing populist tropes of the 'true majority' being the real victims of a system designed by elites to only protect 'newer,' non-constitutional, 'minority' rights (Graff & Korolczuk, 2022).

The rhetoric surrounding religious Americans and the LGBTQ community reinforces the perception that the current climate favors a zero-sum-game approach to rights, wherein expanding LGBTQ rights are in direct conflict with rights to religious freedom and free speech. Again, we see that Phillips' supporters, in alignment with traditionally right-wing legal rights efforts, seek to afford primacy to the First Amendment as it is expressly written in the Constitution, over LGBTQ rights which rely on an interpretation of the Fourteenth Amendment

(Greene, 2021). The *Masterpiece Cakeshop* case is just one example of the legal success the politic right has found with such arguments by combining the free exercise and free speech components of the First Amendment to effectively extend someone's personal religious conviction to the activities of their public business (Brown, 2019; Purdy, 2014).

The courts and government influence

Government overreach

The third and final dimension of the *Masterpiece Cakeshop* case are the perceptions of the courts and the role of the government in the perpetuation of the violation of constitutional rights experienced by religious Americans and Christian business owners, and ultimately the protection of these rights. First, the baker's supporters expressed frustration and anger at what they perceived to be undue government influence at the heart of the case. For example, a common theme among tweets was the sentiment that "the State should not compel speech from its citizens - especially when they have religious convictions against the speech" (@LordKappa, 2017) and that "the government has no authority to compel you or me to promote messages or use our creative skills and talents to participate in events that violate our sincerely held beliefs" (@JennaEllisEsq, 2017). They also argued that "sadly, government [..] often doesn't recognize its proper role in private business (@bsteve17, 2017). These supporters felt that by forcing Jack Phillips to bake the cake for Craig and Mullins, the government—specifically the Colorado Civil Rights Commission—had acted beyond the scope of their power. To Jack Phillips' supporters, the case was less about discrimination against the LGBTQ community and more about determining the extent to which "the gov't [sic] have the power to impose non-discrimination norms on business that requires owners to take steps that, as a matter of conscience, they don't want to take" (@ColumbiaLaw, 2018).

Similarly, Jack Phillip's supporters vilified the government for "the hostility of Colorado to Christian belief in this case" (@MichaelSchutt, 2018). They claimed that Craig and Mullins were not victims in the case, but instead that "Jack Phillips faced flagrant, ugly, religious bigotry by Colorado officials (@vincedorsett1, 2018). To support these claims, they pointed to Justice Kennedy's comments in the ruling that "the Commission...showed elements of a clear and impermissible hostility toward the sincere religious beliefs motivating his objection" (Justice Kennedy as quoted by @EricBermanIN, 2018). Ultimately, they argued that despite a narrow ruling, "the Court was crystal clear that discrimination against religious beliefs would not be tolerated when performed by the government, especially when the government has a constitutional duty to apply its laws neutrally towards everyone" (@FPAofNM, 2018).

These comments mirror elements of right-wing populism insofar as they serve to reinforce the boundaries around 'the people' as excluding the LGBTQ community. Though at face value the 'neutral' application of laws might seem to be the best approach, neutrality often equates to a maintenance of the status quo. Neutrality fails to recognize the historic and systemic inequalities that vulnerable groups experience, and therefore the additional protections that might be necessary to ensure people are able to equitably participate in society. Furthermore, one supporter's states, "f— the Colorado Civil Rights Commission and a well-organized militant group of sex and gender revolutionaries. Bunch of spineless queers" (@dcj52_dan, 2018). This sentiment lumps together the Colorado Civil Rights Commission—the government actor in the *Masterpiece Cakeshop* case—with Craig and Mullins and other LGBTQ activists supporting the couple. This equation of the (left-leaning) state government with the minority group whose rights it is trying to protect emulates right-wing populist strategies of constructing the government as an 'elitist' entity that prefers to pander to 'minority interests' as opposed to representing the 'true'

majority—in this case, 'real' Americans. It also further reinforces the idea that the LGBTQ community and its allies are 'vindictive bullies' forcing a 'special interest' agenda on 'all Americans.'

Though Jack Phillips' supporters do not always explicitly refer to themselves as 'the people,' Donald Trump's rhetoric and actions as a right-wing populist leader effectively construct religious Americans—specifically, (white) Christian Americans—as the 'true' people whose rights are being threatened by a leftist agenda aimed at expanding the rights of 'illegitimate' others. As previously discussed, this aligns with right-wing populist framing strategies that rely on ethnonationalist understandings of who constitutes 'the people' or the nation's 'true' citizens (Pelinka, 2013; Zembylas, 2021). Donald Trump further invokes right-wing populist framing strategies by pitting this exclusionary 'people' against minority 'others' as laws and policies are perceived as excluding the 'true' people from social, economic, and cultural privilege (Anderson, 2017; Inglehart & Norris, 2017; Zembylas, 2021). As such, when seeing Jack Phillips' supporters use discourse pointing to an out of touch state government that fails to represent the interests of 'real' Americans, it is important to read these comments in the context of a right-wing populist leader who explicitly constructs understandings of 'the people' and notions of "crisis, breakdown, or threat" (Moffitt, 2016, p.45) around these religion-oriented identities.

A triumph of constitutional rights

Though sometimes motivated by a misunderstanding of the narrow nature of the ruling, Jack Phillips' supporters felt that the decision was a clear message that the First Amendment rights to freedom of speech and freedom of religion could not be infringed upon under any circumstances. They touted the "SCOTUS Masterpiece Cakeshop decision [as a] 'major victory

for religious liberty,'" arguing that the "ruling [was] '7-2 not a narrow 5-4'" (@CraigCaplan, 2018). Supporters were "overjoyed that #SCOTUS ruled in favor of Jack Phillips and other small business owners right to deny their specialized services because of their unwavering faith," further claiming that "religious liberty should apply to all especially Christians" (@ChristaLou90, 2018). This emphasis on the need to protect the religious rights of Christians specifically reinforces the previously explored trend of Jack Phillips' supporters painting Christian Americans as the true victim in the case and in what is perceived as an increasingly liberal society more broadly.

The rhetoric seen from supporters importantly affords Christianity primacy, painting it as the religion that is being persecuted in the United States. This is noteworthy in the context of Donald Trump's ethno-nationalist framing of 'the people' in terms of white, American Christians. In alignment with right-wing populist framing strategies, 'the people' are portrayed as being victims of a hypocritical, progressive left that seeks only embolden and protect the rights of minority groups at the expense of 'the people's' rights. Despite the long history of Christian nationalism in the United States and the undeniable power of this movement in the context of current politics in particular, the rhetoric used by Jack Phillips' supporters and Donald Trump seeks to portray Christian Americans as the most vulnerable and marginalized group in the United States at present.[48]

Regardless of a state's public accommodation laws, some supporters again pointed to what they believe to be the baker's "constitutionally-guaranteed right to run his business in accordance with his faith" (@RepJimBanks, 2018). Similarly, others felt the SCOTUS ruling was "protecting constitutional rights of individuals to live according to their faith," amounting to

[48] The history of Christian Nationalism and the way it frames current human rights claims is explored in Chapter 2.

a “Religious Freedom Victory” (@michaelmcneely, 2018). Comments such as these reinforce the hierarchy that supporters felt should exist between constitutional rights and all other rights (particularly those related to protections for the LGBTQ community). Specifically, supporters cheered for the “Supreme Court victory for one of our founding principles as a nation, Religious Freedom!” (@MattShaheen, 2018), effectively contrasting such ‘founding principles’ with more recent equality-oriented laws that are not guaranteed in the country’s foundational documents.

Finally, the decision in favor of the baker was touted as “a victory for the Constitution and for the free exercise rights of all Americans” (@theFAMiLYLEADER, 2018). Additionally, claims were made throughout the duration of the case that “if a Christian baker’s rights are violated, we all lose” (@joyceolex, 2017). These tweets emphasize the benefits of the case for *all Americans* which not only dismisses Craig and Mullins’ (and the broader LGBTQ community’s) experiences of discrimination, but also serves to create an exclusionary definition of who counts as an American. This perpetuates the right-wing populist tendency to reinforce a ‘horizontal antagonism’ between those considered to be ‘the people’—‘true’ Americans who value the importance of constitutional freedom above all else—and ‘others’ who fail to conform to the, in this case, gendered norms of ‘the people’ (Brubaker, 2020). Furthermore, by referencing the benefits to *all Americans*, the baker’s supporters underscore their perception of a ‘general will’ that unites and is common to ‘the people,’ a framing strategy that is common in the various articulations of populism (Laclau, 2005). Also aligned with populist framing strategies as laid out by Laclau (2005), Jack Phillips’ supporters portray the courts and what they perceive to be a religious freedom movement as the ultimate and only entities capable of reinforcing, protecting, and ultimately representing that common ‘will of the people.’

Doing the ‘right’ thing

Although some of the baker's proponents felt they couldn't "understand how the #MasterpieceCakeshop case made it to the Supreme Court" given "you would think lower courts would recognize the blatant attack on the 1st Amendment" (@bsteve17, 2017), many supporters felt the Supreme Court had rightfully "pushed back against the rising tide of anti-religious sentiments in America, ruling in favor of Colorado baker Jack Phillips" (@fr_pwest, 2018). These supporters argued, "it's a great day and win for Traditional Americans as the #SupremeCourt *does the right thing*! what kind of example would it be for kids when gays are allowed to punish *normal traditional people*? (@JhsTimmy, 2018, emphasis added). This tweet reinforces the idea presented in the previous chapter that the judicial system in place in the United States and its institutions have, historically, not been designed to protect everyone's rights, and not everyone sees this as a negative attribute.

However, for Jack Phillips' supporters, this is exactly the way the court system should operate. This is because they believe that the 'original' constitutional rights should take precedence and supersede any 'newer' civil rights (like those aimed at increasing equality). In fact, allowing 'normal traditional people' to deny service to certain people based on their religious convictions "is a feature, not a bug, of the First Amendment" (@CmteForJustice, 2017). The primacy afforded to the Constitution is thereby seen as providing a legally protected right to "dissent to" (@CmteForJustice, 2017) the expansion of equality-oriented rights and the perceived imposition and requirement of tolerance towards the LGBTQ community. Ultimately, the *Masterpiece Cakeshop* ruling was seen as the end of the persecution of religious Americans who disagree with LGBTQ rights. As one supporter stated, the "Supreme Court decision says my faith is welcome back in America" (@4MyDiy, 2018). By reinforcing the primacy of

constitutional rights, the *Masterpiece Cakeshop* case ruling also reinforced the notion that some people's rights are more worthy of protection than others.

Conclusion

This chapter explored the ways in which discourse on X (Twitter), serving as a proxy for 'public' discourse, among Jack Phillips' supporters may have been framed using right-wing populist framing strategies. Through a review of X (Twitter) data, I demonstrate that some of the arguments that showed up repeatedly were formulated in using similar right-wing populist tropes. First, the hierarchization of rights placing constitutional rights above others mirrors right-wing populist leaders' rhetoric which seeks to portray certain rights as indispensable to national identity and security. Similarly, supporters relied on right-wing populist framing strategies that paint rights as existing in competition with each other. Right-wing populist leaders often seek to foster anger and resentment among supporters by capitalizing on this logic of rights being a zero-sum game, emphasizing the possibility that expanding 'minority' rights might threaten 'the people's' social or economic privilege. The baker's supporters also sought to portray their fight to protect First Amendment rights against the onslaught of LGBTQ rights as being in the interest of *all* Americans—as representing the 'general will' of the 'true people' in the face of a government 'elite' that favors protecting and expanding the rights of minority 'others.'

In their portrayal of the LGBTQ community, Jack Phillips' supporters emphasized their sense that claims to LGBTQ rights are illegitimate insofar as they are seen to infringe on First Amendment rights. This evokes the right-wing populist tendency to focus on a perceived 'illegitimate' sense of entitlement to rights by 'the other.' Finally, in their description of the role of the courts and the government, Jack Phillips' supporters portrayed the government as being completely taken over by the interests of 'minorities,' further reinforcing notions of an out of

touch government 'elite' uninterested in representing the will of the 'true' people. Interestingly, the courts are portrayed as the only legitimate entities capable of representing the 'common will'— in this case the protection of religious freedom. In the context of a political system which, at the time, was run by a right-wing populist leader, it is possible that the courts are reflecting the legitimacy of the right-wing populist leader as the sole, authentic representative of the 'common will.' This is particularly important in this case, given Donald Trump had already appointed Neil Gorsuch to the Supreme Court, the first of three conservative additions to the court, in an effort to see his agenda more clearly reflected in the decisions of the highest court.

Understanding the discourse that surrounded the *Masterpiece Cakeshop* case in 'the public' is significant because it can shed light on the ways in which populism is a mutually reinforced dynamic relationship between a leader, state institutions, and 'the people.' As Ostiguy and Moffitt (2021) point out, in order to understand populism and its manifestations in a given moment, one cannot ignore "the back-and-forth processes of negotiation between populist leaders and 'the people'" (p.48). 'The people,' though a concept originally constructed through the claims of a populist leader, in turn embody the construct by "rejecting, accepting or modifying such claims" (Ostiguy & Moffitt, 2021, p.52). The analysis in this chapter examined the extent to which Donald Trump's constructions of the people are reinforced and reimagined in the discourse of a conservative audience in the context of a human rights case. Ultimately, the X (Twitter) data analyzed highlighted the fact that many of the arguments in favor of Jack Phillips echoed rhetoric used by Donald Trump that underscored the importance of religious freedom, constitutional rights, and limiting the rights of 'others' that are perceived to threaten national identity.

Ultimately, the Supreme Court dodged the real question of religious objections to public accommodations laws, "handing [a] narrow #SCOTUS victory to Christian baker and #ReligiousFreedom, while preserving ability of states to force religious objectors to provide services for gay customers" (@Curt_Levey, 2018). Though the ruling pointed to clear hostility towards the baker's religious beliefs in the lower court proceedings, it left "unsettled the boarder constitutional questions the case presented" (@newveteran, 2018). In other words, no definitive ruling was made with regards to whether or not businesses can refuse service to certain groups of people based on religious objection. Despite the questions left unanswered from such a narrow ruling, Jack Phillip's supporters largely felt vindicated, interpreting the ruling as a protection of the First Amendment and a win for religious freedom.

Chapter 6 - The Use of Affect

This chapter pivots from an exploration of how human rights are socially constructed in a right-wing populist political context in court documents and tweets on X (Twitter) to an analysis of how Jack Phillips' supporters and lawyers' use affect in these two types of text. Populist political leaders and movements across the political spectrum are known to capitalize strongly on the emotional states and reactions of their supporters (Cohen, 2019; Cossarini & Vallespín, 2019; Schrock et al., 2017; Skonieczny, 2018). While it is known that right-wing populist leaders are prone to relying on anger, fear, and resentment (as well as different articulations of these emotions such as shame and blame), as well as certain positive emotions (like pride and hope) the extent to which institutional and individual supporters of a right-wing populist leader echo the use of these emotions is less studied. I am therefore interested in exploring the types of affect that emerge in court documents and tweets, as well as what types of words and phrases appear to shape the mobilization of affect in these texts.

Understanding the mobilization of affect in these contexts can shed light on the affective interplay between a right-wing populist leader and the institutions and individuals that support them. This further supports my focus on a relational approach to populism by, once again, underscoring if and how institutions and the public supportive of a right-wing populist movement contribute to and shape the rhetoric used to frame human rights campaigns by using affect in similar ways as a right-wing populist leader. I intend to use dictionary-based sentiment analysis techniques in R to assess how affect is mobilized in the court documents and tweets. This chapter begins with an overview of what a sentiment analysis in R entails[49]—including how I used it in this study—and what it can tell us about how affect is used in an institutional and

[49] A more detailed overview of the approach can be found in my methodology in Chapter 3.

public context. I then establish why a sentiment analysis is an effective tool for measuring the use of affect as opposed to, for example, more qualitative methods, as well as outline the limitations of this methodology before presenting the findings of my sentiment analysis as applied to the court documents, followed by the X (Twitter) data.

This analysis is an exploratory endeavor to understand what a sentiment analysis can contribute to our understanding of right-wing populist framing strategies in discourse in institutions and from the public. As noted in Chapter 3, a sentiment analysis is only a starting point to understanding affect and cannot capture everything about how affect shapes the relationships among people, groups, their environments, and others. It is still a useful method for understanding the tone and specific emotions used in rhetoric. The words people use matter, so even if an analysis at the word level cannot fully translate to an understanding of how affect, in the more abstract sense, is mobilized, it can provide important insight into how a particular message is being framed. The findings from this chapter in and of themselves are important insofar as they are a hypothesis-generating contribution, prompting the need to further explore the mutually reinforcing relationships between leaders, the people, and institutions to better understand how affect may operate differently in each of these contexts.

Understanding sentiment analysis

Sentiment analysis is a computational method for analyzing affect in text; specifically falling under Natural Language Processing (NLP), wherein computers are used to understand and interpret text. It combines quantitative and qualitative approaches by associating words (qualitative, subjective information) with a set of emotions and either positive or negative polarity (a quantitative value). Sentiments, similar to affect and emotion, are attitudes and emotions that have a polarity (are positive, negative, or neutral), a source (a person or group

holding the sentiment), and a target (an object towards which the sentiment is directed) (Fink et al., 2011). This method involves extracting information from textual sources to determine an author's attitude towards a particular object, their emotional state while writing, or the emotions the author wishes to convey to the reader (Hovy, 2015).

The two primary outcomes of interest when conducting a sentiment analysis are the quantitative measures of polarity (i.e. whether a text indicates positive or negative sentiments and opinions), and the main emotions that emerge via an author's word choice (Khoo et al., 2012; Nasukawa & Yi, 2003). The three main steps[50] for conducting a dictionary-based sentiment analysis (Silge & Robinson, 2017) include: (1) creating a *corpus* of identified texts; (2) breaking each text in the corpus down to the word level (a process called 'tokenization') and cleaning it by removing textual elements like punctuation and 'stop words' such as 'and,' 'but,' and 'or,' as well as custom words related to the specific analysis at hand; and (3) applying a *lexicon*. A lexicon, also referred to as a 'dictionary' is a list of words with an assigned positive or negative value or a specific emotion. These lists are used to 'tag' words in a text-based dataset—the basis of a dictionary-based sentiment analysis. There are many different existing lexicons; some developed for general use, while others are developed for specific types of texts like news articles, social media posts, or political texts. For this analysis I applied the Bing lexicon, developed by Hu and Liu (2004) to assess the tone of customer reviews. This is one of the most commonly applied lexicons for sentiment analysis and labels words as either positive or negative. I also use the National Research Council (NRC) lexicon, developed by Mohammad and Turney (2013a) to label words according to Plutchik's (1980) eight basic emotions: anger, fear, anticipation, surprise, acceptance, rejection, joy, or sadness[51].

[50] See Chapter 3 for a detailed breakdown of what is entailed in each of these steps.
[51] Additional details about the Bing and NRC lexicons can be found in Chapter 3.

Neither Hu and Liu (2004) nor Mohammad and Turney (2013a) developed their respective lexicons in the context of legal language specifically, however; both lexicons are still useful tools for examining sentiment in court documents. Hu and Liu's (2004) lexicon is a commonly applied lexicon given that it is relatively large compared to other lexicons and it offers a simple positive/negative assessment (Mahmood, 2024). The NRC lexicon, on the other hand, is one the only lexicons designed to examine the use of specific sentiments. The challenge with using lexicons that were developed outside of a legal context is the possibility that a word that may be tagged according to polarity or specific sentiment in one way based on general language might have a different meaning in the context of a court case. Specifically, a word that is commonplace and of neutral tone in a legal context, may be tagged as positive of negative in the lexicons. For example, in the NRC lexicon, the word 'compel' is tagged as negative, and associated with anger and fear but is a common word to find in court documents associated with questions around the courts authority to enforce actions or responses. The Bing lexicon, on the other hand, does not tag the word 'compel' as either positive or negative, indicating that it is considered to be a more neutral word. By using both lexicons, I am able to compare results and analyze how a particular word is tagged in order to mitigate any skew that might exist as a result of 'incorrect' tagging in the context of court documents.

My first corpus consisted of all 13 court documents filed in support of Jack Phillips by his lawyers from the Alliance Defending Freedom in lower courts (opening and reply briefs, notices of appeal, and briefs in support of appeals filed by Jack Phillips' defense, Alliance Defending Freedom) and the Supreme Court (petition for writ of certiorari and supporting brief filed by Alliance Defending Freedom to the Supreme Court, opening and reply briefs also filed by Alliance Defending Freedom to the Supreme Court, and the court's oral arguments transcript

and opinion), as well as all 50 amicus briefs filed in support of the baker.[52] For my second corpus of X (Twitter) data, I first removed all tweets written in support of Craig and Mullins, tweets that didn't express an opinion either way, tweets that were unrelated to the *Masterpiece Cakeshop* case, and tweets containing only hyperlinks. Ultimately, this corpus included a total of 9,764 tweets, 421 of which were from key actors.[53] Once each text was tokenized to the word level, I applied the Bing lexicon and the NRC lexicon to examine the overall tone of the documents and tweets, as well as the key emotions that emerged.

Benefits and limitations of sentiment analysis

A sentiment analysis is a useful method for extracting information about the tone of a text more quickly and consistently than is possible through manual coding. It allows for a much larger sample of texts to be analyzed given its automated nature compared to the time it typically takes to manual code texts, and allows for more reliable replication. Sentiment analysis techniques have been applied to a wide variety of texts including product reviews, newspaper headlines and articles, political texts, novels, and tweets (Kiritchenko et al. 2014). This approach helps "capture the broad contours of a conversation on a topic of interest" (Bestvater & Monroe, 2023, p.3). Analyzing the polarity of a text—whether or not the text is positive, negative, or neutral overall—using a dictionary-based approach can shed light on the extent to which the public and key actors use negative sentiments to the extent that research shows is common amongst populist leaders.

[52] See Appendix A for a detailed list of all court documents and Amicus Briefs included in the analysis.
[53] Key actors are defined as the baker's lawyers—the Alliance Defending Freedom—and the organizations who filed Amicus Briefs in support of Phillips, as well as those who regularly engaged with the hashtags "#MasterpieceCakeshop", "#JackPhillips" and "#JusticeforJack," as well as the terms "Masterpiece Cakeshop" and "Jack Phillips" on X (Twitter). I defined regular engagement as tweeting in support of the baker four or more times. These organizations not only shaped the legal discourse supporting Jack Phillips and his cake shop, but also played a role in shaping public conversations, particularly by their active promotion of Jack Phillips and analysis of the case on X (Twitter).

Recently, research has shifted from an emphasis on the use of affect solely by populist political leaders towards "highlighting emotions as the mediating mechanism between populist communication and its audience effect" (Verbalyte et al., 2025, p.410). These studies increasingly explore how a populist leaders' framing strategies elicit emotions in the broader public and the "attitudinal and behavioral impacts of exposure to [populist] discourse" (Verbalyte et al., 2025, p.410). For example, Demasi et al. (2025) demonstrate that the 'activation' of populist attitudes occurs when negative emotions are evoked by discourse emphasizing unfairness. They found, however, that these negative emotions could also be mitigated when populist leaders spread "positive messages fostering solidarity" (Verbalyte et al., 2025, p.411).

Similarly, Nai and Maier (2025) highlight the relationship between a populist leader's use of emotion and "affective polarization" or the "positive and negative self-identification with, respectively, the (partisan) in- and out-groups" (p.1712). Specifically, they found that a populist leader or movement's "negative messages strengthen dislike for outgroups and enhance attachment to one's political group" (Verbalyte et al., 2025, p.411). These studies, however, have focused primarily on attitude scales (Abadi et al., 2025; Abts & Rogenhofer, 2025; Capelos et al., 2025; Demertzis, 2019; Lindholm et al., 2025) rather than how affect is used in supporters' discourse. Additionally, those studies that have analyzed the use of affect in discourse by using sentiment analysis techniques have typically focused on right-wing populist leaders' and political actors' rhetoric on various platforms (see Cid, 2024; Cossu, 2024). This research uses sentiment analysis techniques to better understand how affect appears in communications from the 'general

public'[54] and by supporters in the legal system in the context of discourse surrounding a human rights claim.

Research has shown that when emotions are conceived of as preceding and guiding how people see, think, and act they are useful predictors of the relationship between negative emotions and populist support (Marcus, 2021; Ward et al., 2025). As such, when examining X (Twitter) data, more negative or angry tweets in support of Jack Phillips might indicate not only a reflection of right-wing populist framing strategies but also support for right-wing populism and its associated ideas about 'the people' and 'the other.' Using sentiment analysis techniques, I can highlight the extent to which case-related texts supporting Jack Phillips reflect, for example, the same prominent use of anger as right-wing populist leaders by examining the tone of these texts.

When assessing texts like court documents and tweets, however, it is important to note the difference between sentiment and stance. While a dictionary-based sentiment analysis can shed light on the tone of a text, that does not always translate to a clear reflection of the author's underlying attitudes about ideas, individuals, or groups, though the two concepts are frequently conflated (Bestvater & Monroe, 2023). Whereas a sentiment analysis classifies text according to its general positive or negative polarity, stance refers to "an affective or attitudinal position expressed toward a given target" (Bestvater & Monroe, 2023, p.2). In other words, stance reflects a text's polarity as it is "defined relative to a specific concept or entity of interest" as opposed to a more general, non-targeted sentiment (Bestvater & Monroe, 2023, p.2). This distinction is important because attitudes are multifaceted and can be expressed in a variety of

[54] See Chapter 5 for an in depth overview of how I am using X (Twitter) data as a representation of discourse in the 'general public,' and how rhetoric on social media is increasingly used to draw conclusions about the 'public sphere.'

ways. Oftentimes, “the same stance can easily be expressed in either supportive or oppositional terms,” leading to a potential misalignment between the sentiment of a message and its stance (Bestvater & Monroe, 2023, p.2). On X (Twitter) for example, someone could reflect the same oppositional stance towards a protest either through a positive message approving of the status quo or a negative critique of the social movement (Bestvater & Monroe, 2023). In the context of this research, sentiment, as opposed to stance, is the information of interest in the court documents and tweets about the *Masterpiece Cakeshop* case. I am primarily interested in the how sentiment appears in the selected texts and whether or not this is reflective of the use of affect typically associated with right-wing populist leaders, as opposed to the author’s underlying opinions towards particular groups.

Furthermore, this points to the ways in which a sentiment analysis tells only a partial story regarding the use of affect. As articulated in Chapter 3, affect can serve as an umbrella term, encompassing feelings, emotions and sentiments wherein feelings are the sensations that can be labelled based on past experiences, emotions are the projection or display of a feeling, and sentiments are the resulting, relatively permanent, emotional dispositions towards certain objects, people, groups, or situations (Munezero et al., 2014; Shouse, 2005). Though a sentiment analysis can identify how sentiment emerges in a text by looking at polarity (positive or negative tone), source (the person or group holding the sentiment), and even specific sentiments like anger, joy, and sadness, this type of analysis is only a starting point for understanding the use of affect. This is because, affect is often thought of as the “forces and intensities” that circulate among bodies establishing and reinforcing in-group and out-group dynamics rather than belonging to or being directed at individuals (Ahmed, 2004b; Gregg & Siegworth, 2010, p.2). Though sentiment is a

building block—and perhaps the starting point—of affect, and is therefore important to identify and understand, the ways in which sentiments translate into and affect the relationships between people, their environment, and others cannot be fully deduced through a sentiment analysis.

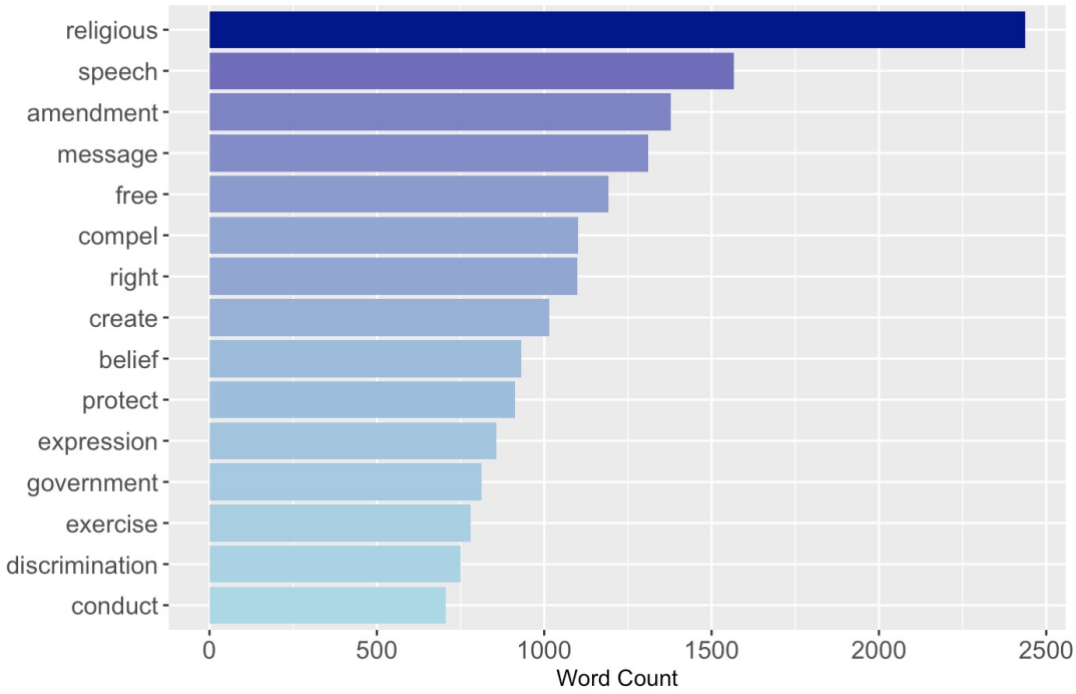
I begin with an analysis of the court documents, looking across type of court document and by year in which a brief or petition was submitted, followed by an analysis of the X (Twitter) data, comparing key actors' sentiment to that of the broader, general public supportive of Jack Phillips. I conclude with a discussion of patterns that emerge when comparing court documents with X (Twitter data).

Sentiment in court documents

To begin the analysis of sentiment in court documents, it is important to explore some of the qualities of the text before applying the sentiment lexicons. Understanding the most common words found in the full corpus, across court document types, gives a sense of the type of language used overall (Figure 3). Looking at the top 15 words found across the court documents, we see words like 'religious,' 'speech,' and 'amendment' appearing most commonly. Though these words are, to a certain extent, to be expected in a court case about the clash between religious freedom and public accommodations laws, it is interesting to see words like 'compel,' 'free,' and 'discrimination' appearing more than 500 times each. These words demonstrate the general way that Jack Phillips' supporters (in Amicus briefs) and lawyers (in the other court documents) chose to frame their argument. These types of terms align with the findings in Chapter 4 demonstrating that arguments in favor of the baker were constructed around the idea that it was, in fact, Jack Phillips that was facing discrimination against his religious beliefs. It also points to the arguments that the government was "compelling the creation of expression" in

violation of the baker's First Amendment rights (Brief for the United States as Amici Curiae, *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 2017, p.10).

Figure 3. Most Common Words across Court Documents

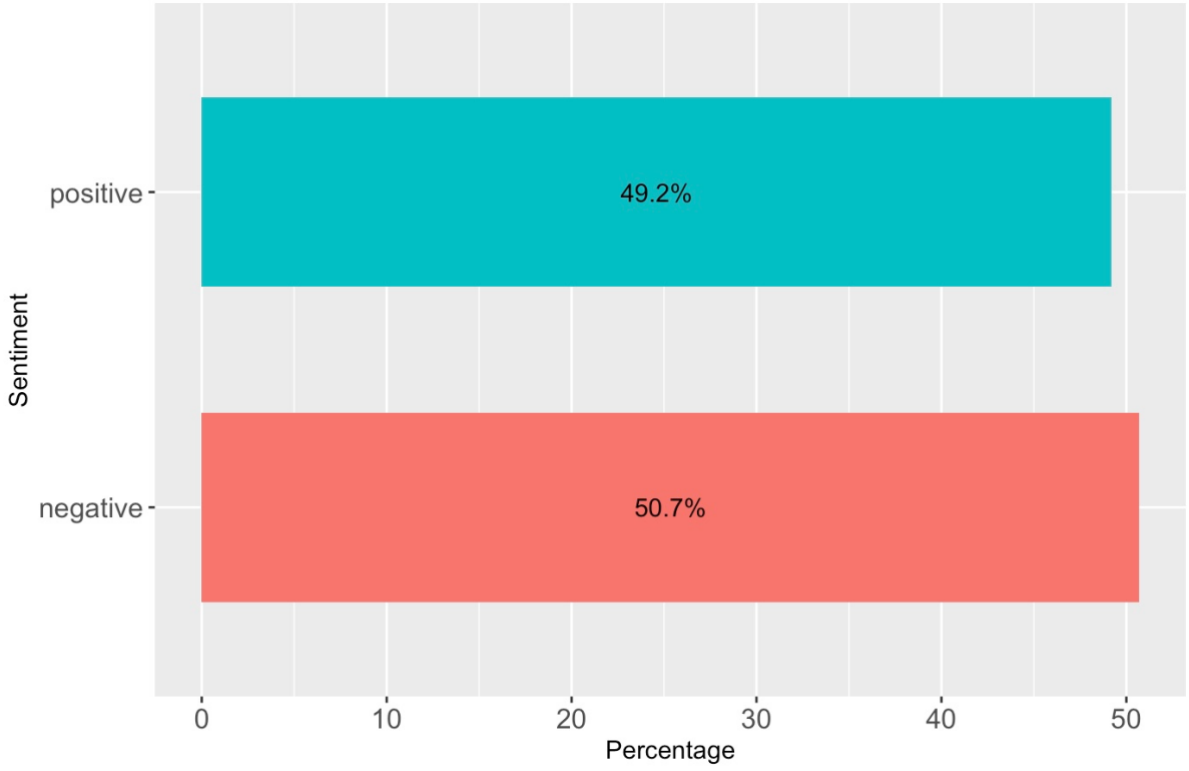


Overall court document polarity with the Bing lexicon

When looking across all of the court documents filed in support of Jack Phillips (Amicus briefs, lower court documents and SCOTUS documents) by using the Bing lexicon, we see that there was a slightly negative skew across the court documents (Figure 4). Negative words accounted for 50.7 percent of the total words, compared to 49.2 percent positive words. Given the tendency for formal texts to skew more positive (Tatman, 2017), it is interesting that the court documents demonstrate a slightly more negative overall sentiment, even though the difference is minimal. Though the research on right-wing populism suggesting that negative language is used more frequently than positive language in framing strategies might suggest a more significant difference in the breakdown of positive versus negative words, the slight overall negative tone still aligns with the literature (Ernst et al., 2019; Nai, 2021; Widmann, 2021). It

suggests that right-leaning actors in institutions like the courts may emulate the tendency towards negative language typically employed by populist leaders, though to a lesser extent. This may be, in part, because in the context of a courtroom, people are often bound by norms and rules of engagement that populist leaders typically flout in public discourse.

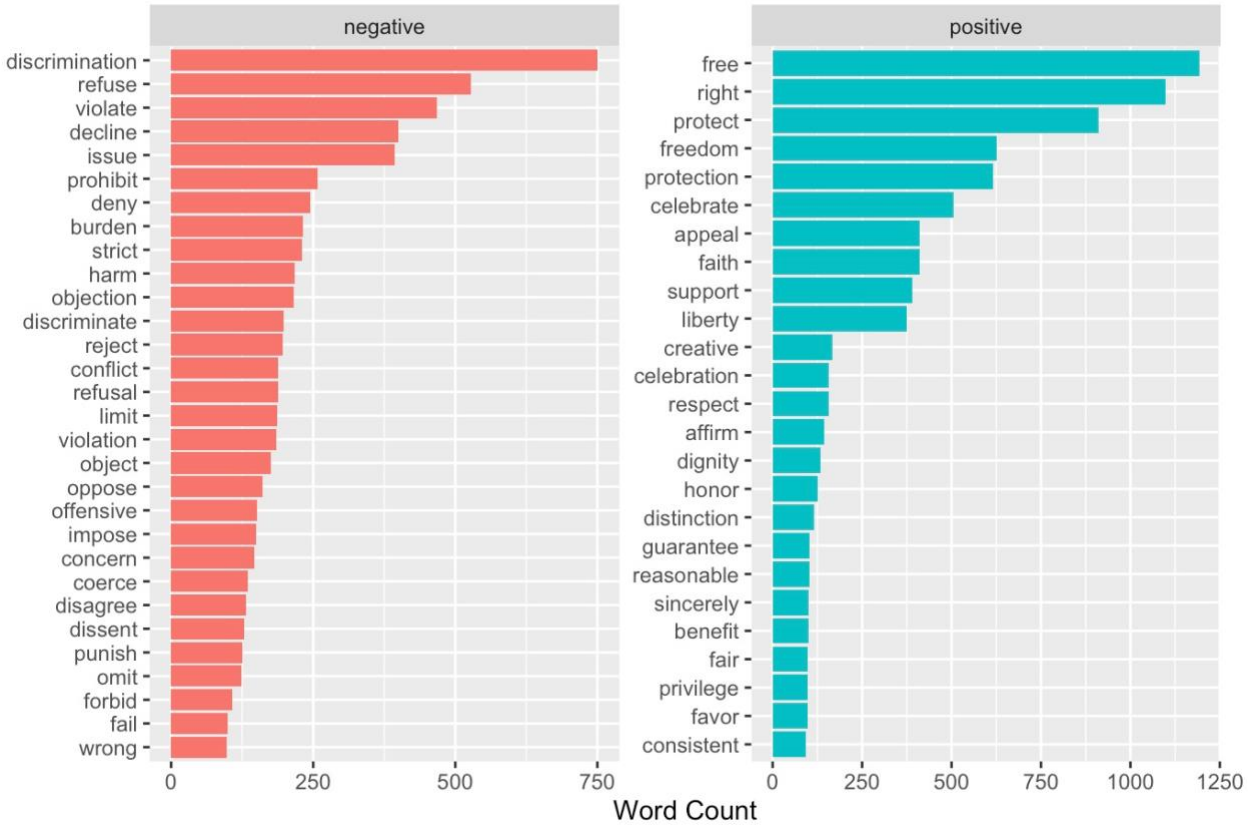
Figure 4. Overall Bing Polarity across Court Documents



Part of the driver for the negative skew may also be related to the ways in which Jack Phillips' lawyers and supporters would have constructed their argument around the *absence* of protection for First Amendment rights; a framing which would likely prompt the use of more negative words. The more balanced tone than is typically associated with right-wing populist political discourse, on the other hand, may also be a reflection of the fact that, in court documents, lawyers would make arguments championing their clients' rights (potentially a more positive framing) in addition to attacking the arguments against their client (potentially a more negative framing).

It is also useful to consider which words are driving the negative and positive tone. The negative and positive graphs in Figure 5 show many of the same words found in the above most common words graph (Figure 3). We see words like 'discrimination,' 'refuse,' and 'violate' at the top of the list of negative words, reflecting the way Jack Phillips' case was framed in the legal documents. In their Amicus Brief, Restoring Religious Freedom (*Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 2017) argued that while "the state may choose to acknowledge the changed 'public perception of homosexuality' […] this is scarcely an argument for denying First Amendment protection to those who *refuse* to accept these views" (p.21, emphasis added). A common theme across court documents was that the government and the courts were seeking to force religious Americans who believe homosexuality is wrong to condone it by forcing them to accept marriage equality and punishing them for acting in accordance with their beliefs as in the *Masterpiece Cakeshop* case.

Figure 5. Most Common Positive and Negative Words



In addition to their arguments for religious freedom, Jack Phillips' lawyers also put forward a free speech argument. According to the baker's lawyers, because "the freedom of speech protected by the First Amendment includes the 'right to refrain from speaking' and prohibits the government from telling people what they must say" (Petition for Writ of Certiorari at the Supreme Court of the United States, *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 2016, p.24a), forcing an artist like Jack Phillips to bake a cake for a same-sex wedding is akin to violating that right to free speech. They further argued that a Muslim, secular, or African-American baker would not be compelled in the same way to produce 'speech' they found objectionable. This echoes the strategies that right-wing populist movements regularly engage with which portray the elite as favoring the rights of minority 'others' that are not considered to be part of the 'true people' (Alston, 2017; Bílková, 2018; Koskenniemi, 2021). Similarly, they framed the case around the argument that Phillips' sincerely held faith prohibits

racist and atheist messaging, messaging about Halloween and alcohol, and the promotion of any marriage not between one man and one woman (Petition for Writ of Certiorari at the Supreme Court of the United States, *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 2016). This was an attempt to downplay the discriminatory nature of the baker's refusal by framing it in the context of his religious beliefs more generally.

In both their religious freedom and free speech arguments, Jack Phillips' lawyers and supporters relied on negative language to employ the framing strategy that is often used by right-wing populist actors of claiming victimhood. Though one would expect a legal argument to focus on the extent to which the opposition is wrong in their accusations, it is interesting to see, in the context of a human rights case, that Jack Phillips' lawyers and supporters go a step further to claim that not only is the opposing side bringing forth false accusations, they are in fact the ones being discriminatory. As Taş (2020) points out, this claiming of victimhood is also a common strategy used by right-wing populist actors in political discourse as a means of reinforcing the tensions between 'the people' (Christian business owners like Jack Phillips in this case) and the oppressive, out of touch 'elite' (the Colorado Civil Rights Commission in this case) who are seen as trampling on 'the people's' rights in favor of protecting the minority 'other' (Craig and Mullins who are part of and, therefore, represent the LGBTQ community in this case). We see positive words being used to reinforce Jack Phillips' religious conviction and pride in his Christian beliefs as a means of downplaying his refusal to bake a wedding cake for Craig and Mullins as simply part of a broader context of refusing to engage in ceremonies or celebrations that violate his beliefs. At the same time, we see negative words being used to convey the extent to which Craig and Mullins and the courts that side with them are the discriminatory oppressors.

Words like 'free,' 'right,' 'protect,' and 'freedom' are the most common positive words, underscoring Jack Phillips' right to free speech, the need to protect his freedom and his rights from government intervention and discrimination, as well as the left's agenda of 'political correctness.' As Restoring Religious Freedom (*Masterpiece, Cakeshop v. Colorado Civil Rights Commission,* 2017) argued in their Amicus Brief, the Colorado Civil Rights Commission sought to apply public accommodations laws in a way that "silence[s] those views that the First Amendment desires to *protect*" (p.21, emphasis added). The Becket Fund (*Masterpiece, Cakeshop v. Colorado Civil Rights Commission,* 2017) argued in their Amicus Brief that "the Religion Clauses [of the First Amendment] *protect* religious individuals from forced participation in religious events that *violate* their religious beliefs" (p.6, emphasis added), thereby protecting Jack Phillips from having to bake a cake for a same-sex wedding he believed was morally objectionable on the basis of his religion.

The fact that we only see a slight negative skew in polarity when looking across court documents may be indicative of the ways in which both positive and negative *words* can be used to construct both positive and negative framing. For example, in this case the word 'refusal' related to Jack Phillips' refusal to bake the wedding cake for Craig and Mullins. This word is negative but is being used to frame Jack Phillips in a positive light by emphasizing his religious conviction and pride in his religious identity as the driving force behind this refusal. Similarly, the word 'protect' is tagged as positive in the Bing lexicon and is used in relation to Phillips' lawyers' and supporters' calls for the court to protect the baker's right to free speech and freedom of religion. Though 'protect' is deemed to be a positive word, it is being used to portray the court and the Colorado Civil Rights Commission in a negative light insofar as they have, up to that point, failed to protect those First Amendment rights.

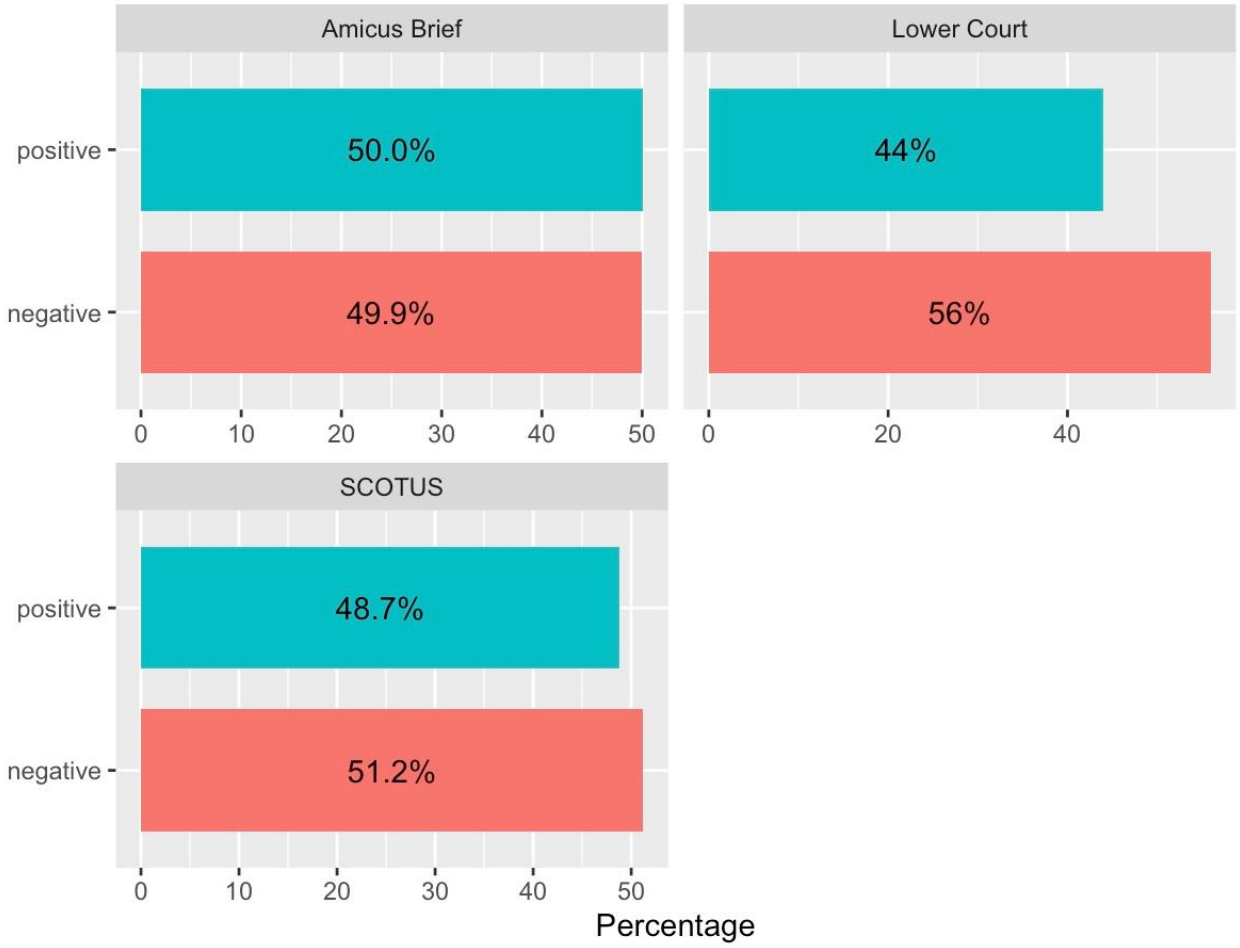
In the context of a right-wing populist government that relied heavily on affective framing strategies aimed at reinforcing perception of victimhood, and pride in one's identity in the face of perceived discrimination (Taş, 2020), it is interesting to see similar framing strategies appear in the discourse used by Jack Phillips' lawyers, in particular, who are supportive of that government. Despite seeing only a minor negative skew, in the context of the way Jack Phillips' lawyers were trying to portray him as a proud Christian victim of discrimination by the LGBTQ community and the courts who are inherently hostile to religion (specifically Christianity), it makes sense to see a more balanced use of negative and positive language in an effort to frame these opposing sides of the case.

Several of the words seen in the most common words, such as 'compel,' 'amendment,' and 'create' are not found in either the positive or negative graphs in Figure 3. This highlights one of the challenges and limitations with using a dictionary-based approach to sentiment analysis, wherein not every word is categorized. In the Bing lexicon, only 6,786 words are tagged as either positive or negative. This means that words that are deemed as 'neutral,' as well as many more clearly positive or negative words are not tagged. Of note, is the widespread use of the word 'compel' in legal language, generally speaking. This word features prominently in court documents given that cases often center around the court's authority to enforce certain actions or responses. Though Hu and Liu (2004) did not develop their dictionary in the context of an analysis of legal discourse, it is possible that 'compel' and similar words cannot consistently be associated with positive or negative sentiment. Specifically, it is possible that words like 'compel' are too context dependent to be uniformly associated with positive or negative sentiment. The NRC lexicon is similarly limited with only 6,453 words tagged as being

associated with a particular emotion (in the NRC lexicon, it is important to note that a single word may be associated with multiple emotions).

We continue to see a very slight skew towards negative language emerge when looking at the court documents by court type (Figure 6). While this is more pronounced in the lower court documents and SCOTUS documents, in the Amicus briefs there is a negligible difference between the percentage of negative and positive words. We do see, however, that negative words were much more prevalent than positive words in the lower court documents (56 percent negative compared to 44 percent positive) than we see in the Amicus briefs and SCOTUS documents where the difference doesn't exceed 2.5 percent. As explored in Chapter 4, many of the arguments, in the lower courts in particular, emphasized the discrimination that Jack Phillips was facing by virtue of his religious beliefs, attacked the government's perceived attempts to compel Jack Phillips to bake a cake in violation of his right to free speech, and demonized Craig and Mullins, and the LGBTQ community writ large for allegedly trying to force their politics on others.

Figure 6. Overall Bing Sentiment by Court Document Type

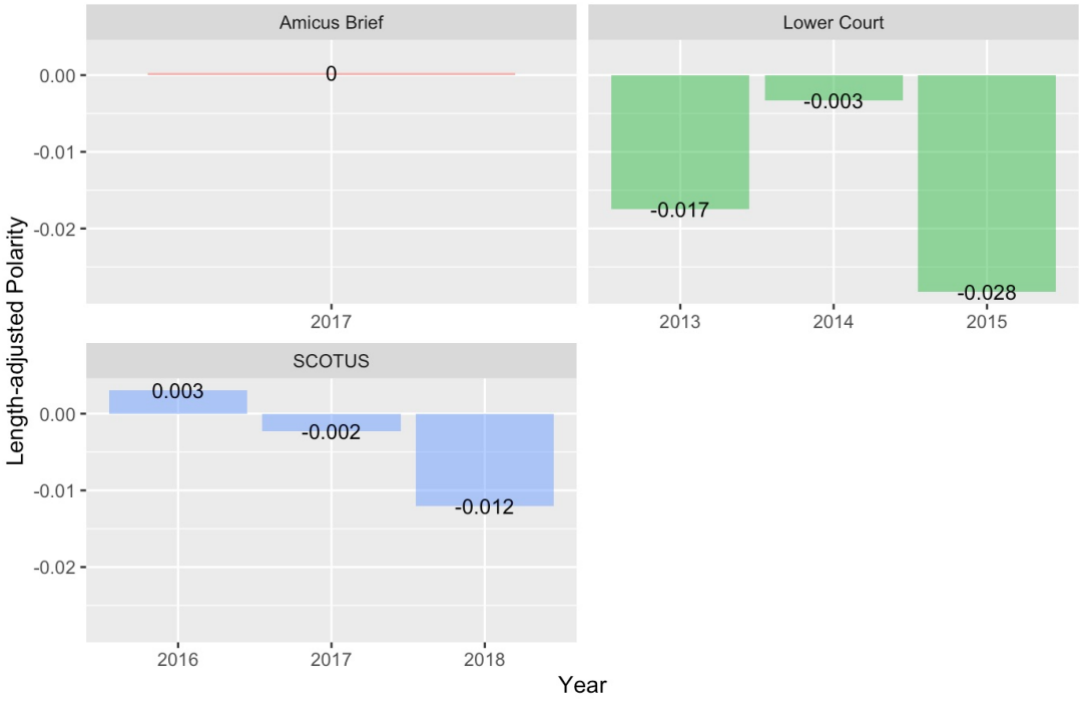


Similarly, when we examine net sentiment by court document type by year from 2013 to 2018 we see that, when adjusted for length,[55] the net sentiment, though consistently negative, fluctuates in the lower court documents from 2013 to 2015, and in the Supreme Court documents the net sentiment becomes increasingly negative from 2016 to 2018 (Figure 7). The Amicus briefs were all filed in 2017 so there is no comparison to be made over time, however; as with the positive/negative comparison in Figure 4, the net sentiment is essentially neutral even when adjusted for length.

[55] Adjusting for length involves looking at the full length of the document, including untagged words, rather than only the words tagged by the lexicon. This helps address the skew that might occur when analyzing documents with significantly different lengths.

The SCOTUS documents' net sentiment ranges from slightly positive in 2016 to increasingly negative in 2017 and 2018. The two documents in support of Jack Phillips in 2016 were a petition for a Writ of Certiorari and the Supreme Court's reply in support of this petition. It's possible that the slightly positive net sentiment for this year is a result of the tone of the petition for a Writ of Certiorari, as it emphasized Phillips' religious convictions and the sanctity of his artistic expression, through cake, as free speech. By comparison, in 2017 the net sentiment is only slightly negative as the brief for petitioners and the reply to this brief highlight the strengths of Jack Phillips' argument, using a more positive tone, while the oral argument transcript included both arguments on behalf of the baker and the couple, rendering the overall sentiment more neutral. In 2018, the SCOTUS opinion was issued. The tone of this document is likely more negative overall than the preceding two years, given that the focus of this document is to underscore the ways in which the Colorado Civil Rights Commission violated the free exercise clause by not considering Phillips' religion in a neutral and respectful way.

Figure 7. Net Sentiment over Time by Court Document Type



The only slight skew towards negative polarity across court documents suggests that in the context of legal discourse surrounding a human rights case, there may be a more balanced approach to the use of affect than is seen in right-wing populist political rhetoric which tends to rely more heavily on negative language (Ernst et al., 2019; Lindholm et al., 2025; Nai, 2021; Ward et al., 2025; Widmann, 2021). One reason for this may be the approach lawyers take to writing legal briefs. As Black et al. (2016) point out, "the legal brief is the primary vehicle by which lawyers seek to persuade appellate judges" and to "influence how they think about a case and vote in that case (p.378). Because the influence of a brief depends on the writer's perceived credibility, it is important that attorneys craft their briefs in ways that reinforce their perceived credibility (Black et al., 2016). Specifically, appellate briefs should use reasoned arguments and avoid using overtly emotional language in their briefs as this type of language "suggests that the attorney writing it lacks credibility" (Black et al., 2016, p.378; Magidson, 1971; Scalia & Garner, 2008). Scalia and Garner (2008) argue that "good judges pride themselves on the rationality of their rulings and the suppression of their personal proclivities, including most especially their emotions" (p.32). As such, though they suggest subtle emotional appeals may appropriate, overt use of emotionally charged language should be avoided (Black et al., 2016).

In fact, Shepherd and Cherrick (2006) argue that crafting an emotional appeal in subtle ways is a powerful mechanism for persuading judges. This emotional appeal, however, must be developed "through the advocate's fair factual statement, accurate analysis of the law, and compelling legal reasoning. The brief should be written in an objective tone with no flashy displays of adjectives intended to incite the court or enrage the opponent" (Shepherd & Cherrick, 2006, p.161). This may contribute to why see more neutral polarity across the briefs submitted by Alliance Defending Freedom and Jack Phillips' supporters. It is possible that this explains

how the Amicus Briefs appeared to have an even split of negative and positive words, in the sense that those writing them did not always have the same established credibility as Jack Phillips' attorneys would have had in the lower courts and in front of the Supreme Court.

Analysis of specific sentiments in court documents using the NRC lexicon

When looking at how more specific emotions like trust, anger, fear, joy, sadness, anticipation, disgust, and surprise appear across all of the court documents (Amicus briefs, lower court documents, and SCOTUS documents), we see that trust is most prevalent (29.1 percent), followed by fear (13.1 percent), anticipation (12.9 percent), joy (12.60 percent), anger (12.2 percent), sadness (8.4 percent), disgust (5.7 percent), and surprise (5.6 percent) (Figure 8). We see a similar pattern emerge when looking just at the Amicus briefs. However, lower court documents rely on a higher percentage anger words (14.5 percent) compared to the SCOTUS documents (12.6 percent) and the Amicus Briefs (11.8 percent), as well as the overall percentage (12.2 percent) (Figure 9). We also see that the lower court documents consist of a higher percentage of anger, fear and joy words than anticipation words while the SCOTUS documents use a higher percentage of anticipation, joy, and anger words than fear words (Figure 9). This further reflects the more strongly negative overall tone found in the lower court documents compared to a more balanced or neutral tone in the Amicus Briefs and SCOTUS documents (Figure 6).

Figure 8. NRC Sentiment Breakdown across Court Documents

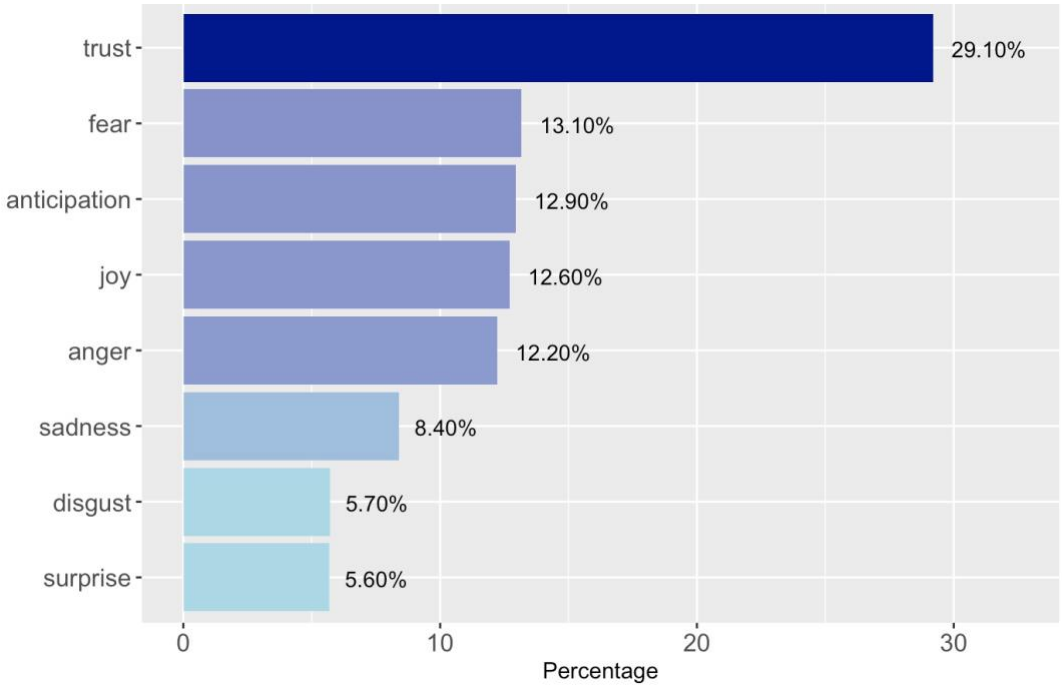
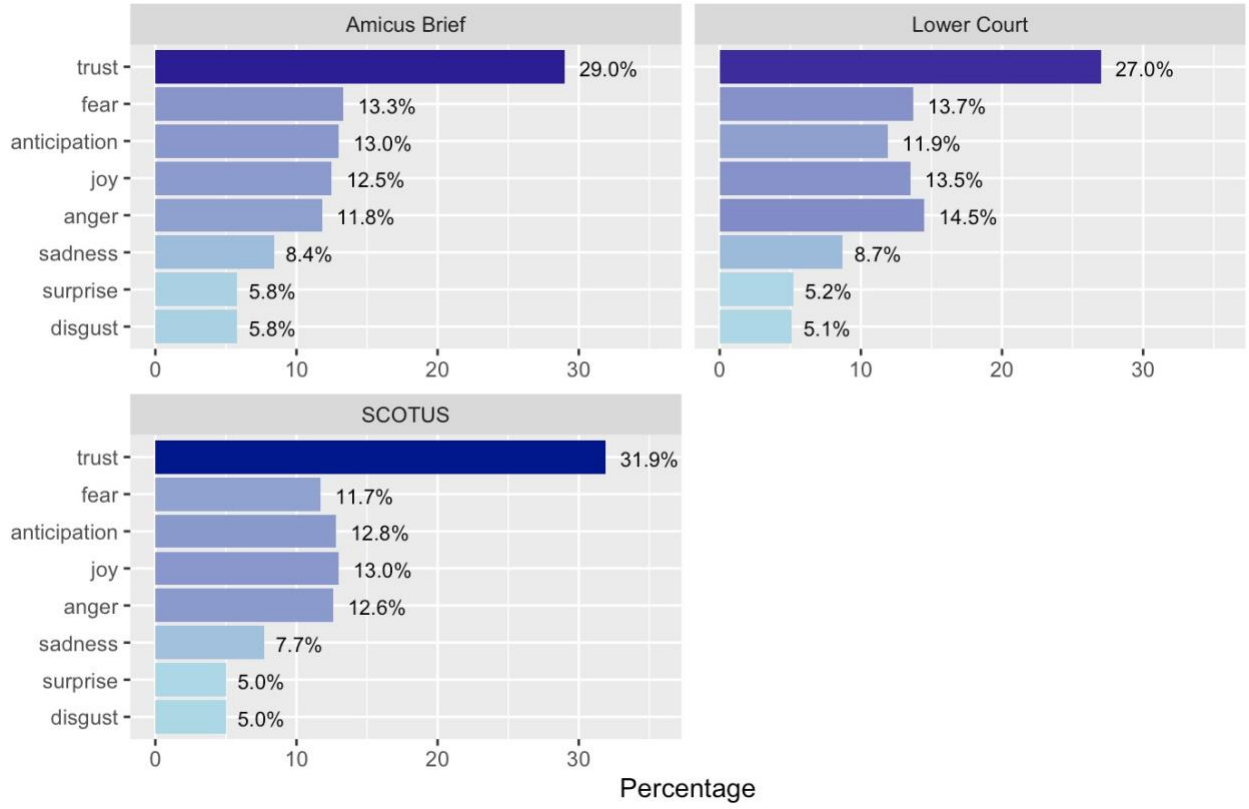


Figure 9. NRC Sentiment Breakdown by Court Document Type

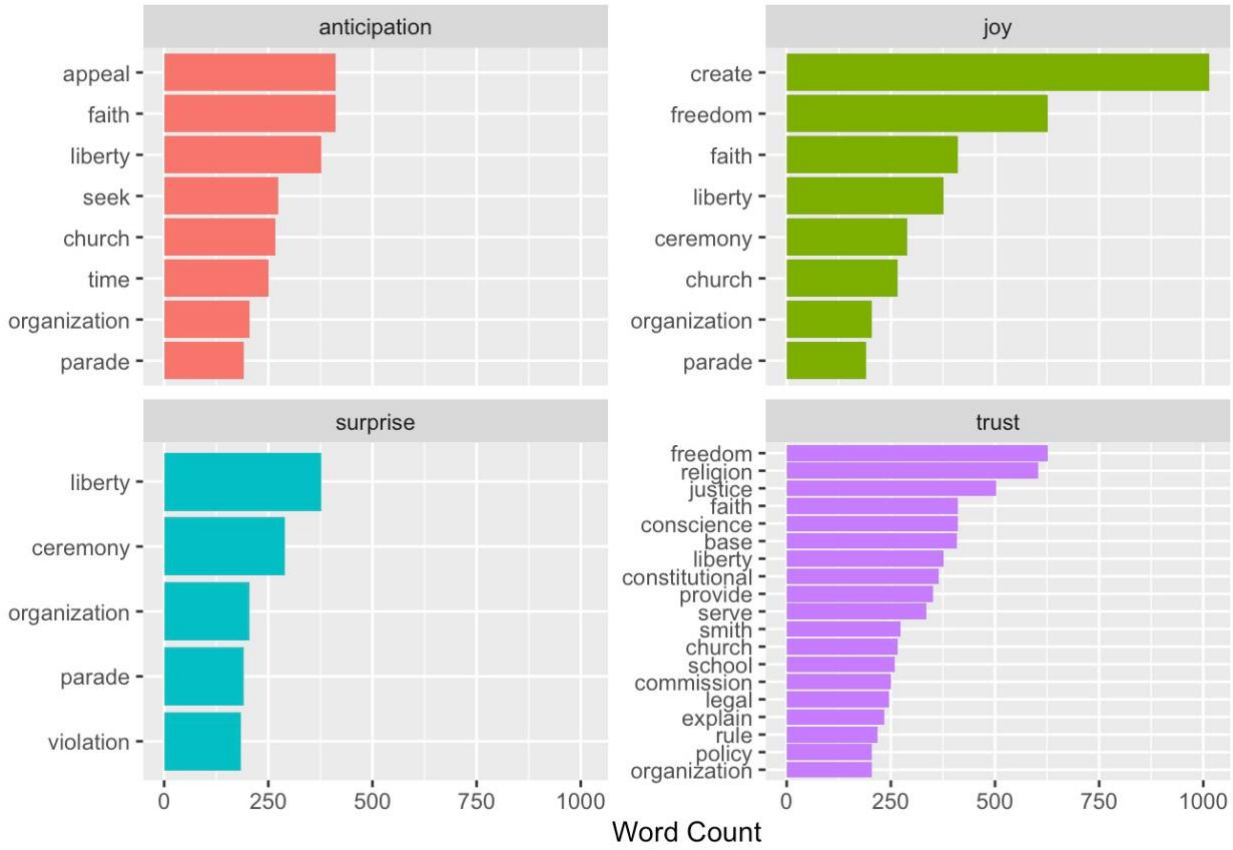


Looking at the words that contribute to each sentiment across court document types can help us better understand the overall sentiment breakdown we see in Figures 8 and 9. Words like 'freedom,' 'religion,' 'justice,' 'faith,' and 'conscience' are the most prevalent words associated with trust (Figure 10). In the context of a human rights case, particularly in a constitutional system like in the United States, it is also not unexpected to see words like "freedom," "justice," and "liberty" being used heavily throughout the documents, as this case centered around First Amendment rights. Several of these words, and those associated with joy, also appear in the list of words contributing to positive tone overall (Figure 3). These words feature prominently in all of the court documents as the crux of how Jack Phillips is described by his lawyers, contributing to the strong appearance of trust and joy in the court documents in Figure 6.

For example, in the Opening Brief for Petitioners to the Supreme Court of the United States (*Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 2017), Phillips' lawyers extended the implications of the case beyond the baker's own faith, arguing that "hanging in the balance is more than Phillips's *freedom* to ply his craft without *forfeiting* his conscience. At stake is his and all likeminded believers' *freedom* to live out their religious identity in the public square" (p.16, emphasis added). They also stated, "artists and other speakers must remain free to create expression as their *consciences* dictate—not as the state *demands*. Any other outcome would replace the First Amendment's majestic guarantees with 'a mere shadow of *freedom"*" (Opening Brief for Petitioners to the Supreme Court of the United States, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 2017, p.34-35, emphasis added). The use of joy words like 'freedom' and 'create' coupled with words representing anger like 'forfeiting' and 'demands' point to the more complex dyadic feeling from Plutchik's (1980) model of *pride* in one's

religious identity. Specifically, the desire to live out that identity publicly and be unwilling to compromise on one's religious convictions under any circumstance.

Figure 10. Most Common Words by Positive Emotion



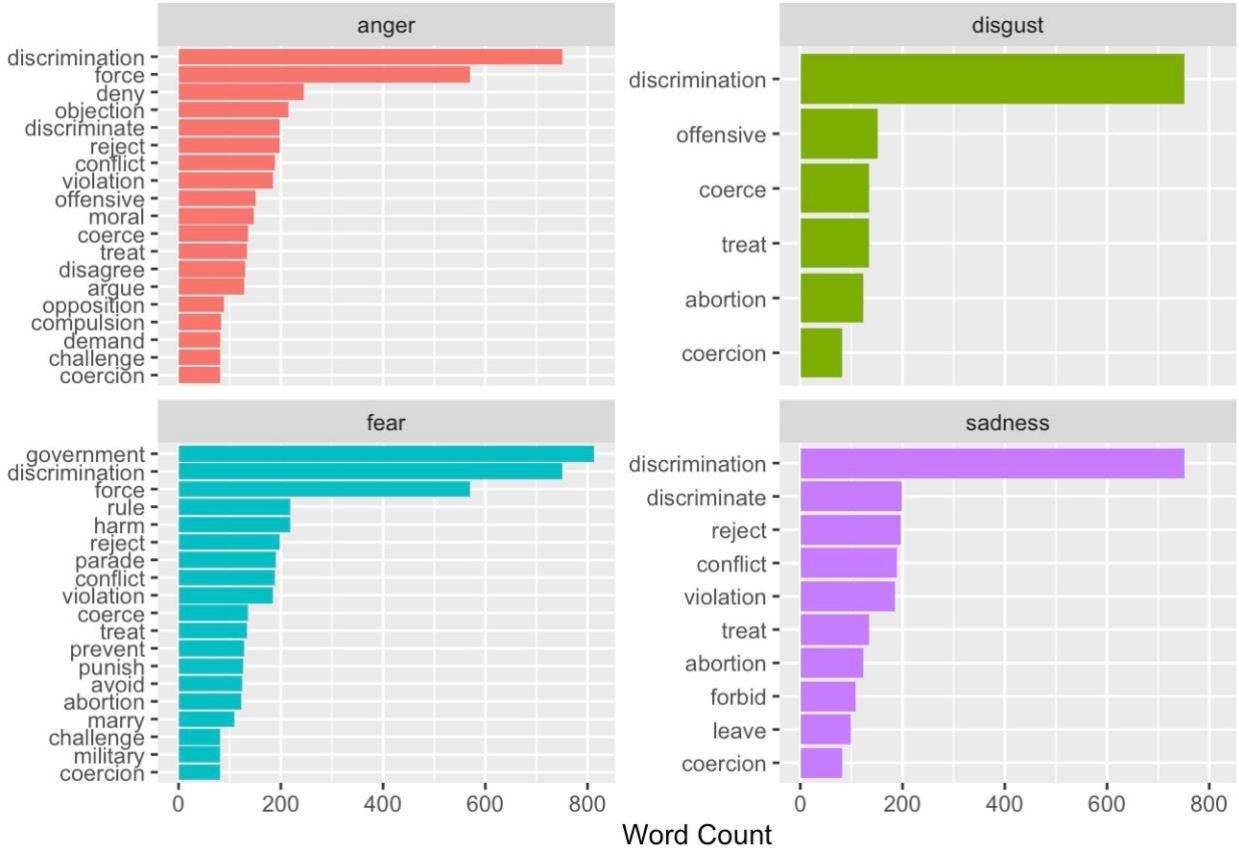
When looking at words associated with fear, we see that words like 'government,' 'discrimination,' 'force,' 'rule',' and 'harm' are the most prevalent. Similar words are prevalent in the list of anger-related words, in addition to 'violation,' 'coerce,' and 'disagree' (Figure 11). For example, in the Appellant's Reply Brief to the Colorado Court of Appeals, the Alliance Defending Freedom used a narrative of righteous anger and fear of future repercussions when arguing,

> the harm suffered by society when the government *coerces* conscience—and especially that of artists—far outweighs any alleged *harm* Appellees raise. In fact, Appellees have

> suffered no real *harm* at all. Phillips does not flatly refuse service to gay and lesbian customers—conduct that would plainly *violate* CADA—but instead objects to using his artistic talents and abilities to create expression celebrating an event that *violates* his religious beliefs" (*Masterpiece Cakeshop v. Craig and Mullins*, 2015, p.21-22, emphasis added).

Phillips' lawyers use this narrative to negate Craig and Mullins' argument that they were discriminated against, by claiming that Phillips was not refusing to serve members of the LGBTQ community outright but rather objecting to contributing to the celebration of an event that violated his religious beliefs.

Figure 11. Most Common Words by Negative Emotion



That we see similar words used to reflect both fear and anger highlights the fact that words in the NRC lexicon can be associated with more than one emotion. This can be a challenge with dictionary-based sentiment analyses, as they are limited in their ability to assess the context of, for example, an entire sentence containing the word to better determine with which sentiment it is best associated. In other words, though a word like 'discrimination' is correctly associated with negative emotions, some degree of nuance is lost as the dictionary-based approach cannot be more specific in its attribution.

The use of negative versus positive words, as well as specific emotions in the construction of the argument in favor of religious freedom and free speech across all court documents demonstrated a more neutral polarity and greater use of positive emotions overall than is typically seen in right-wing populist framing strategies. What is interesting, however, is that despite the use of slightly different affective framing, Jack Phillips' lawyers and supporters did engage in the right-wing populist tendency to adopt progressive human rights language to develop their 'backlash' response (Dudai, 2017; Hamilton, 2023). Specifically, in the court documents, we frequently see attempts to use negative and positive words and words associated with the eight basic emotions to construct Phillips as the true victim in this human rights case. This was achieved using negative framing emphasizing the discrimination that Phillips was subjected to, while simultaneously using more positive framing to downplay the discriminatory nature of the baker's refusal to bake the wedding cake.

This portrayal of Jack Phillips as the true victim in this human rights case reinforces the right-wing populist claim that 'elites' use human rights for minorities as a means of circumventing the democratic process and, by extension, the 'will of the people' (Tasioulas, 2019), while simultaneously using the language of victimization and violated rights that is

necessary when constructing human rights claims in general (Brysk, 2018; Hunt, 2007). As Mégret (2022) points out, adopting progressive human rights language is a common right-wing populist 'backlash politics' approach, particularly in legal contexts, given that "legalization and technocratic governance" have come to indicate a progressive human rights project's authority (p.246).

Affect is an important tool in this claiming of victimhood, given the importance of constructing subtle emotional appeals that make others feel horrified by the alleged violation of rights (Hunt, 2007). Furthermore, affective language reinforces the relationships and boundaries between different groups of people (Ahmed, 2004a; Ahmed, 2004b). As seen in this case, Phillips' lawyers sought to reinforce boundaries between religious Americans and the LGBTQ community and their allies, while emphasizing the relationship between religious Americans and 'all' Americans (excluding, of course, LGBTQ Americans). These findings indicate that in the context of a right-wing populist political context, though lawyers rely on some of the framing strategies employed by right-wing populist actors, the use of affect to reinforce their arguments in court documents is more balanced and neutral than is typically seen in the context of political discourse.

Sentiment in X (Twitter) data

When examining the X (Twitter) data to better understand how key actors and the general public engage with affect in their discourse, it is again useful to look at the most common words used overall. In both the general public and key actors' tweets, 'religious' appears as the most commonly used word, as it did in the court documents (Figure 12 and Figure 13). This is again unsurprising given the nature of the rights claim at hand, and the ways in which Jack Phillips' lawyers framed the case around the baker's religious identity. The word would also appear

frequently as the heart of their argument was that forcing Phillips to bake the cake would violate his religious freedom in addition to his right to free speech. Similarly, both the general public and key actors focused on the baker's identity as a Christian and his religious beliefs, in addition to the importance of liberty more abstractly. Interestingly, the words 'government' and 'win' appeared in the key actors' top 25 words (Figure 13) but not the general public's (Figure 12). This indicates that key actors were more inclined to tweet about the upcoming Supreme Court decision in addition to the case's ultimate victory in the Supreme Court, as well as the role of the government in contributing to the violation of Jack Phillip's rights. The focus on the Supreme Court victory can also be explained by the fact that a majority of tweets by key actors took place from 2016 to 2018 after the Supreme Court agreed to hear the case.

Figure 12. Most Common Words Used by the General Public

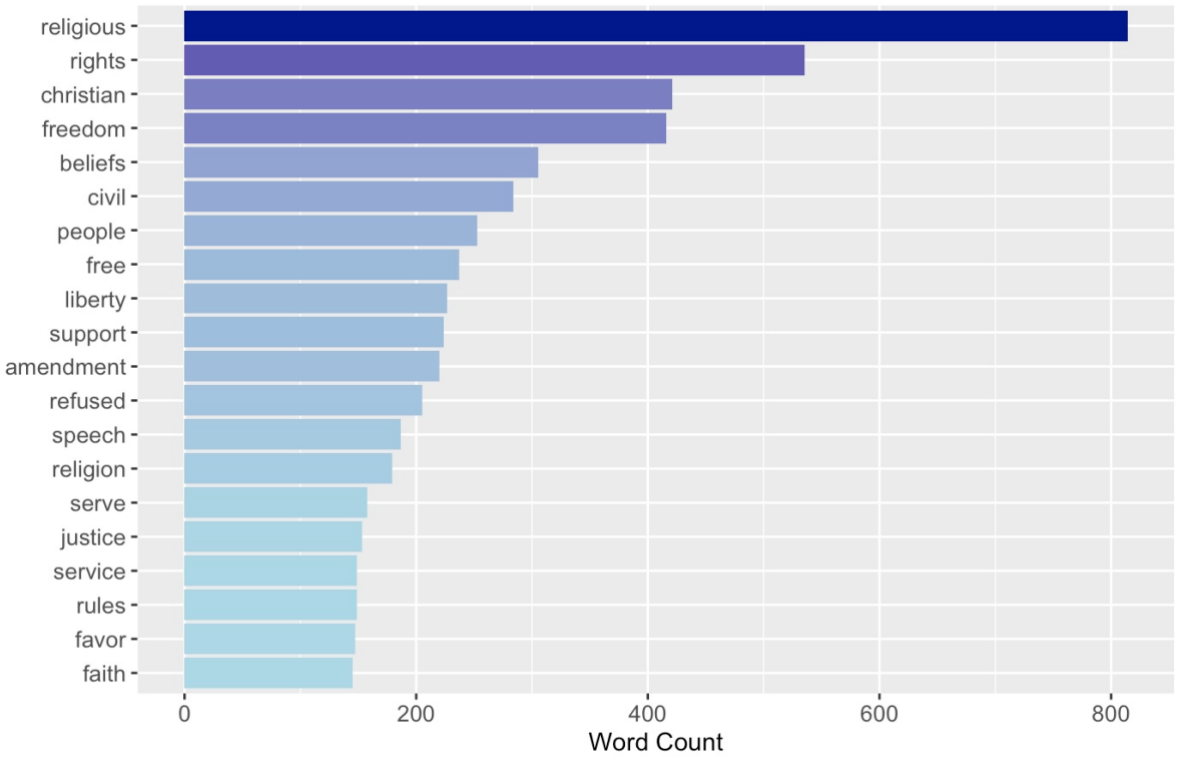
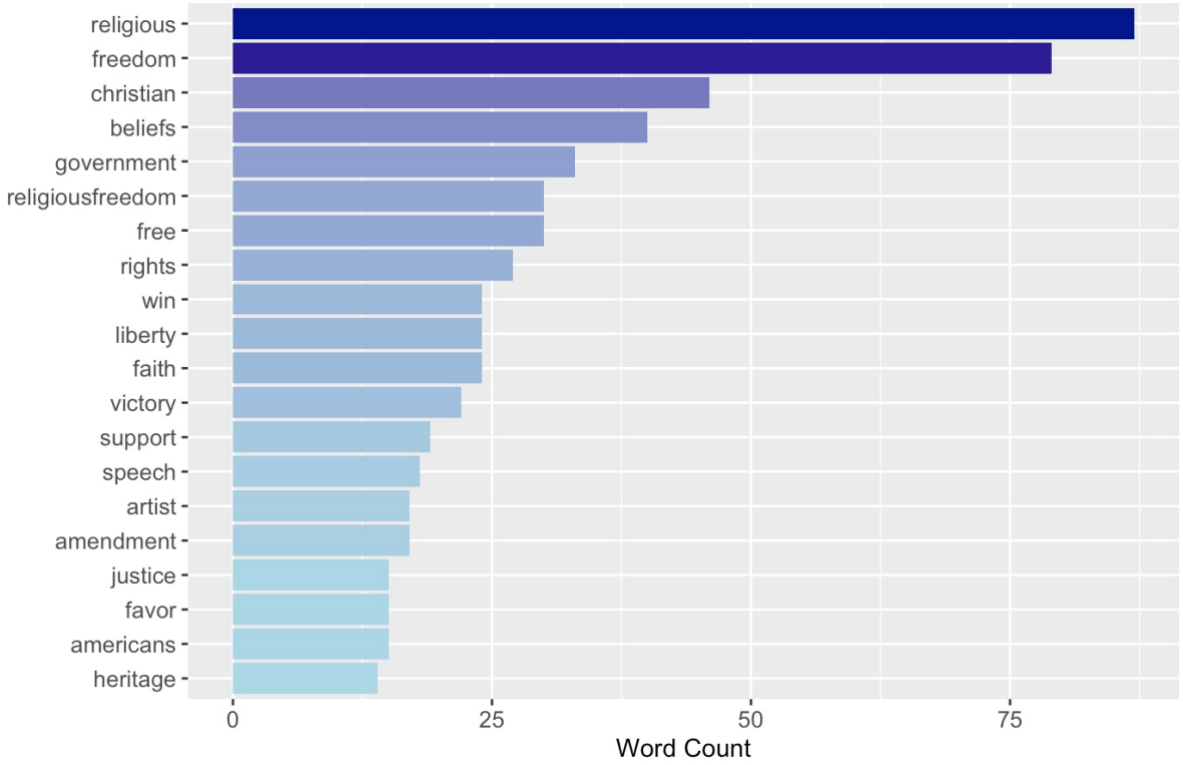


Figure 13. Most Common Words Used by Key Actors

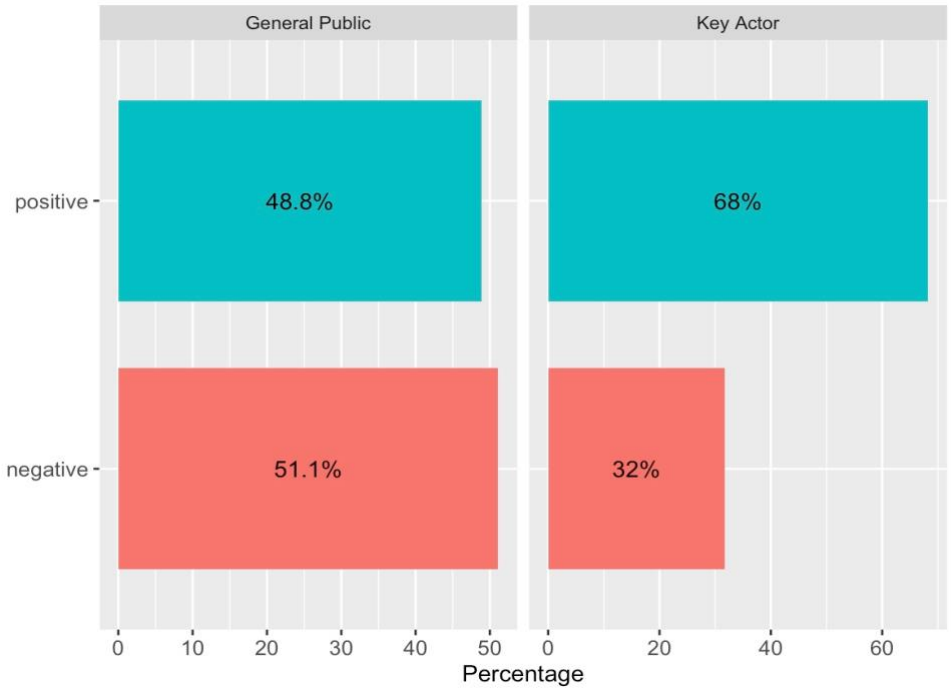


Overall tweet polarity with the Bing lexicon

If we look at the overall tone of tweets by the general public and key actors, we see that, while tweets by the general public are slightly more negative overall (48.8 percent positive compared to 51.1 percent negative), key actors' tweets are dramatically more positive than negative (68 percent positive compared to 32 percent negative) (Figure 14). It is possible that this positive skew in key actors' tweets is related to the timeframe in which the tweets were posted. A large majority of the tweets by key actors were posted after the Petition for a Writ of Certiorari was submitted to the Supreme Court in 2016. In fact, despite a negative net sentiment in 2013 and 2015, key actors' tweets became increasingly positive from 2016 to 2018 (Figure 15). The highly negative net sentiment in 2013 is because there was only two key actor tweets that year, both of which had an overall negative tone. One by Breitbart News (an American far-right news

source) and one by Tony Perkins with the Family Research Council (an evangelical non-profit activist group and think-tank that filed an Amicus Brief in support of Phillips).

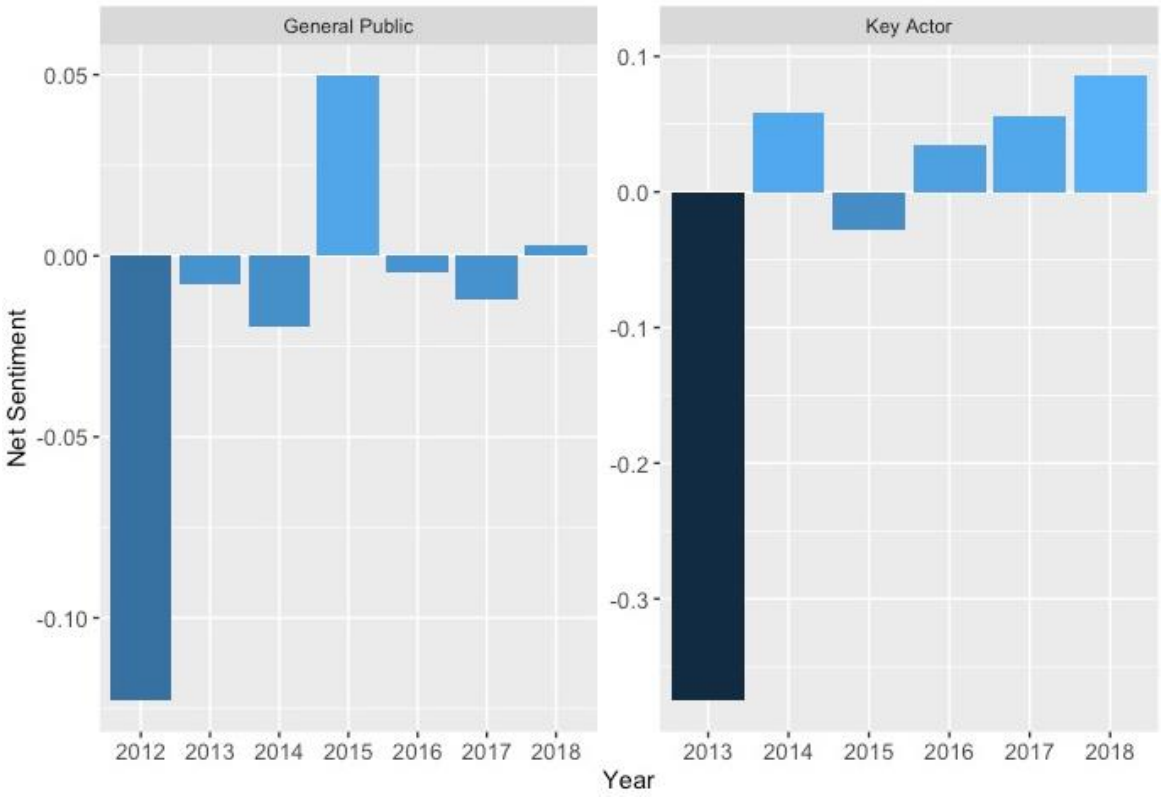
Figure 14. Overall Bing Polarity by Actor Type



Though the overall polarity of the tweets from the general public was only slightly more negative than positive, when broken down by year we see that the net sentiment was consistently negative except for 2015 and 2018 (Figure 15). The slightly positive net sentiment in 2018 is likely attributed to the baker's narrow victory at the Supreme Court that year. Supporters pointed to what they perceived to be a "decisive Victory for Religious Freedom at the U.S. Supreme Court in Masterpiece Cakeshop" (@ophidianpilot, 2018). The net sentiment in 2018, however, was less positive for the general public than key actors, however, as many supporters pushed back against the notion that the victory was narrow since it was 7-2 (the ruling itself was narrow in scope rather than suggesting that the number of justices voting for or against was somehow narrow). Additionally, some supporters in the general public also denigrated Justices Ruth Bader Ginsburg and Sonia Sotomayor for voting against the baker stating, "It would have been

unanimous, but we have seen that there are two judges who do not decide according to the law, and have no heart, knowing how these leftist decisions of Colorado attacked and destroyed Jack Phillips, two vote against [sic]" (@CruzJoseambro, 2018).

Figure 15. Net Bing Sentiment by Actor Type



It is possible that the positive skew in 2015 for tweets by the general public is related to supporters' responses to the Colorado Court of Appeals upholding the original decision that Phillip's had discriminated against Craig and Mullins by refusing to make them a custom wedding cake. Supporters in the general public praised Phillips' religious conviction, stating, "it is great how Jack Phillips keeps his faith. I hope judges will come to senses and recognize Religious Civil Rights" (@thecrcr, 2015) and, "I would still stand tall and say no to baking same sex cakes. We r [sic] still behind Jack Phillips" (@katatkms1224, 2015). Additionally, many tweets from the general public reference the crowd-funding efforts taking place to support

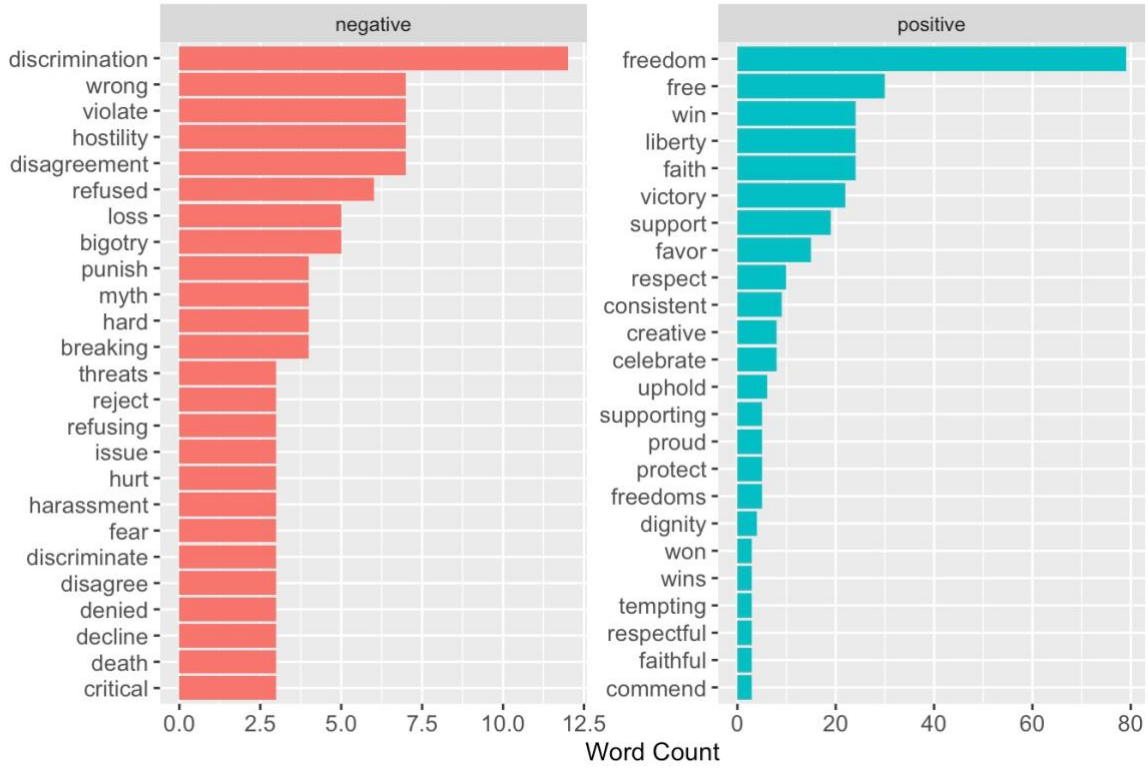
Masterpiece Cakeshop while the bakery was shut down for refusing to require sensitivity training for employees as mandated by the court. Key actors, however, focused more on the ruling against the baker causing a more negative skew in 2015, as well as pointing to how "Jack Phillips had to stop making wedding cakes for fear of fines" (@Heritage, 2015) and was "under threat" (@tperkins, 2015) by those who condemned his decision to not bake the cake.

That key actors' overall positive polarity being related to the Supreme Court ruling in favor of the baker in 2018 is further supported by looking at key actors' most frequently used positive words (Figure 16). Words like 'win,' 'victory,' and 'uphold' demonstrate the focus on the Supreme Court decision and the baker's 'win.' Phillips' supporters argued, "this is a *victory* for Jack Phillips and our nation's long cherished freedom of following one's deeply held beliefs without fear of government punishment" (@tperkins, 2018, emphasis added) and that "this is a *victory* for the Constitution and for the free exercise rights of all Americans" (Chuck Hurley as quoted by @theFAMiLYLEADER, 2018, emphasis added). Despite the narrow nature of the Supreme Court ruling, the baker's supporters pushed a narrative suggesting widespread, constitutional implications for 'all Americans.' In reality, the ruling only applied to the actions of the Colorado Civil Rights Commission in the *Masterpiece Cakeshop* case specifically, leaving the questions of free speech and freedom of religion as legitimate objections or exemptions from anti-discrimination laws unanswered.

The most common negative words used by key actors point to an emphasis on the 'discrimination,' 'hostility,' 'bigotry,' and 'threats' that Jack Phillips experienced over the course of the case (Figure 16). For example, in 2018, key actors tweeted their thanks to Alliance Defending Freedom for "working against government *hostility* towards people of faith which has no place in our society" (@azpolicy, 2018, emphasis added). Ahead of the Supreme Court ruling,

key actors argued that Phillips had faced "blatant anti-religious *bigotry*" (@TxValuesAction, 2017, emphasis added). They disparaged the LGBTQ community as accusing others of discrimination, even as "they *discriminate* against Christians like #JackPhillips of #MasterpieceCakeshop on a daily basis," calling them "hypocrites" (@BiblicalSigns, 2017, emphasis added). Similarly, despite claiming that Jack Phillips had experienced discrimination on the basis of his religious beliefs, the Alliance Defending Freedom tweeted that "not every disagreement is *discrimination*" (@ADFLegal, 2017), implying Craig and Mullins were not actually discriminated against.

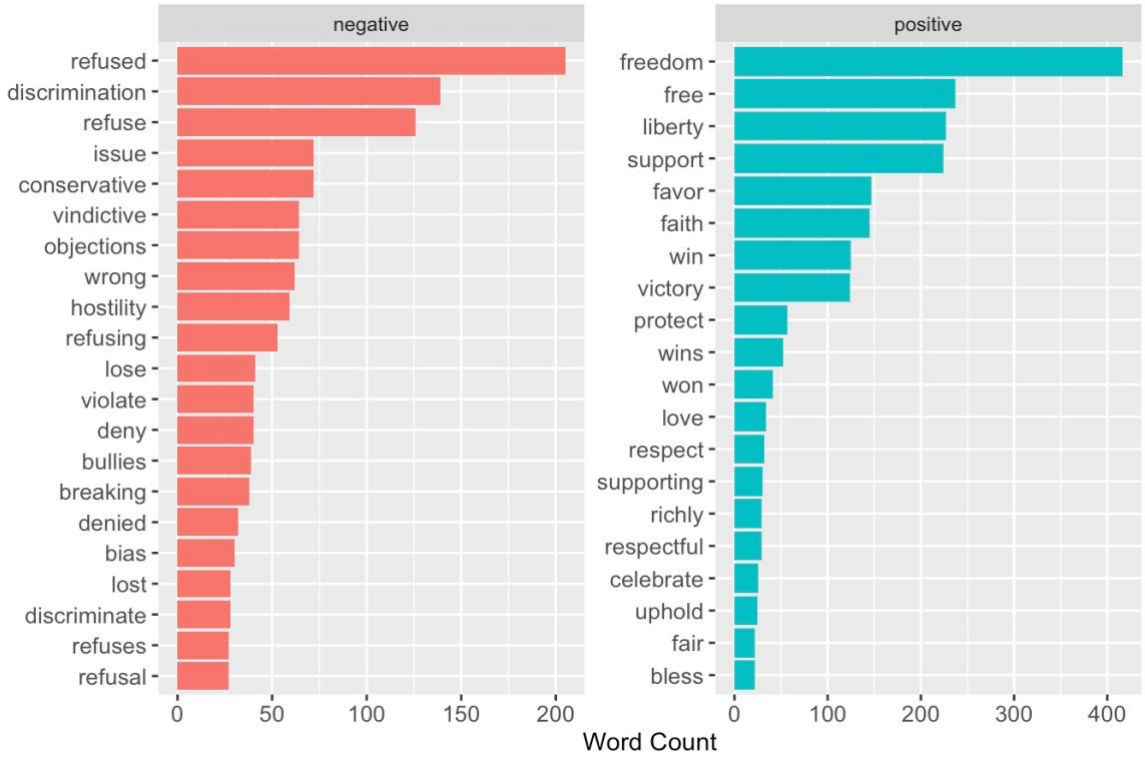
Figure 16. Most Common Positive and Negative Words Used by Key Actors



The general public also frequently mentioned the 'win' and 'victory' (Figure 17) contributing to the positive net sentiment in 2018 (Figure 15). Their negative rhetoric, however, rather than focusing on the experiences of the baker, emphasized portraying the couple and the LGBTQ community more generally as 'vindictive' and as 'bullies' for allegedly forcing their

'lifestyle' on religious Americans. For example, throughout the duration of the case supporters in the general public made arguments that "Jack Phillips owner of masterpiece cake shop in Denver Colorado, is another example the gay agenda using the ACLU to persecute Christians" (@danielcaimi, 2014), urging others to "defy the #GayGestapo & Stand Up for Freedom" (@ElenaFelicia47, 2014). Additionally, many argued that Jack Phillips had not discriminated against Craig and Mullins because the government "cannot compel Jack Phillips to create art to celebrate what he sees as wrong, at least if we're to remain a free society" (@drexrawson, 2017).

Figure 17. Most Common Positive and Negative Words Used by the General Public

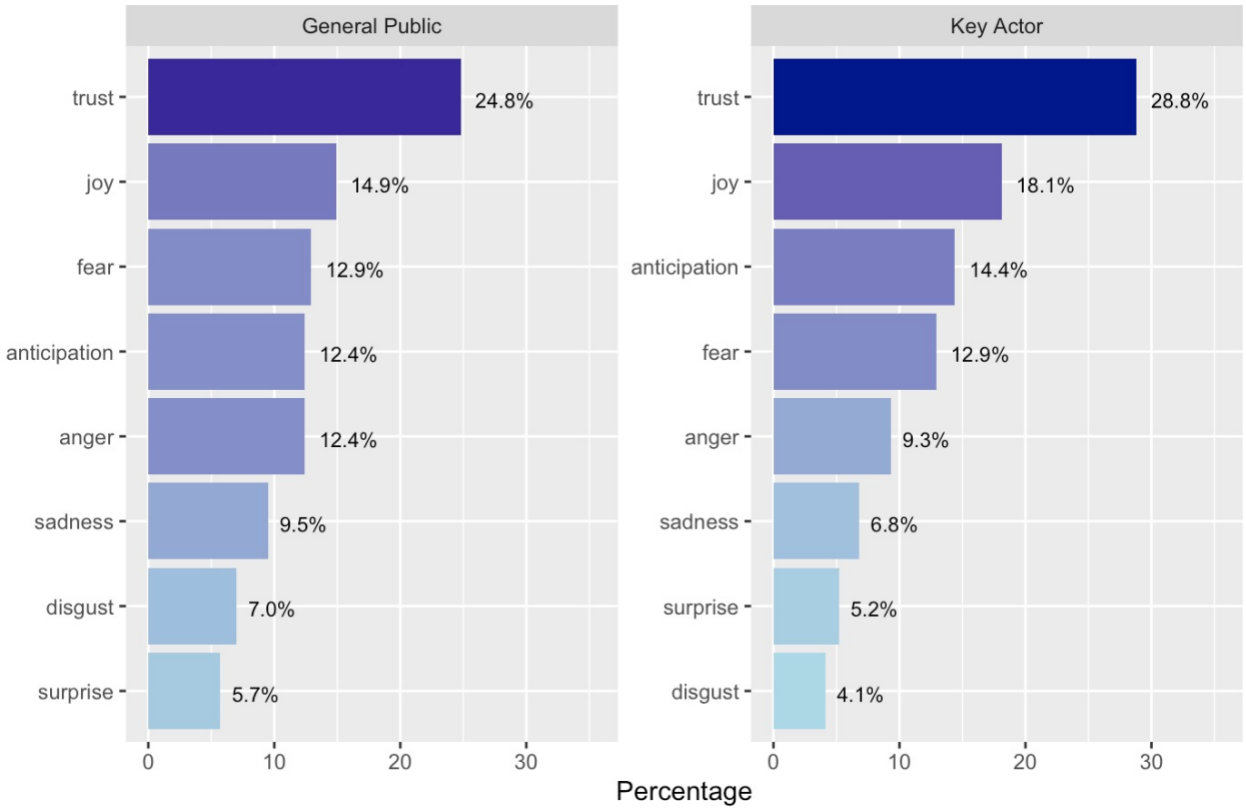


Analysis of specific sentiments in tweets using the NRC lexicon

Similar to the court documents, we see trust emerge as the most prevalent emotion for both the general public and key actors (24.8 percent and 28.8 percent, respectively) (Figure 18). In tweets by the general public, joy was the second most prevalent emotion (14.9 percent), followed by fear, anticipation, and anger in almost equal measure (12.9 percent, 12.4 percent,

and 12.4 percent, respectively). For key actors, though joy was also the second most prevalent emotion (18.1 percent), anticipation (18.1 percent) was more prevalent than fear (12.9 percent) and anger (9.3 percent). For both the general public and key actors, sadness, disgust, and surprise were used to a lesser extent.

Figure 18. Overall NRC Sentiment by Actor Type



'Fighting' emerged as common word driving the prevalence of anger in the X (Twitter) data for both key actors and the general public (Figures 19 and 20). Key actors pointed out that "Jack Phillips is *fighting* a #SCOTUS battle to defend his freedom of artistic expression. However, the radical LGBT activists attacking his First Amendment rights do not consider cake designs to be free speech at all" (@txvalues, 2017, emphasis added). The ways in which this battle was carried out in the courts by Alliance Defending Freedom was equivalent to "*fighting* for all of our freedoms" (@HeritageOTH, 2018, emphasis added). The general public similarly

championed Alliance Defending Freedom as "*FIGHTING* THE REGRESSIVES WHO WANT TO ERODE LIBERTIES ENSHRINED IN AMERICAS FOUNDING DOCUMENTS" (@AndTParty, 2018, emphasis added). They were also keen to emphasize that Jack Phillips was "*fighting* for the First Amendment, not against gay marriage" (@180report, 2017, emphasis added), and that "Christian Values are in Real Danger. You see, Jack Phillips is at the Supreme Court *fighting* for his right to Religious Liberty, and the Liberal Lobby is doing everything they can to derail his case" (@Bryan700, 2017, emphasis added).

Figure 19. Most Common Words for Negative Emotions by Key Actors

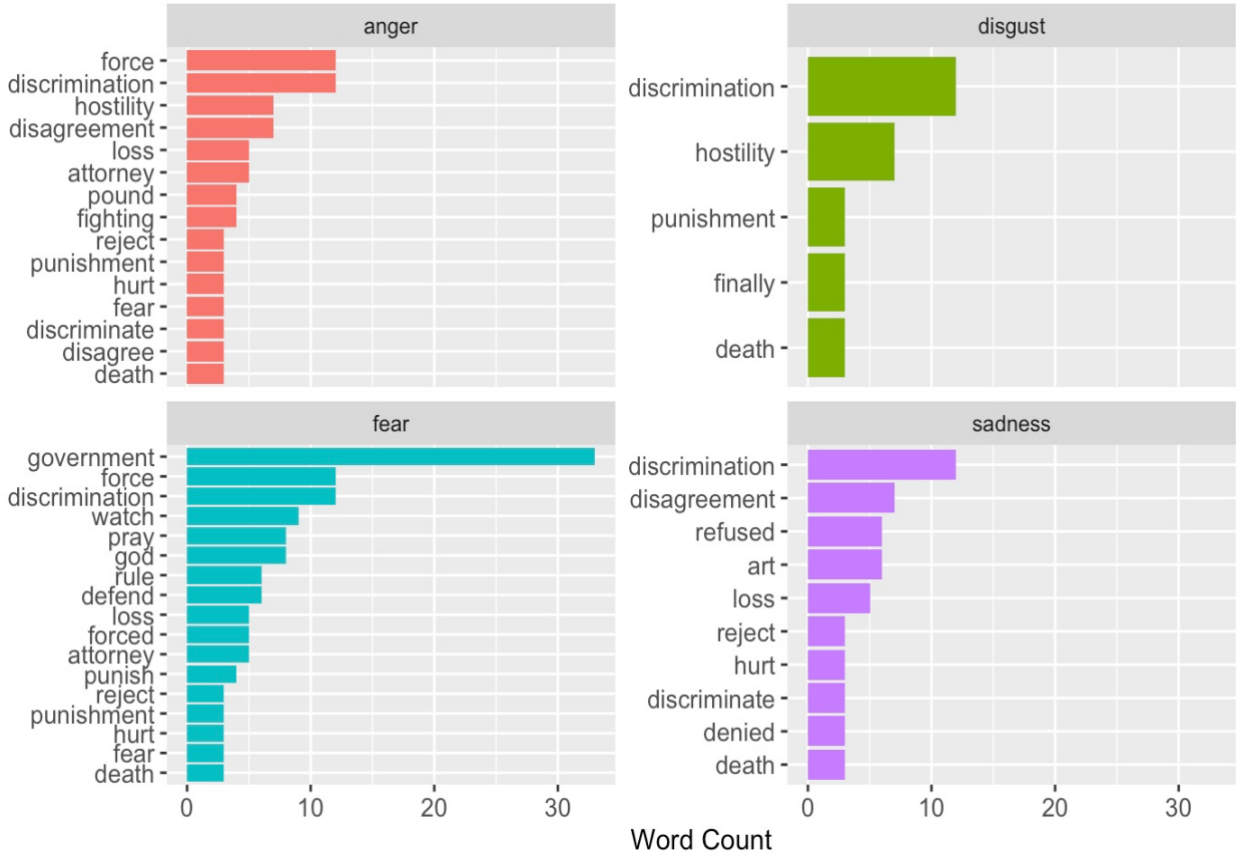
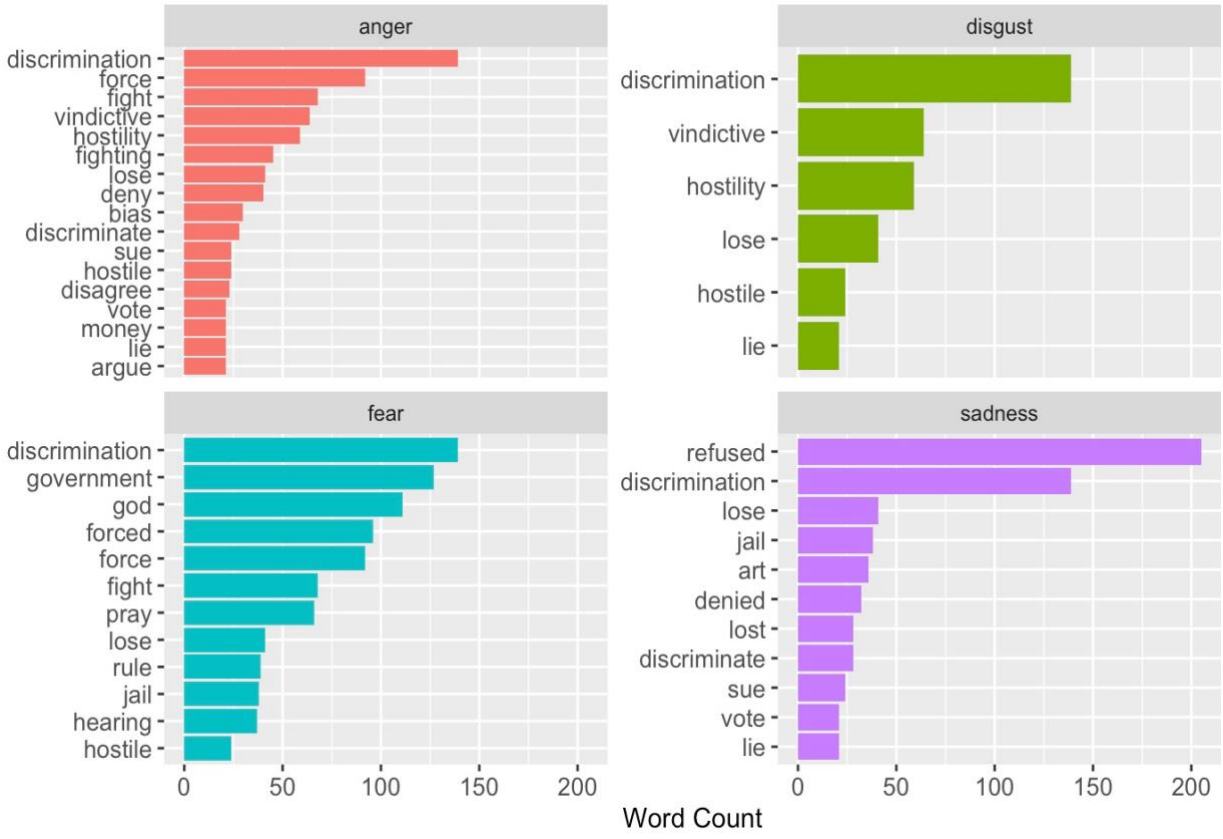


Figure 20. Most Common Words for Negative Emotions by the General Public



In terms of the words driving positive emotions like trust and joy, we see 'victory' and 'faith' as strong contributors for both key actors and the general public (Figures 21 and 22). Key actors hailed the Supreme Court victory as "a *victory* for Jack Phillips and our nation's long cherished freedom of following one's deeply held beliefs without fear of government punishment" (@tperkins, 2018, emphasis added). In tweets by the general public, this was similarly reflected by the sentiment that "after winning a partial *victory* Monday from the high court, Jack Phillips has become a beacon for conservatives who feared a shift toward #gayrights could make them an oppressed minority" (@EdgeMediaNet, 2018, emphasis added).

The general public also claimed that "today's hearing was about our freedom to practice our *faith* without interference from the government. And make no mistake – the outcome of today's proceedings will impact every American – those with religious *faith* and even those with

no *faith* at all" (@mhoggin, 2017, emphasis added). Key actors similarly pointed to the broader consequences of the Supreme Court decision, highlighting that "the U.S. Supreme Court now must decide...whether Christians can be compelled to express messages or promote events that violate their *faith*. #JusticeforJack" (@thelcms, 2017, emphasis added). This tweet, interestingly, points only to the implications for Christian Americans, as opposed to other tweets by key actors and the general public claiming consequences for 'religious Americans' broadly speaking or even 'all Americans.'

Figure 21. Most Common Words for Positive Emotions by Key Actors

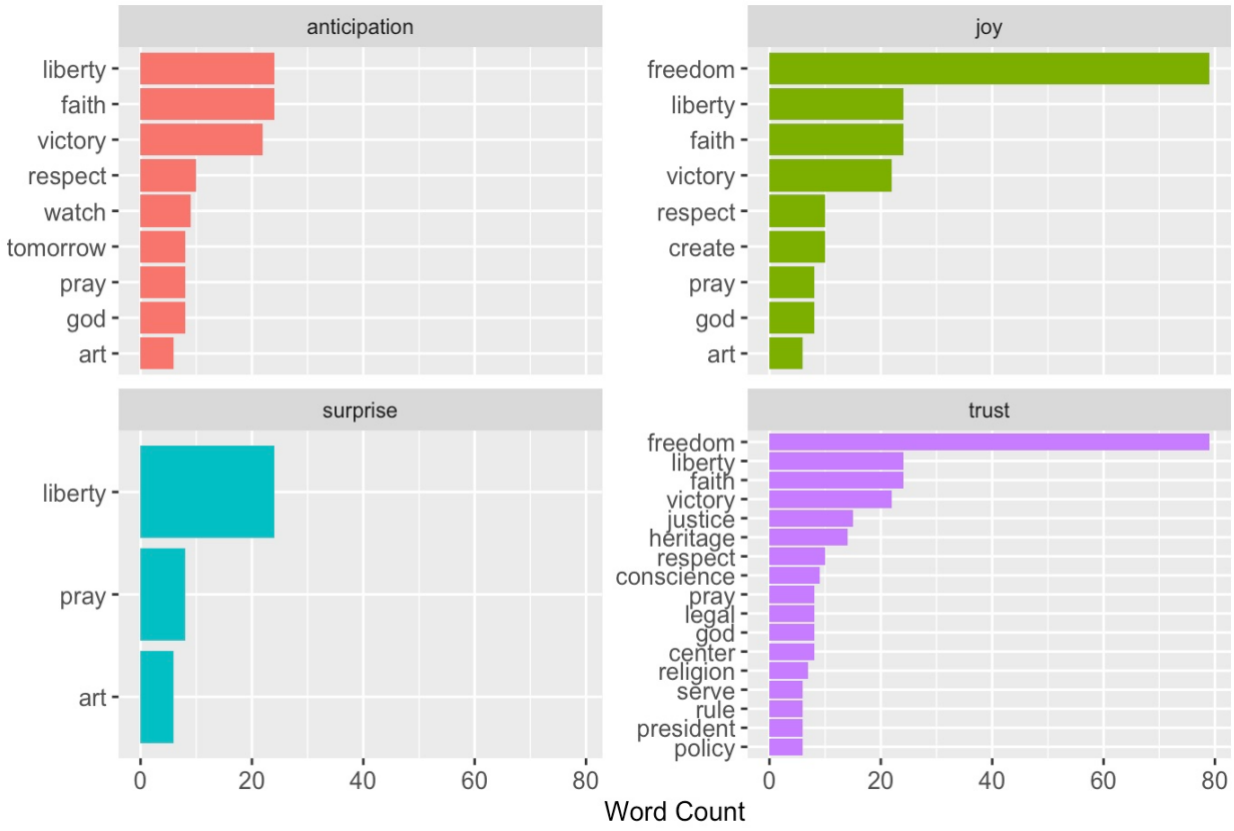
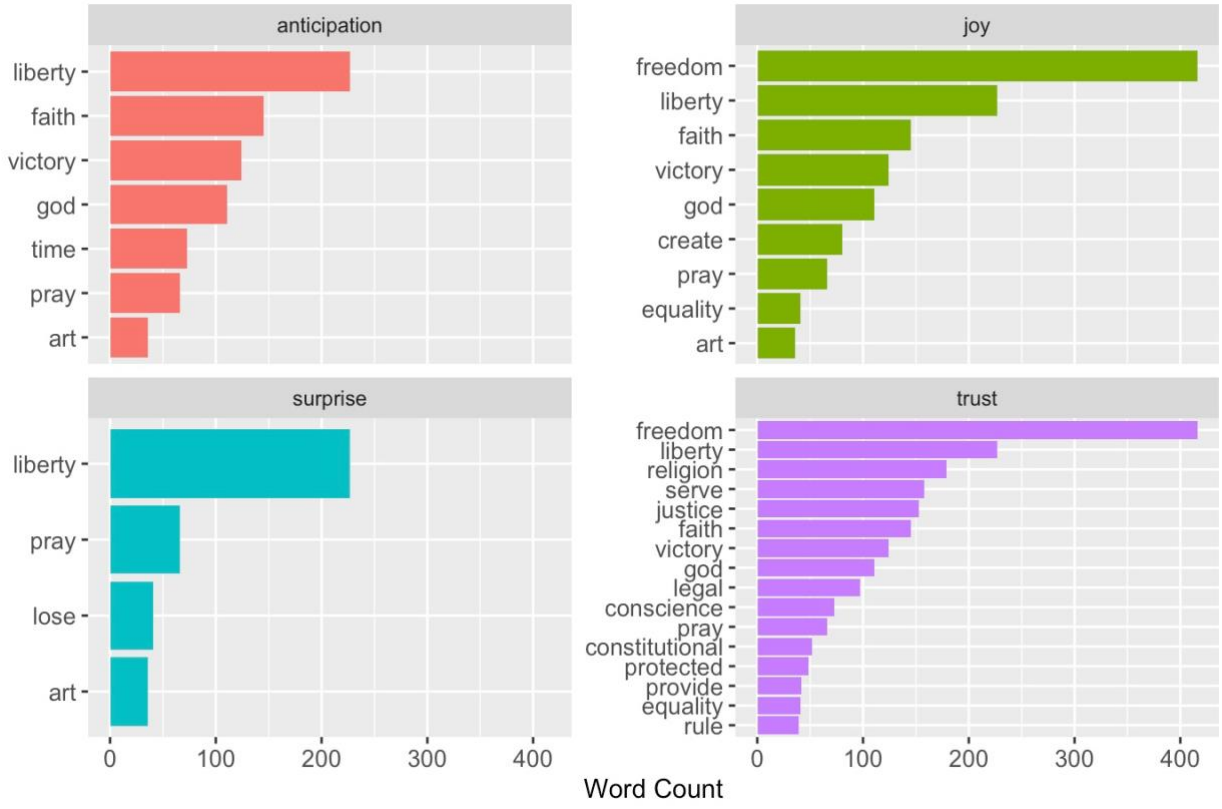


Figure 22. Most Common Words for Positive Emotions by the General Public



As with the court documents, the X (Twitter) data from the general public showed a more balanced use of positive and negative language than the literature on right-wing populism might suggest. Additionally, key actors used positive language much more than negative language in their tweets. These findings suggest a need to further examine the role that positive affect plays in shaping human rights claims put forward by the political right in the context of right-wing populism, but particularly when examining the rhetoric around these claims in legal and public settings. We also saw a similar use of positive and negative language to underscore the alleged victimhood of the baker, as we did in the court documents. Key actors and the general public used negative language to emphasize that Craig and Mullins and, by extension, the LGBTQ community were bullies trying to force their lifestyle and beliefs on the general public. They then used more positive language to reinforce the notion that Phillips had not actually discriminated

against the couple because the refusal to bake the cake was based on a refusal to participate in one of many types of ceremony to which the baker objects to based on his religious beliefs. From this perspective, Phillips and his supporters construct a narrative that downplays the discrimination faced by Craig and Mullins.

Discussion

The findings in both the court documents and X (Twitter) data suggest that even in a political context of right-wing populism, it is possible that human rights campaigns articulated by those on the political right in a right-wing populist political context may have a more balanced use of positive versus negative affect than we typically see reflected in the framing strategies of right-wing populist leaders. In the court documents I found that overall, there was a negligible difference between the use of negative versus positive words. Furthermore, other than trust being the most prevalent emotion, the use of other emotions like anger, fear, joy, and anticipation was generally balanced regardless of document type. In the X (Twitter) data, while key actors' tweets tended to be more positive, there was, again, a negligible difference in the use of negative versus positive words in tweets by the general public. In terms of specific emotions, trust again appeared as the most prevalent emotion for both key actors and the general public. Though joy and anticipation featured more prominently than negative emotions like anger and fear in tweets by key actors, these emotions were used in a more balanced way in tweets by the general public.

Research on the use of affect in right-wing populist movements would suggest that, despite some use of positive emotions, the overall tone would be negative and negative emotions like fear and anger would be most prevalent (Ernst et al., 2019; Lindholm et al., 2025; Nai, 2021; Ward et al., 2025; Widmann, 2021). This research, however, has almost exclusively focused on political discourse by *leaders* of right-wing populist movements. My findings, therefore, expand

the scope of this research and suggest that in the context of human rights discourse in the court system and by supporters of right-wing populist movements, there is a more varied affective orientation. As Ostiguy and Moffitt (2021) posit in their relational approach to populism, it is crucial to recognize the role that institutions and supporters play in shaping populist movements. Not only do my findings suggest that the use of affect may be more nuanced by right-wing populist institutions and supporters than leaders, it also supports the literature on right-wing populism that increasingly suggests a need to examine how right-wing populist movements rely on both positive and negative affect (Busher et al., 2018; Müller, 2016).

Negative affects like fear and anger often serve as the foundation for the development of a right-wing populist movement and its support by underscoring the threat posed to 'the people' and their national identity by things like immigration, multiculturalism, reproductive rights, and LGBTQ rights (Rhodes-Purdy et al., 2023; Van Herpen, 2021; Ward et al., 2025). The role of positive affect becomes clearer once a populist movement has solidified and established a base of supporters that can foster a sense of solidarity with other people experiencing the same perceived threats, and hope that, together, those threats can be overcome (Abts & Rogenhofer, 2025; Bonansinga, 2022; Demasi et al., 2025). My findings align with this literature insofar as we see supporters, particularly key actors, using positive affect like pride in their tweets.

Additionally, given the literature suggests that positive affect reinforces populist movements once support has been established, it is possible that the more balanced tone in tweets by the general public and across court documents is, in part, linked to greater use of positive affect as opposed to the clearer negative skew typically seen in right-wing populist leaders' rhetoric. Specifically, it is possible that in the context of discourse among supporters, the overall tone and most prevalent primary emotions will be positive as they seek to foster that hope

and solidarity. This would then be balanced with negative tone and primary emotions targeted towards opponents and perceived attackers. Ultimately, these findings expand our understanding of how supporters of right-wing populism, institutionally and in the public, mobilize affect to promote their arguments in human rights cases by demonstrating the need to more closely examine the use of positive affect in comparison to negative affect in right-wing populist framing strategies. Furthermore, these findings suggest that a more nuanced approach to understanding affect is necessary when analyzing human rights arguments brought forward by the political right in the context of right-wing populism.

It is also important, however, to note the limitations present in this analysis. The greatest limitation to conducting sentiment analysis using a dictionary-based approach come from the loss of nuance in the findings. For example, a dictionary like the NRC or Bing lexicons cannot detect or tag words correctly when used ironically or sarcastically. Sometimes, though a tweet may use words associated with negative emotions from the NRC lexicon like fear or anger, the overall tone of the tweet is positive. For example, while 'fighting' is associated with fear and anger, 'victory' is associated with joy and trust. When a tweet thanks Alliance Defending Freedom for the Supreme Court victory and fighting for the rights of religious Americans, while the overall tweet has positive connotations, the word 'fighting' would still be associated with fear and anger. Similarly, because words in the NRC lexicon can be associated with multiple emotions, the appearance of a word will necessarily contribute to the score of each emotion it is associated with as opposed to being able to pick up on the nuance and correctly attribute it to a single emotion based on the context of the sentence, paragraph, or tweet.

Additionally, a dictionary-based approach limits the sentiment analysis to the emotions included in a given lexicon (the NRC lexicon here). As such, this analysis is restricted to

Plutchik's (1980) main eight emotions—trust, joy, surprise, anticipation, anger, fear, sadness, and disgust. This restriction results in a more simplistic understanding of affect that precludes deeper analysis on more complex emotions found in Plutchik's (2001) twenty-four dyads (see Figure 2 or Appendix D). This poses a challenge as many of emotions that right-wing populist framing strategies rely on most heavily are the more complex affective states of shame, resentment, pride, and hope. Overall, however, despite these limitations, the findings presented above suggest that in the context of human rights debates, the political right frames their arguments and support using a net neutral approach to affect where the use of positive emotions is more balanced with the use of negative emotions than is typically seen in rhetoric from right-wing populist leaders

Chapter 7 - Conclusion

When the Supreme Court overturned the Colorado Civil Rights Commission's decision on the basis that they had exhibited religious bias in the proceedings against Jack Phillips, they ultimately left the question of whether people can claim religious exemptions to public accommodation laws unanswered. As such, the *Masterpiece Cakeshop* case signaled only the beginning of the clash between religious freedoms and LGBTQ rights as articulated in terms of the combination of the free exercise and freedom of speech components of the First Amendment. While many related cases have played out in the lower courts since 2018, only two have made it all the way to the Supreme Court. In 2019, a case made its way to the Supreme Court in which a Catholic church-affiliated organization sued the city of Philadelphia for refusing to place children for foster care with the organization because it barred LGBTQ people from becoming foster parents. Similar to the *Masterpiece Cakeshop* case, the court ruled 9-0 in favor of the organization because the city was seen as not applying non-discrimination laws neutrally. Despite the unanimous ruling, the decision was, again, narrow in that it did not substantively address the question of whether or not someone can claim a religious exemption to serving LGBTQ people.

In 2023, in the context of a much stronger conservative majority,[56] the Supreme Court ruled 6-3 in favor of Lorie Smith's web-design business, 303 Creative, and her right to refuse service to same-sex couples because of her religious beliefs. The ruling was based on the notion

[56] Despite the 7-2 ruling in the *Masterpiece Cakeshop* case, in 2018 there was a 5-4 conservative majority in the Supreme Court. Justices Roberts, Thomas, Alito, Gorsuch leaned conservative while Justices Sotomayor, Ginsburg, Breyer, and Kagan leaned liberal. Justice Kennedy had represented a key swing vote in favor of the *Obergefell v. Hodges* ruling in 2015.

With Justice Kennedy retiring immediately following the *Masterpiece Cakeshop* ruling in 2018 and Justice Ginsburg passing away in 2020, Donald Trump was able to appoint two notably conservative Justices to the court - Brett Kavanaugh and Amy Coney Barrett.

that the state of Colorado could not force Smith to create 'speech' she opposes, effectively answering the question that the *Masterpiece Cakeshop* ruling has skirted. This case, however, was still somewhat narrow in that it did not grant all businesses the license to discriminate against LGBTQ people. This is because 303 Creative, unlike businesses that sell to all members of the public, works on a commission basis in which clients are vetted before being taken on as clients (Center for Education, Research, and Advocacy, 2023). Furthermore, the ruling would only apply to creative professionals who can claim that being forced to create custom content violates their First Amendment right to freedom of speech.

Most recently, in 2025, Kim Davis' decade long crusade for religious freedom exemptions culminated in the Supreme Court declining to hear her case. Kim Davis was requesting to have the Supreme Court revisit the *Obergefell v. Hodges* (2015) decision that legalized gay marriage based on her claim that the ruling violated her religious freedom. In 2015, Davis, a county clerk in Kentucky, refused to issue marriage licenses to same-sex couples after the *Obergefell* decision was made, citing her religious beliefs. After being sued by several couples, a judge ordered her to pay hundreds of thousands of dollars in legal fees and damages and begin issuing marriage license to same-sex couples immediately. After a federal judge found her in violation of this court order, Davis was also put in jail for several days. Davis pursued the case to the Supreme Court where, in light of *Obergefell* granting same-sex couples the constitutional right to marry, the court declined to hear the case because Davis was in clear violation of that right. Given that at least nine states have introduced legislation aiming to block new marriage licenses for LGBTQ couples or passed resolutions urging the Supreme Court to overturn *Obergefell*, Davis' case is likely only the first of many efforts to overturn the ruling.

In Davis' original petition for a writ of certiorari that was denied in 2020, Thomas and Alito claimed in their dissent that the legalization of same-sex marriage "threaten[s] religious liberty" and because of the decision "those with sincerely held religious beliefs concerning marriage will find it increasingly difficult to participate in society without running afoul of *Obergefell* and its effect on other anti-discrimination laws" (*Davis v. Ermold*, 2020, p.2). Despite again declining to hear Davis' case in 2025, Alito and Thomas' sentiment that Davis is one of the first victims "of this Court's cavalier treatment of religion in its *Obergefell* decision" (*Davis v. Ermold,* 2020, p.2) hints to the possibility that the court is not entirely opposed to hearing future challenges to the landmark 2015 decision.

This dissertation was motivated by a desire to understand how human rights claims, such as the ones detailed above, are constructed by the political right in the context of a right-wing populist political climate. The *Masterpiece Cakeshop* case provided an interesting case study given both its role as one of the first cases of religious freedom claims opposing LGBTQ rights to make it to the Supreme Court, and the fact that much of the case and its surrounding discourse occurred in the lead up and aftermath of Donald Trump's first election as president. The clash between religious freedom and LGBTQ rights is only one example of the prevalent notion in the United States and globally that human rights are a zero-sum game. In other words, the advancement of rights for one group necessitates a defeat or a loss for another (Aviel, 2019). This is particularly problematic as it "reproduces notions of population 'minorities' as threats—a legacy of white supremacy that continues to undergird how we talk about changes to institutional policies and processes" (Arciniega, 2017, p.e248).

This type of framing for human rights has been particularly pervasive in religious freedom debates at the intersection with gender equality and reproductive rights, and particularly

since *Obergefell v. Hodges* (2015) legalized same-sex marriage, with LGBTQ rights. In this context, religious freedom advocates see any universal protection of LGBTQ rights as infringing on First Amendment rights to freedom of religion, while LGBTQ rights supporters see exemptions for religious individuals to anti-discrimination laws as infringing on their civil liberties (Koppelman, 2020). Zero-sum logic applied to human rights ultimately harms both groups fighting for their rights by "creat[ing] exclusions around who is allowed the privilege of being American" rather than advancing equality (Arciniega, 2017, p.e250). It is this outcome in particular that makes religious freedom debates a key site for better understanding the intersection of human rights discourse and right-wing populism, given the centrality of exclusive constructions of 'the people' to right-wing populist movements. Right-wing populist movements are rooted in framing strategies that reinforce the boundaries around who is considered a 'true' member of 'the people' and 'the nation' (Blokker, 2018; Moffitt, 2020).

Whereas opposition to LGBTQ rights on the political right stemmed primarily from the perceived threat that gays and lesbians posed to children and the nuclear family in the 1980s and 1990s, Kim Davis' actions after *Obergefell* (2015) shifted the narrative to focus on individuals' religious beliefs (Williams, 2018). By using the First Amendment rhetoric around freedom of religion, the conservative right has effectively sought to create "a zone of personal conscience impervious to the state" (Williams, 2018, p.246). Donald Trump has since capitalized on the reinforcement of protections for religious freedom through actions like Executive Order 13798 passed in 2017 promoting free speech and religious liberty, and departmental rules like the 2019 HHS 'Conscience rule,' staunchly advocated for a broadened scope of and re-invigorated protection for religious freedom. As a result, the perceived incompatibility of religious freedom and LGBTQ rights acts as an effective case study for understanding how a right-wing populist

political context—that has championed extensively for one side of this debate—impacts the social construction of human rights claims.

Furthermore, given the current prevalence of proposed anti-LGBTQ rights legislation in the form of calls to overturn *Obergefell* (2015), efforts to ban transgender healthcare, and actions to ban transgender athletes from sports, it is increasingly important to understand how the political right is framing its religious freedom arguments to advance this anti-LGBTQ agenda. As the political right has become more adept at winning its religious freedom-based human rights cases in the last decade, it is important to understand how the rise of right-wing populism in the United States may have impacted the framing of these human rights claims, particularly given how right-wing populist leaders engage in a politics of backlash against human rights projects and efforts towards equality for minorities. Despite this backlash, right-wing populist leaders have also coopted some of the language of human rights by reframing the need for equality and equal protection in more classically liberal terms that do not include the redistributive measures often supported by human rights campaigns (Mégret, 2022).

The strength of Donald Trump's influence as a right-wing populist leader and the framing strategies that cause him to be characterized as such have been extensively explored since his first election as president in 2016. Existing research has examined both the intersection of human rights and right-wing populism (see Alston, 2017; Bílková, 2018; Hopgood, et al., 2018; Koskenniemi, 2021; Mégret, 2022; Tasioulas, 2019) and the intersection of affect and right-wing populism (see Betz & Oswald, 2022; Bonansinga, 2022; Busher et al., 2018; Ernst et al., 2019; Graff & Korolczuk, 2022; Lindholm et al., 2025; Nai, 2021; Petrov, 2020; Verbalyte, 2025; Ward et al., 2025; Widmann, 2021), particularly as it appears in leaders' speeches and social media posts. This project, however, shifted the focus to different actors' institutional and public

discourse. This focus sheds light on the relational quality of populism, in which right-wing populist movements emerge not only as a result of a charismatic leader, but because of the interplay between this leader and supportive institutions and members of the public (Ostiguy & Moffit, 2021). It also expands on the existing literature on the relationship between human rights claims and right-wing populism by focusing on how the claims are articulated by right-wing populist supporters in the court system itself as well as by the general public on social media.

Findings and scholarly contributions

This research looked at the interplay between human rights claims and populism. Though there is extensive literature on how right-wing populist leaders attack or support various human rights campaigns, there is very little research exploring how right-wing populist supporters might approach the articulation of rights in institutions and the public. I did not approach this research with the expectation that right-wing populist framing strategies would necessarily be prevalent in the articulation of human rights claims by court and public actors, but rather examined what an analysis of human rights discourse can tell us about populism in a distinctly right-wing populist context. Furthermore, given the crucial role that affect plays in right-wing populist leaders' framing strategies, I also analyzed the role that affect might play in the articulation of rights claims in an institutional and public context. The following findings emerged from my research:

1. In both institutional (court documents) and public (X (Twitter)) discourse around a religious freedom and free speech oriented human rights claim, right-wing actors used some populist framing strategies such as 'the people,' 'the elite,' and 'the other,' however; the legal and public discourse did not perfectly align with what is typically considered right-wing populist framing strategies. Existing literature typically focuses on how right-wing populist leaders communicate with their supporters but, despite recognition of the role that supporters play in

shaping right-wing populist movements (Ostiguy & Moffitt, 2021), studies do not examine the framing strategies used by institutional and public supporters. Looking at supporters' rhetoric in the context of a human rights case is particularly important given how prevalent counterattacks to progressive human rights campaigns have become in the United States' right-wing populist context. My findings suggest that, though the application of right-wing populist framing strategies was uneven, it does appear that the right-wing populist political climate influences how the political right constructs their human rights argument in favor of religious freedom. Understanding that right-wing populism plays a role in how human rights claims are articulated by the political right in an institutional and public setting can ultimately strengthen progressive rights movements' ability to more effectively articulate their own claims in a legal context and garner more popular support for their efforts in order to counter these right-wing populist 'backlash' claims.

2. Though research shows that the mobilization of negative affect plays a crucial role in how right-wing populist leaders gain legitimacy and garner support, there was limited evidence of a strong negative tone in both the court documents and X (Twitter) data. Though this does not preclude the importance of affect in institutional and public discourse about human rights claims, it does raise questions about whether emotions other than the anger, fear, and resentment emphasized by right-wing populist leaders may be equally or more significant in discourse from other actors in different contexts. This aligns with the growing research suggesting that an emphasis solely on the role that negative affect plays in right-wing populist framing strategies is limited (Busher et al., 2018; Müller, 2016). The fact that we saw a more balanced use of negative and positive language in both the court documents and X (Twitter) data suggests that positive affect, in the form of supporters' sense of solidarity, pride, and hope, may appear more

prominently as a response to the negative affect used by leaders to establish support. This is because those positive emotions emerge as people feel that they are experiencing the same perceived threats and hope that, together, those threats can be overcome (Abts & Rogenhofer, 2025; Bonansinga, 2022; Demasi et al., 2025).

These findings contribute to the fields of human rights and right-wing populism by examining their intersection in institutional and public discourse, as opposed to focusing solely on discourse from a right-wing populist leader. First, evidence of how supporters of a right-wing populist movement articulate human rights claims can improve human rights actors' ability to advance their own agendas by underscoring how right-wing populism manifests among supporters in the United States and providing insight on how right-wing populist 'backlash politics' and cooptation of human rights language might appear in supporters' own human rights claims (see Dudai, 2017; Hamilton, 2023; Koskenniemi, 2021).

Specifically, right-wing populist actors have experienced a great deal of success in garnering support for their backlash to human rights campaigns largely because of the "existing cracks in the human rights infrastructure" (Hamilton, 2023, p.694). One of the challenges recently faced by progressive human rights campaigns is that more creative and innovative messaging strategies are needed. Alston (2017) pointed out that human rights activists "need to acknowledge the need to devote more time and effort into being persuasive and convincing, rather than simply annunciating our principles as though they were self-evidently correct and applicable" (p.11).

The creative ways in which right-wing populist supporters in the last decade have combined free speech and freedom of religion claims have contributed to a great deal of success in the courts for the conservative right, demonstrating the need for progressive rights campaigns

to rethink their approach to claims-making. Right-wing populist movements increasingly frame themselves as "the ultimate defender of human rights where human rights are said to have been abandoned by their traditional spokespersons" (Mégret, 2022, p.241). My findings that in both X (Twitter) data and court documents there was an overall balanced use of negative and positive language suggest that these 'backlash' human rights claims are as much about attacking progressive rights claims as they are about portraying human rights claims from the political right as the 'real' rights that need to be protected.

Second, the examination of institutional and public discourse surrounding a religious freedom and freedom of speech rights claim, as well as how affect in these contexts, builds on and contributes to literature exploring the relational approach to populism. My finding that the right-wing populist framing strategies typically employed by leaders and political actors are only partially represented in the discourse in court documents and X (Twitter) data demonstrates a need to potentially reconceptualize how right-wing populism manifests when looking at the supportive public and institutions as opposed to leaders. These findings contribute to our understanding of how a right-wing populist political context shapes how supporters' and supportive institutions' rhetoric is influenced, specifically outside of the explicitly political realm. Knowing that, in a legal, human rights context, we see right-wing populist supporters relying on similar framing strategies as right-wing populist political actors points to the far-reaching influence of right-wing populism. This uneven application of right-wing populist framing strategies suggest that additional research is needed to better understand the extent to which right-wing populism is, in fact, influencing how the political right articulates their 'backlash' human rights arguments. As explored below, a necessary subsequent step would be to examine the framing strategies used by Craig and Mullins' lawyers and supporters in the

Masterpiece Cakeshop case to determine if Phillips' lawyers and supporters actually used right-wing populist framing strategies more often.

Third, my research provides a methodological contribution insofar as I depart from the analysis in existing research on right-wing populist leaders' rhetoric, instead conducting a text analysis of supporters' rhetoric in an institutional and legal context. This provides a practical way of examining the relational approach to populism by shedding light on how the right-wing populist political context that has been fostered contributes to the way supporters frame their rhetoric. Furthermore, many studies have examined how right-wing populist movements engage in a 'backlash politics' towards progressive human rights claims aimed at protecting minorities (Dudai, 2017; Hamilton, 2023; Hopgood, et al., 2018; Mégret, 2022). These studies, however, have not examined the articulation of human rights claims in a legal context as I do in this project, focusing instead on political rhetoric.

It is understandable that the research examining right-wing populist framing strategies has thus far focused on rhetoric directly from political actors and leaders, in particular, given that it comes directly from the 'source' of the populist movement, but also because right-wing populist framing strategies, which are inherently political, may be more obvious and apparent in political texts. From a relational perspective, however, research on how supporters' and supportive institutions' shape their rhetoric is necessary to better understand how right-wing populist movements manifest, grow, and are reinforced. Examining how these dynamics impact the construction of human rights arguments brought forward by right-wing populist supporters is equally important, given the centrality of the backlash to progressive human rights projects in right-wing populist movements. Furthermore, examining the intersection of right-wing populism

and human rights can better position progressive rights movements to articulate their own claims in ways that more effectively counter right-wing populist arguments against their efforts.

Limitations and directions for future research

Though this study expands the possibilities for analyzing right-wing populist discourse by shifting the focus from the leader to institutions and the public, my findings point to both challenges with my methodology and areas for future research. Methodologically, the first limitation of my study was the focus only on discourse from Jack Phillips' supporters and legal representatives. A comparison between this discourse and that of the same-sex couple's legal representatives and supporters could shed additional light on the extent to which right-wing populist framing strategies appeared in the baker's supporters' discourse as compared to their counterparts in the case. This would be particularly useful in the context of the court documents, given the challenges that arose with parsing out what may have been a deliberate right-wing populist framing strategy as compared to the language commonly deployed in legal contexts. Furthermore, in terms of the sentiment analysis, a comparison between the baker's supporters and opponents might strengthen our understanding of the extent to which the use of affect in institutional and public discourse mirrors what the literature typically associates with right-wing populist movements. This is because a comparison between supporters and opponents may show a starker difference in the use of, for example, a negative tone and negative affect than looking at a single side of the debate.

A second limitation was the exclusion of news media due to its complex, mediated nature and its relationship and coverage of Donald Trump's first campaign and presidency. Though this exclusion was a deliberate choice given the vastness of data available and the uniqueness of news media reporting as compared to legal language and X (Twitter) discourse, it would be

interesting to conduct a separate study using only news media to shed more light on how right-wing populist leaders influence not only *what* is covered in the news, but also *how* it is covered and framed.

In terms of areas for future research, in the context of Donald Trump and his conservative-majority Supreme Court' dismantling of established human rights precedents, it would be interesting to explore how right-wing populist framing strategies appear in institutional and public discourse surrounding recent cases dealing with the clash between LGBTQ rights and religious freedom like *303 Creative LLC v. Elenis* (2023) and the abundance of anti-trans cases like *United States v. Skrmetti (2025)*[57] and *West Virginia v. B.P.J*[58] which delivered oral arguments to the Supreme Court in January, 2026. It would be interesting to get a better understanding of the potential influence of right-wing populism on the framing of human rights claims by the political right given that Donald Trump's right-wing populist campaign has now been prevalent for a decade and has grown in strength and legitimacy.

Additionally, it would be interesting to apply this methodology, while addressing the limitations outlined above, to explore other significant clashes of human rights efforts such as *Students for Fair Admissions v. Presidents and Fellows of Harvard College* (2023) and *Students for Fair Admissions v. University of North Carolina* (2023), the two cases that ended race-conscious affirmative action in college admissions. This would allow for further analysis of the racial dimension of right-wing populism in the United States in which 'the people' are defined in terms of their Christianity and cis-heterosexuality, and their whiteness and xenophobic

[57] On June 18, 2025, the Supreme Court rule that a Tennessee law banning hormone therapy and puberty blockers for transgender minors did not violate the equal protection clause of the 14th Amendment in a 6-3 decision.
[58] This case concerns the participation of transgender athletes in sex-segregated school sports. On June 30, 2026, the Supreme Court ruled unanimously that allowing different sports teams for boys and girls does not violate Title IX and 6-3 that Idaho and West Virginia's laws did not violate the Equal Protection Clause of the Constitution by using biological sex as a requirement for participation in female sports teams.

understandings of citizenship and nationalist inclusion. Additionally, expanding the scope of this research to other global contexts where right-wing populist parties have been elected, particularly in Europe, could further our understanding of the extent to which the construction of human rights claims is impacted by right-wing populist framing strategies by providing evidence from different kinds of political and legal systems.

Finally, as previously noted, my project excluded media articles surrounding the *Masterpiece Cakeshop* case. A separate discourse and sentiment analysis could be conducted of journalistic media from a diversity of sources (right-leaning, centrist, and left-leaning) in order to parse out the complex relationship between right-wing populist movements and traditional media outlets. Such an analysis could point, again, to the various ways in which progressive rights campaigns could move away from the "overly-legalistic approach to human right claims-making" that has been less successful in the face of right-wing populist 'backlash' human rights arguments (Braaten, 2021; Hamilton, 2023, p.694).

Closing thoughts

During Donald Trump's first term as president, despite his exclusionary and often hateful rhetoric and promises, many scholars, activists and other politicians largely felt that democracy would ultimately prevail and prevent the erosion of rights and precedent (Gricius, 2022). As Singh (2017) argued, "despite Trump's authoritarian populist leadership, the United States has continued to act as a liberal republic. The constitutional characteristics such as separation of powers, judicial review, federalism, hyper-pluralism, and consistent as well as constant elections all act as guards against demagogues such as Trump" (as cited in Gricius, 2022, p.188). However, as we have witnessed more clearly in his second term, Trump has increasingly

undermined the United States' democratic ideals such as the independent role of the media, the independence of the courts and, since 2020, the integrity of elections (Norris, 2017).

As Bugaric (2025) points out, Donald Trump was "more of a disorganized disrupter than an aspiring autocrat" during his first term, and ultimately failed to overturn the 2020 election because state election officials, judges at the state and federal levels, civil servants, the military, Vice President Pence, the mainstream media, and many others resisted Trump's baseless crusade (p.318). In this case, the United States Constitution and its numerous checks and balances intended to prevent authoritarianism operated as intended. However, in his second term, equipped with the Heritage Foundation's 'Project 2025'[59] as a guiding force behind mass deportations, attempts to limit voting rights, classroom censorship, and gutting of abortion access, among other strategies, Donald Trump has demonstrated a more concerted, organized, and coordinated effort to dismantle the constitutional pillars of liberal democracy in the United States (Bugaric, 2025).

Since his first day back in office, Trump has "replaced bureaucrats with people loyal to him […] remove[ed] disloyal civil servants" and "is also likely to continue with the politicization of judicial appointments, gradually neutralizing the resistance of the judicial branch" (Bugaric, 2025, p.320). With the already strong conservative majority in the Supreme Court, coupled with a Department of Justice led by Trump loyalists, the administration has been emboldened to carry out personal vendettas against political foes (e.g. Letiticia James, the New York Attorney

[59] Project 2025 is a federal policy agenda and blueprint for a radical restructuring and strengthening of the executive branch developed by the Heritage Foundation, a conservative think tank that stands in staunch opposition to minority rights including abortion and reproductive rights, LGBTQ rights, immigrants' rights, and racial equity (Democracy Forward, 2024). The Heritage Foundation recently outlined its priorities for 2026, hoping to further efforts to restrict immigration and voting rights, as well as reinforce 'traditional family values' (The Heritage Foundation, 2025).

General, James Comey, the former FBI director, Lisa Cook, the Federal Reserve governor, Senator Adam Schiff who led Trump's first impeachment trial, and many others).

In some cases, the courts have upheld Trump's ability to carry out seemingly unconstitutional policies such as the removal of agency heads, limiting lower court judges from issuing nationwide orders to prevent the government from enforcing certain policies, or allowing the government to continue to delay Supplemental Nutrition Assistance Program funds during the recent government shutdown. In many cases, Trump has outright ignored judicial orders ordering him to, for example, stop deporting people to countries where they do not have citizenship (an order ultimately overturned by the Supreme Court) or to unfreeze billions of dollars in congressionally approved foreign aid.

A plethora of cases have reached the Supreme Court related to racial profiling by Immigration and Customs Enforcement (ICE) agents,[60] Trump's legal authority to impose widespread tariffs,[61] birthright citizenship,[62] and Trump's authority to deploy the National Guard in cities like Chicago, Portland, and Los Angeles.[63] This project, despite its limitations, points to the need to better understand how right-wing populism manifests in the United States, beyond a sole focus on Donald Trump's actions and rhetoric, particularly as institutions are commandeered and re-organized to explicitly support the president. I intend for my research to

[60] At the time of writing, this case (*Noem v. Vazquez Perdomo*, 2025) had not yet been decided. On September 8, 2025, the Supreme Court ruled in support of the continued use of racial profile by ICE agents in immigration raids and sweeps in a 6-3 decision.
[61] At the time of writing, this case (*Learning Resources Inc. v. Trump*, 2025) had not yet been decided. On February 20, 2025, the Supreme Court ruled that Donald Trump's tariffs invoking the International Emergency Economic Powers Act (IEEPA) were unconstitutional in a 6-3 decision.
[62] On April 1, 2026, the Supreme Court heard oral arguments regarding whether or not Donald Trump's executive order ending or severely restricting birthright citizenship complies with the 14th Amendment of the Constitution (*Trump v. Barbara, 2026*). On June 30, 2026, the Supreme Court issued a 6-3 ruling striking down the executive order.
[63] At the time of writing, this case (*Trump v. Illinois, 2025*) had not yet been decided. On December 23, 2025, the Supreme Court ruled that Donald Trump's justification for deploying the National Guard to Chicago was insufficient in a 6-3 decision.

shed light on how right-wing populism capitalizes on historical legacies of oppression and existing liberal human rights framing to advance discriminatory agendas that serve to exclude anyone perceived as 'other' from conceptions of 'the true people.' In the context of the numerous human rights violations and attacks on human rights doctrine we are currently witnessing in the United States, it becomes even more important to understand how right-wing movements frame their counterattacks to equality-oriented rights campaigns in the context of right-wing populism in order to more effectively garner widespread support both within and outside of the courts and perhaps contribute to the development of a system of human rights that is not borne out of violent exclusion.

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Appendix A. List of Court Documents Included in Analysis

Table 4. Court Documents

Date	Court	Document
10.30.2013	State of Colorado Administrative Court	Brief in Opposition to Complainants' Motion for Summary Judgment and in Support of Jack Phillips' Cross Motion for Summary Judgment (filed by Alliance Defending Freedom)
04.18.2014	State of Colorado Administrative Court	Respondents' Brief in Support of Appeal of Administrative Judge's Opinion (filed by Alliance Defending Freedom)
07.16.2014	Colorado Court of Appeals	Notice of Appeal to Colorado Court of Appeals (filed by Alliance Defending Freedom)
01.09.2015	Colorado Court of Appeals	Appellant's (Masterpiece Cakeshop) Opening Brief
03.31.2015	Colorado Court of Appeals	Appellant's (Masterpiece Cakeshop) Reply Brief
10.23.2015	Supreme Court, State of Colorado	Petition of Writ for Certiorari to the Colorado Court of Appeals (filed by Alliance Defending Freedom)
11.13.2015	Supreme Court, State of Colorado	Reply in Support of Writ for Certiorari (filed by Alliance Defending Freedom)
07.22.2016	SCOTUS	Petition for Writ of Certiorari
12.06.2016	SCOTUS	Reply in Support of Writ for Certiorari (filed by Alliance Defending Freedom)
08.31.2017	SCOTUS	Opening Brief for Petitioners (Masterpiece Cakeshop)
11.22.2017	SCOTUS	Reply Brief for Petitioners (Masterpiece Cakeshop)
12.05.2017	SCOTUS	Supreme Court Oral Argument Transcript
06.04.2018	SCOTUS	Supreme Court Opinion

Table 5. Amicus Briefs filed in 2017

Submitting Organization
11 Cake Artists
14 law and economics scholars
20 states
22 Utah Republican state senators
33 family policy organizations
34 legal scholars
479 Creative Professionals
86 United States senators and representatives
Aaron and Melissa Klein
Agudath Israel of America

American College of Pediatricians, American Association of Pro-Life Obstetricians and Gynecologists, Christian Medical and Dental Association, and the Christian Pharmacists Fellowship International
Billy Graham Evangelical Association et al.
C12 Group; Christian Employers Alliance; Pinnacle Forum; CEO Forum, Inc; and Center for Faith Work at Letourneau University
CatholicVote.org
Center for Constitutional Jurisprudence and National Organization for Marriage
Christian Business Owners Supporting Religious Freedom
Christian Law Association
Christian Legal Society et al.
Concerned Women for America
Council for Christian Colleges and Universities (CCCU), et al.
Ethics & Religious Liberty Commission of the Southern Baptist Convention et al.
First Amendment Lawyers Association
Freedom X and Rabbi Dovid Bressman
Independence Law Center
Indiana Family Institute, Inc.; Indiana Family Action, Inc.; and the American Family Association of Indiana, Inc.
Institute for Justice
International Christian Photographers and Center for Arizona Policy
Legal Scholar Adam J. MacLeod
Liberty Council
Liberty Counsel
Mark Rengerus, Jason S. Carroll, Joseph Price, and Donald Paul Sullins
Northa Carolina Values Coalition and The Family Research Council
Professors Christopher R. Green and David R. Upham
Public Advocate of the United States, et al.
Restoring Religious Freedom Project
Rev. Patrick Mahoeny and Free Speech Advocates
Richard Lawrence
Ryan T. Anderson, Ph.D., and African-American civil rights leaders
Sherif Gergis
Southeastern Legal Foundation and international law scholars
The Becket Fund for Religious Liberty
The Cato Institute, Reason Foundation, and Individual Rights Foundation
The Foundation for Moral Law
The National Black Religious Broadcasters and the National Hispanic Christian Leadership Conference
The National Jewish Commission on Law and Public Affairs (COLPA) filed on behalf of orthodox Jewish organizations
The National Legal Foundation, Pacific Justice Foundation, and Congressional Prayer Caucus Foundation
Thomas More Society

United States
United States Conference of Catholic Bishops et al.
William Jack and the National Center for Law and Policy

Appendix B. List of Key Actors

Table 6. List of Key Actors and X (Twitter) Handles

Actor Type	Organization/Individual	X (Twitter) Handle
Amicus Brief	Alliance Defending Freedom	ADFLegal
Amicus Brief	CEO of ADF Kristen Waggoner	KWaggonerADF
Amicus Brief	Alliance Defending Freedom	emilieADF
Amicus Brief	Alliance Defending Freedom	ADFCareers
Amicus Brief	Alliance Defending Freedom	ADFIntl
Amicus Brief	Alliance Defending Freedom	ChistianaADF
Amicus Brief	Alliance Defending Freedom	ADFKellie
Amicus Brief	Becket Fund	BECKETlaw
Amicus Brief	Billy Graham Evangelical Association	DecisionNews
Amicus Brief	Catholic Vote	CatholicVote
Amicus Brief	Cato Institute	CatoOnCampus
Amicus Brief	Cato Institute	CatoPress
Amicus Brief	Cato Institute	Tcbergmn
Amicus Brief	Cato Institute	IlyaSomin
Amicus Brief	Christian Legal Society	CLS_HQ
Amicus Brief	Concerned Women for America	CWforA
Amicus Brief	Concerned Women for America (President)	PYNance
Amicus Brief	Ethics and Religious Liberty Commission	ERLC
Amicus Brief	Ethics and Religious Liberty Commission	FloridaERLC
Amicus Brief	Family Research Council	FRCdc
Amicus Brief	Family Research Council	Tperkins
Amicus Brief	Heritage Foundation	Heritage
Amicus Brief	Heritage Foundation	HeritageOTH
Amicus Brief	Heritage Foundation	Heritage_Action
Amicus Brief	Heritage Foundation	RyanTAnd
Amicus Brief	California Family Council	CAFamily
Amicus Brief	Florida Family Policy Council	FLPolicyInsider
Amicus Brief	Family Policy Alliance (Idaho, Kansas)	Family_policy
Amicus Brief	The FAMiLY LEADER	theFAMiLYLEADER
Amicus Brief	The Kentucky Family Foundation	KentuckyFamily
Amicus Brief	Massachusetts Family Institute	MAFamilyInst
Amicus Brief	Minnesota Family Council	MNFamilyCouncil
Amicus Brief	Montana Family Foundation	Montana_Family
Amicus Brief	Nebraska Family Alliance	Nebfamily

Amicus Brief	New Yorkers for Constitutional Freedoms	Revjmcguire
Amicus Brief	New Yorkers for Constitutional Freedoms	AlbanyUpdate
Amicus Brief	North Carolina Family Policy Council	Ncfamilyorg
Amicus Brief	The Family Policy Council of West Virginia	FamilyPolicyWV
Amicus Brief	Palmetto Family Alliance	Palmetto Family
Amicus Brief	Family Action Council Tennessee	Factennessee
Amicus Brief	Texas Values	Txvalues
Amicus Brief	Texas Values	TxValuesAction
Amicus Brief	The Family Foundation of Virginia	TFFVA
Amicus Brief	The Family Policy Institute of Washington	FPIW
Amicus Brief	Center for Arizona Policy	Azpolicy
Amicus Brief	The Frederick Douglass Foundation	FDFNational
Amicus Brief	The Radiance Foundation	Lifehasapurpose
Amicus Brief	Indiana Family Institute	Indianafamily
Amicus Brief	James Lankford	SenatorLankford
Amicus Brief	Roger Wicker	SenatorWicker
Amicus Brief	Mike Johnson	RepMikeJohnson
Amicus Brief	Jim Banks	RepJimBanks
Amicus Brief	Doug Lambord	RepDLamborn
Amicus Brief	C12 Groups	C12forums
Amicus Brief	Christian Employers Alliance	Jcnjmama
Amicus Brief	Center for Constitutional Jurisprudence	ClaremontInst
Amicus Brief	National Organization for Marriage	NOMupdate
Amicus Brief	The Lutheran Church-Missouri Synod	Thelcms
Amicus Brief	National Association of Evangelicals	NAEvangelicals
Amicus Brief	Council for Christian Colleges and Universities	CCCUorg
Amicus Brief	Colorado Christian University	CentennialCCU
Amicus Brief	North Carolina Values Coalition	NCValues
Amicus Brief	Thomas More Society	ThomasMoreSoc
Other	1st Amendment Partnership	1APonline
Other	2nd Vote	2ndVote
Other	American Principles Project	Approject
Other	Biblical Signs	BiblicalSigns
Other	Breitbart News	BreitbartNews
Other	Breitbart News	BreitbartVideo

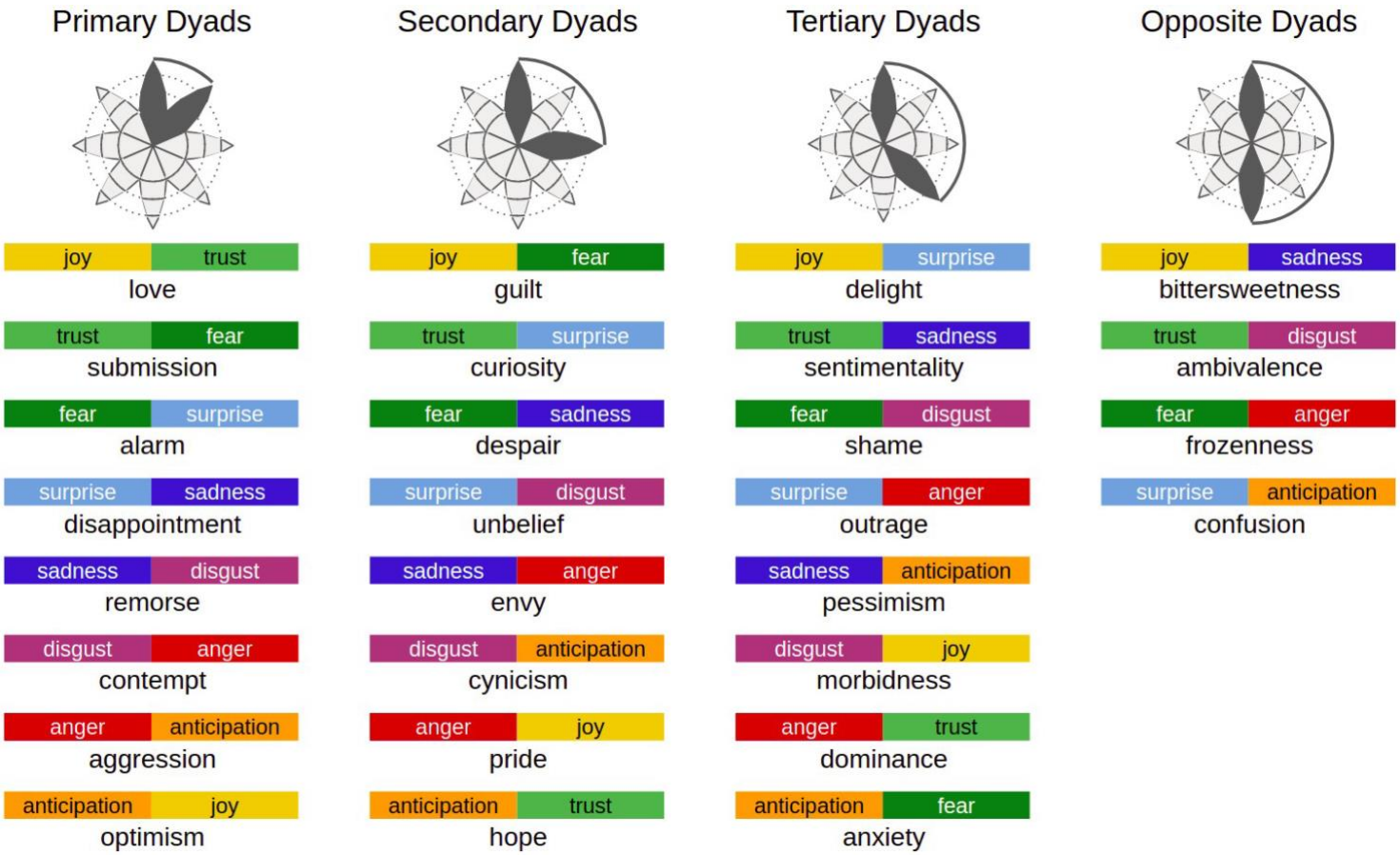
Other	Breitbart News	BreitbartsConvo
Other	The Briefing Room	Briefing__Room
Other	Citizens for the Republic	CFTR
Other	Institute for Faith Work and Economics	FaithWorkEcon
Other	Fox News	FoxNews
Other	Keep the Faith Ministries	KTFministry
Other	Armageddon News	NewsArmageddon
Other	New Yorker's Family Research Foundation	NewYorkFamilies
Other	The National Law Journal	TheNLJ

Appendix C. Custom Stop Words

"Jack", "Phillips", "Masterpiece", "Cakeshop", "jack", "amici's", "phillips", "masterpiece", "cakeshop", "court’s”, “masterpiececakeshop", "supreme", "court", "baker", "colorado", bakery", "alliancedefends", "decision", "cakes", "couple", "owner", "lgbt", "ruled", "sex”, “ruling", "bake", "wedding", "hear", "shop", "sell", "news", "bakers", "argument", "arguments", "couples", "read", "red", "hen", "cake", "scotus", "jackphillips", "justiceforjack", "gay", "amici", "curiae", "phillips's", "mullins", "craig", "commission", "colorado's", "marriage", "obergefell", "accommodation", "accommodations", "hold", "samesex", "same", "right", "public", "form", "decision", "decisions", "law", "law ", "laws", "business", "kennedy", "trump"

Appendix D. Plutchik's Dyad Emotions

Figure 23. Table of Plutchik's 24 Dyad Emotions



Note: Reprinted from Semeraro A, Vilella S, Ruffo G (2021) PyPlutchik: Visualising and comparing emotion-annotated corpora. PLoS ONE 16(9): e0256503. https://doi.org/10.1371/journal.pone.0256503 under CC BY 4.0 license.