



## The Supreme Court Has Another Chance to Uphold Religious Liberty for Small Business Owners

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On Dec. 5, the Supreme Court will hear an appeal from Lorie Smith, who owns a graphic design firm in Colorado and wants to expand her business to include wedding websites. This sounds innocent enough, but the government of Colorado has added an obstacle: it says that if she designs any wedding website, she'll have to design *any website* a customer requests.

On her company website, Smith writes, “As a Christian who believes that God gave me the creative gifts that are expressed through this business, I have always strived to honor Him in how I operate it. ... Because of my faith, however, I am selective about the messages that I create or promote — while I will serve anyone I am always careful to avoid communicating ideas or messages, or promoting events, products, services, or organizations, that are inconsistent with my religious beliefs.”

As her brief to the Court says, “Smith will decline any request—no matter who makes it—to create content that contradicts the truths of the Bible.”

Smith's faith is not mine. But like Voltaire, I fully defend her right to express her own ideas, and to refuse to express ideas she rejects.

I've been writing in favor of gay marriage since 1995. My organization, the Cato Institute, filed more than a dozen legal briefs in support of marriage equality on the way to the Supreme Court's *Obergefell v. Hodges* decision in 2015. So I'm a firm supporter of equal marriage rights.

But it is also important to defend the rights of small businesspeople who don't want to participate in a gay wedding by providing services such as designing a cake, a website, or floral decorations.

This should be an easy decision for the court, based on a long string of First Amendment precedents. As the Cato Institute told the court in an earlier case involving a baker who designed custom wedding cakes, “The Court declared nearly 75 years ago that ‘if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.’”

Further, the court ruled in the 1977 “Live Free or Die” license-plate case out of New Hampshire that forcing people to speak is just as unconstitutional as preventing or censoring speech.

The Supreme Court has noted the First Amendment “includes both the right to speak freely and the right to refrain from speaking at all” and the court has never held that the compelled-speech doctrine is only applicable when an individual is forced to serve as a courier for the message of another. Instead, the justices have said repeatedly that what the First Amendment protects is a “freedom of the individual mind, which the government violates whenever it tells a person what she must or must not say.”

On that basis, courts have found that abstract art, tattooing, stained glass windows, church architecture, nude dancing, and St. Patrick’s Day parades are protected by the First Amendment. Surely web design deserves equal protection.

But we shouldn’t need the First Amendment to protect Lorie Smith’s rights. A nation founded on the principle of “life, liberty, and the pursuit of happiness” should respect Smith’s freedom and dignity, just as it should respect the equal freedom and dignity of gay people.

In his essay “Live Not by Lies,” Alexander Solzhenitsyn wrote that each person must never “write, sign or print in any way a single phrase which in his opinion distorts the truth,” never “take into hand nor raise into the air a poster or slogan which he does not completely accept,” and never “depict, foster or broadcast a single idea which he can see is false or a distortion of the truth, whether it be in painting, sculpture, photography, technical science or music.”

He urged that course on citizens of a totalitarian dictatorship. Can we ask less of citizens in a free society?

A gay baker or web designer should not have to create a cake or a website with an antigay message — or indeed a plain cake or website for an organization he finds offensive. As Cato said in urging the Court to take Lorie Smith’s case, “Web designers should be free to choose not to speak for any political movement, no matter how laudable or condemnable it is.”

“They should be free not to create web sites or graphic designs proclaiming, ‘White Lives Matter,’ ‘The Nation of Islam Is Great,’ ‘KKK,’ ‘There is No God but Allah,’ ‘Jesus is the Answer,’ or any other message that they cannot in good conscience abide,” the brief notes.

For decades gay people asked for freedom — the right not to be arrested for engaging in consensual sexual relationships, not to be barred from the military and other government jobs on the basis of their sexual orientation, and not to be excluded from marriage.

They asked for tolerance and acceptance, for equal rights and equal dignity, for a live-and-let-live approach toward people who may be different from us. Gay activists betray that struggle when they seek to use the power of government to deny tolerance to those with different views.

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