



A wedding cake won't heal religious differences

Trevor Burrus

December 6, 2017

This week the Supreme Court heard arguments in Masterpiece Cakeshop v. Colorado Civil Rights Commission, a case about a baker who refused to design a cake for a gay wedding. Jack Phillips, the owner of Masterpiece Cakeshop, had served gay customers for years, but he feels serving a same-sex wedding will violate his religious convictions. The Colorado Civil Rights Commission has allowed black cake-makers to refuse to make cakes for the Aryan Nation and secular cake-makers to refuse to make cakes opposing same-sex marriage, but Mr. Phillips's refusal apparently went too far.

We live in a pluralistic society, and not everyone's convictions fit together easily. Folks with religious convictions don't change their minds over a Supreme Court case, and they certainly don't change their minds because the government forces them to serve same-sex weddings. In fact, they're likely to retrench in their beliefs -- Jack Phillips has said the five-year legal battle has "really helped my faith to grow."

But this case is bigger than Jack Phillips. It's about, let's say, your uncle, a good man who is intensely religious with deep convictions.

It was probably hard enough coming out to your parents, but you let your mom tell your uncle first that you're gay because you didn't want to hear his first reaction. The next few interactions were a little strained, but the connection you always had with your uncle endured. Eventually, everything seemed okay again -- that is, until you invited him to your wedding.

There was some shouting and some praying on both sides. Your uncle thought long and hard on the matter, consulted with clergy and read scripture. In the end, he told you what his conscience required: While he couldn't attend the ceremony, he would be glad to celebrate with you at the reception.

So you did what any decent person would do: You asked the Colorado Civil Rights Commission to force your uncle to go to your wedding. Right? Of course not.

Some might say that scenario isn't analogous to the situation facing Jack Phillips. Your relationship with your uncle is private, whereas Masterpiece Cakeshop opens itself to the public as a business. In America, when you open yourself to the public, you lose certain rights and privileges.

It's true that the two scenarios are different as a matter of law, but we can use the analogy between them to ask two deeper questions: First, is this a decent thing to do to another human being -- to force them to serve or attend a wedding that they feel violates their deeply held

religious convictions? Second, is forcing religious people to serve same-sex weddings how we create a more tolerant society?

In Obergefell v. Hodges, the Supreme Court extended constitutional protections to same-sex marriage and created one of those cultural moments that feels like part of a Hollywood production. People wept on the steps of the Court and I, having contributed to a brief in the case arguing against marriage discrimination, wept with them. I later had the stirring pleasure of attending a same-sex wedding in the National Cathedral and wept while watching two good friends celebrate both their love and their civil rights. I've been fighting for gay rights since seventh grade.

After the Obergefell celebrating was over, my next thought was this: please don't immediately start forcing Christians to serve same-sex weddings. Please. This is the greatest civil rights victory of my lifetime, please don't spoil it by attacking the rights of religious conscience. Please don't treat 21st-century America, where 89% of Fortune 500 companies prohibit discrimination on sexual orientation even though they aren't required to by federal law, as if it were the Jim Crow South.

Please don't act as if not getting a cake made by a single baker is a commensurate harm to the pervasive and systematic discrimination faced by African-Americans under Jim Crow, when traveling through required using the Negro Motorist Green Book to figure out which businesses would serve them and which towns would run them out at sundown.

Please allow some time for adjustment, and allow those who are conflicted on these issues some space and understanding. Tolerance needs to be mutual, not one-sided.

In the courtroom yesterday were Jack Phillips, the religious cake-maker, and Charlie Craig and David Mullins, the gay couple who were denied service. It was a poignant moment, and a deeply sad one. There was no conversation, no attempt to reach mutual understanding and respect. There was just the cold, hard courtroom, the impersonal apparatus of the state, ostensibly seeking to solve the conflict between them but in reality driving them apart. Maybe Jack Phillips will lose his case and maybe religious cake-makers everywhere will be forced to serve same-sex weddings. I don't know what to call that, but, whatever it is, it's not tolerance.

Trevor Burrus is a research fellow in the Cato Institute's Robert A. Levy Center for Constitutional Studies and managing editor of the Cato Supreme Court Review.