

Can Arizona businesses refuse service to LGBT customers? Attorney general, others weigh in

Jessica Boehm

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With an Arizona Supreme Court hearing just weeks away, some of Arizona's most powerful politicians and businesses are weighing in on whether Phoenix can require businesses to serve lesbian, gay, bisexual and transgender customers.

They don't all agree, and the outcome could have national implications.

On Jan. 22, the court will hear arguments stemming from a 2016 lawsuit challenging a portion of Phoenix's nondiscrimination ordinance regarding sexual orientation and gender identity.

Two evangelical Christian artists who own Phoenix wedding shop Brush & Nib filed the lawsuit because they believe that designing invitations or other custom artwork for same-sex couples is equivalent to endorsing such marriages, which their religion does not permit them to do.

They said that violates their First Amendment rights, even as no same-sex couples had requested their services at the time they filed the lawsuit.

The duo had little legal luck — losing at both Maricopa County Superior Court and the Arizona Court of Appeals — until the Arizona Supreme Court agreed to hear their case.

In preparation for the hearing, more than a dozen groups of politicians, legal experts, businesses, religious groups and advocacy groups submitted "friend of the court" briefs, with some supporting the wedding shop owners and others backing the city.

A Supreme Court case has profound implications for LGBT rights and religion's place in public life. The case pits a Denver-area gay couple against a baker who cited his Christian faith in refusing to make a cake for their wedding celebration. (Dec. 1) AP

Brnovich, legislators weigh in

Arizona Attorney General Mark Brnovich joined with attorneys general of seven other states in a brief outlining why they believe the Arizona Court of Appeals erred in its decision to uphold Phoenix's ordinance.

The attorneys argue that customized calligraphy and paintings for weddings are artistic works that are protected by the Arizona Constitution. Phoenix's ordinance, they argue, would illegally compel the designers to create artwork they do not wish to create.

The attorneys argue that non-discrimination ordinances are legal, and should be used to prevent discrimination, but not at the expense of violating religious beliefs.

“Our brief seeks a balance to keep the anti-discrimination ordinance in place and respect the religious beliefs and property rights of individuals engaged in faith-based artistic expression.”

Arizona Attorney General Mark Brnovich

In a statement, Brnovich said, “hate-based discrimination towards any group of people has no place in our public accommodations. The idea that a government could fine and jail these two women for choosing to not create custom-made art in conflict with their religious beliefs is wrong.

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Twenty-six Republican Arizona state lawmakers, including the incoming House speaker and Senate president, also submitted a brief, sharing many of the same concerns.

The lawmakers argue that "accepting government-compelled creation of custom artwork cannot be the price of entry to the marketplace."

"Government cannot compel Brush & Nib to create dozens of little billboards, whether arranged on tables or mailed to guests, holding out Phoenix's message of marriage, if that message goes against Brush & Nib's philosophical and religious objections to it," the lawmakers said in the brief.

National Center for Law and Policy, CATO Institute, a coalition of religious entities and numerous other groups also submitted briefs supporting Brush & Nib.

Religious groups, businesses support ordinance

Numerous groups filed briefs in support of Phoenix and its non-discrimination ordinance.

A coalition of eight law school professors and First Amendment scholars argued in their brief that just because the services provided by Brush & Nib are artistic in nature does not afford them any special protections.

A wedding-invitation designer is no different than a food caterer, limousine driver or hotel staff. The services each provide are not an endorsement of the wedding, but instead are a business transaction, they argue.

“(Non-discrimination laws) guarantee that a Muslim cannot be refused a meal by a Protestant restaurateur, a Sikh cannot be evicted by a Baptist landlord, and a Catholic cannot be fired by a Jewish supervisor for adhering to the 'wrong' faith.”

A brief in support of Phoenix's non-discrimination ordinance

The women's desire to turn away same-sex couples, "has nothing to do with (the women's) calligraphy and artistic talents, and everything to do with their desire not to provide same-sex couples with the same services they provide to heterosexual couples," according to the brief.

A group of religious, religious-affiliated and civil rights organizations that "share a commitment to religious freedom and to ensuring that LGBTQ people, and all Americans, remain free from officially sanctioned discrimination," also submitted a brief supporting Phoenix.

"Religious freedom is a constitutionally and statutorily protected value of the highest order. It is not, and has never been, a license to discriminate in violation of neutral public-accommodations laws," the brief states.

The groups argue in their brief that Phoenix's non-discrimination ordinance also protects them, and other religious organizations, against discrimination.

"(Non-discrimination laws) guarantee that a Muslim cannot be refused a meal by a Protestant restaurateur, a Sikh cannot be evicted by a Baptist landlord, and a Catholic cannot be fired by a Jewish supervisor for adhering to the 'wrong' faith," the brief states.

The American Civil Liberties Union, other Arizona wedding vendors and a coalition of more than 200 businesses — including American Express Company, PayPal Holdings, Inc. and the Greater Phoenix Economic Council — also weighed in to support Phoenix's non-discrimination ordinance.

Importance of case

This case could affect far more than wedding invitations in Phoenix.

Scottsdale-based Alliance Defending Freedom — the conservative legal group representing Brush & Nib — has challenged similar non-discrimination ordinances across the country.

The U.S. Supreme Court ruled on one of the legal group's other cases — involving a bakery in Colorado that refused to make a wedding cake for a same-sex couple — earlier this year, but the justices left many legal questions unanswered.

In a narrow ruling, the court sided with the bakery. In his opinion, former Supreme Court Justice Anthony Kennedy wrote that the decision was based upon how the baker was treated by Colorado's Civil Rights Commission. Kennedy said that some of the comments made by commissioners called into question the fairness of the commission's decision.

Alliance Defending Freedom celebrated the decision as precedent-setting. But many legal scholars said the decision was not based on the merits of the case and would do little to affect similar cases around the country.

It's all but guaranteed that the Supreme Court will eventually weigh in on non-discrimination ordinances again, and that could come in the form of the Brush & Nib case.