



Free speech for thee and for me

Dale Carpenter

September 16, 2019

Today the Arizona Supreme Court concluded that calligraphers cannot be compelled to personally write custom wedding invitations for marriages to which they object. While there's a lot to be said about future application of precedents like this to anti-discrimination law, I was glad to see the court distinguish cases involving expansive claims to "free speech" rights for blanket refusals to provide floral arrangements and wedding venues. Indeed, under the Arizona opinion, most of the goods and services commonly provided for weddings would not be "speech" (or would at most involve conduct with an expressive component) and therefore would not be constitutionally immunized from anti-discrimination law.

Along with a million or so other Americans, I am in one of those marriages the calligraphers condemn. Free speech used effectively by gay-marriage advocates convinced large majorities of Americans to support the cause. Those supporters can criticize the calligraphers on theological, philosophical, and political grounds. And of course, they can readily (and, I assume, happily) take their business elsewhere. But those whose very calling is to put pen to paper should not be required—on pain of government-imposed fine, jail, or loss of their livelihoods—to speak in violation of their consciences.

(The Cato Institute, Eugene, and I filed an amicus brief supporting a narrow win for the calligraphers on free-speech grounds. We did not express a view on the state religious-freedom claim, which the calligraphers also successfully invoked.)