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Justices agree to hear discrimination challenge from Christian web designer

A woman who designs websites says she has been unable to expand her business into weddings because Colorado law would force her to work with same-sex clients.

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Supreme Court took up an appeal Tuesday from a Christian woman who wants to design wedding websites, but only for straight couples.

Lorie Smith argues in her petition to the court that Colorado's anti-discrimination law violates her religious beliefs by forcing her to advertise her services for same-sex marriages.
"Lorie is willing to create custom websites for anyone, including those who identify as LGBT," her attorneys at Alliance Defending Freedom explained. It is only for requests that would promote messages "contrary to her faith," including those which "promote sexual immorality, abortion, or same-sex marriage," that she would decline.

Though she has drafted a statement to that effect to make consumers aware of her policies, Smith says the message is considered illegal under Colorado's Anti-Discrimination Act.

She sued for an injunction but had her case thrown out despite the Supreme Court's 2018 ruling in favor of another Colorado business, Masterpiece Cakeshop, that refused to design wedding cakes for gay couple. The attorneys representing Smith's business 303 Creative also represented Masterpiece Cakeshop and its Christian owner, Jack Phillips.
The 10th Circuit affirmed summary judgment against Smith in a 2-1 ruling, finding that the harm LGBTQ Coloradans would experience from denied services outweighed a business owner's First Amendment rights.

"We agree with the Dissent that 'the protection of minority viewpoints is not only essential to protecting speech and self-governance but also a good in and of itself," U.S. Circuit Judge Mary Beck Briscoe, a Clinton appointee, wrote for the majority in July 2021 opinion. "Yet, we must also consider the grave harms caused when public accommodations discriminate on the basis of race, religion, sex, or sexual orientation. Combatting such discrimination is, like individual autonomy, 'essential' to our democratic ideals."
The Cato Institute and Hamilton Lincoln Law Institute tapped Eugene Volokh, a professor at the University of California, Los Angeles, School of Law, to author an amicus brief supporting Smith's petition to the Supreme Court.

“Web designers should be free to choose not to speak for any political movement, no matter how laudable or condemnable it is,” Volokh wrote. “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.”

Colorado Solicitor General Eric R. Olson argued in the state’s response brief, however, that the law was narrowly tailored to meet constitutional muster, and its end goal of addressing discrimination was paramount.
“Eliminating ‘stigmatizing injury, and the denial of equal opportunities that accompanies it’ provides a powerful basis for antidiscrimination laws,” he wrote.

In a statement, Alliance Defending Freedom welcomed the chance to argue the case before the Supreme Court and compared the state’s nondiscrimination law to an “Orwellian diktat.”

“Colorado’s law — and others like it — are a clear and present danger to every American’s constitutionally protected freedoms and the very existence of a diverse and free nation,” Kristen Waggoner, an attorney at the group, wrote.

Colorado Attorney General Phil Weiser expressed confidence meanwhile that the high court will uphold the law.

“Companies cannot turn away LGBT customers just because of who they are,” he said.

The Supreme Court did not issue any statement on the case in agreeing to take it up Tuesday. It was one of two cases granted a writ of certiorari.

The other comes from Adolfo R. Arellano, who applied to the Department of Veterans Affairs for disability benefits more than 30 years after he was discharged from the Navy. Arellano claims the one-year window for veterans to file such claims should be extended, or tolled, in his case because his mental illness prevented him from filing his claim earlier.

Despite testimony from a psychiatrist that Arellano has been “100% disabled since 1980,” when he was “almost crushed and swept overboard while working on the flight deck of [an] aircraft carrier,” the en banc Federal Circuit ruled against Arellano in a 6-6 stalemate this past June. Arellano's attorney noted in a petition to the high court that Arellano is one of tens of thousands of disabled veterans who struggle to apply for benefits within the year of their discharged from military service.
“It is an unfortunate reality that many members of the armed forces face a difficult path once discharged from service,” wrote James R. Barney with Farabow, Garrett & Dunner in New York.

Diagnosed with schizoaffective disorder bipolar as a result of injuries he received in the Navy, Arellano only applied for benefits after the death in 2011 of his father, who up until then had been his primary caretaker. For the last 40 years, Arellano has been either homeless or in the care of his family. Attorneys for the veteran say brain injuries, post-traumatic stress disorder and depression oftentimes conspire to keep a person who needs help from meeting the deadlines that are in place for getting the benefits they are owed.

In an amicus brief for Arellano, the nonprofit Military-Veterans Advocacy argues that the ruling by the Federal Circuit, “erodes veterans’ rights to the benefits their dutiful service has earned them.”
U.S. Circuit Judge Raymond T. Chen wrote in last year's concurring opinion against Arellano that the court is bound by the unambiguous intent of Congress in enumerating the one-year rule.

Solicitor General Elizabeth B. Prelogar likewise noted in the government's opposition brief that Congress provided 13 exceptions for benefits tolling, and that granting Arellano’s request would add a 14th — an act outside of the judiciary’s authority.
Attorney Barney said in an email Tuesday that he is grateful the high court will hear arguments on what is "an important issue to many disabled military veterans and their families.”

Representatives for the Department of Veterans Affairs did not respond to a request for comment.