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# Can a Web Designer Be Forced To Make Gay Wedding Pages? The Supreme Court Will Decide

**Will this follow-up to the famous wedding cake case finally decide if this is mandated speech violating the First Amendment?**

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The Supreme Court will finally be tackling the question of whether a public accommodation law can compel a business owner to produce messages that violate their personal beliefs as part of anti-discrimination protections.

Today the Supreme Court agreed to hear *303 Creative LLC v. Elenis*. Lorie Smith owns and runs 303 Creative, a graphic website design firm based in Colorado. Smith planned to design and host sites for weddings, but she has religious objections to same-sex marriage and does not want to be forced to design and host sites for such weddings. This puts her at odds with Colorado's Anti-Discrimination Act, which prohibits discrimination against LGBT customers.

Smith counters that she isn't refusing to serve LGBT customers, but she "cannot create websites that promote messages contrary to her faith, such as messages that condone violence or promote sexual immorality, abortion, or same-sex marriage," according to her petition to the Supreme Court. The United States Court of Appeals for the Tenth Circuit has taken the side of the Colorado Civil Rights Division and ruled that the law was being neutrally applied and not unconstitutionally vague or overbroad. Colorado could legally require Smith to design and host sites for gay weddings and could furthermore prohibit her from putting a message on her website stating that she would not due to her religious beliefs.

This case flows out of the Supreme Court's 7-2 ruling *Masterpiece Cakeshop v. Colorado Civil Rights Commission*. It's even from the same state. The Masterpiece Cakeshop case revolved around whether a baker could be forced to make a wedding cake for a gay couple. The Court ruled in the bakery's favor but actually punted on the central free speech question. The Court ruled that the commission had not neutrally applied the law, and commissioners had made statements indicating they had a bias against Masterpiece Cakeshop owner Jack Phillips' Christian beliefs.

Similarly, in a more recent case, *Fulton v. Philadelphia*, about whether a Catholic adoption agency could discriminate against gay couples, the Court dodged again. It ruled in favor of the adoption agency—not for religious freedom reasons, but because the law gave city officials discretion to grant exemptions, and therefore, it was not a neutrally applied law.

While the bakery and the adoption agency won these two cases, no precedent was established. The extent that the services of a baker, florist, photographer, and others were protected by the First Amendment and whether public accommodation laws could force businesses to provide their services for ceremonies over which they held moral objections remain legally muddled. Justice Neil Gorsuch noted in his opinion in the Fulton case, "these cases will keep coming until the Court musters the fortitude to supply an answer."

Indeed, several businesses have raised further legal challenges. Now that the Supreme Court has taken up *303 Creative LLC. V. Elenis*, we may finally get the precedent people are seeking. Smith is being represented by Alliance Defending Freedom, which also represented Phillips in the Masterpiece Cakeshop case.

The Cato Institute, joined by UCLA law professor Eugene Volokh (of The Volokh Conspiracy) and Southern Methodist University Dedman School of Law professor Dale Carpenter (also a contributor to The Volokh Conspiracy), have submitted an amicus curiae brief supporting Smith, urging the Court to find that Colorado's anti-discrimination laws violate her First Amendment rights. The brief notes:

As the Tenth Circuit acknowledged, Smith's creation of wedding sites is pure speech. Forcing her to create websites to which she objects is a speech compulsion. The law cannot force her to speak in this way unless the state can satisfy strict judicial scrutiny.

Declaring that a unique and customized product is irreplaceable and that therefore a requirement to provide it in the commercial marketplace is narrowly tailored, as the Tenth Circuit did, is to end free-speech protection for providers of expressive products. It erodes the ability of courts to invalidate applications of speech regulations where part of the government's goal is to punish unpopular ideas rather than solely to protect consumers' access to products.

That cannot be right as a matter of constitutional law. While providers of commercial services are certainly subject to state anti-discrimination obligations, their freedom of speech must remain protected.

In the orders today that the Supreme Court will hear the case, the Court narrowed down the questions in the case to a single issue: "Whether applying a public-accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment."

Do not expect some sort of broad ruling that would radically rethink anti-discrimination laws. Just two years ago Justice Gorsuch and Chief Justice John Roberts joined the Court's more liberal justices in deciding that the Civil Rights Act of 1964's anti-discrimination protections included gay and trans people. This is specifically and narrowly about the limits of mandating commercial speech that compromises the values of business owners.