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## The Real Significance of the Masterpiece Cakeshop Decision

Jeff Jacoby

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The Supreme Court's decision Monday in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* was not a legal landmark. It broke no constitutional ground. It affirmed no important new principle in the interpretation of the First or Fourteenth Amendments. The justices ruled 7-2 in favor of Jack Phillips, the owner of the specialty cake shop who was punished for refusing to design a cake to celebrate a same-sex marriage. But their verdict was widely downplayed as a temporary stopgap, limited to the somewhat unusual facts of Phillips's case, and holding out little reassurance to other vendors with religious objections to gay marriage.

I think that misses the point.

It's true that Justice Anthony Kennedy's majority opinion sidestepped the hard questions posed by this litigation. Can someone who opposes gay marriage be compelled to support it through his work? Is the artistry involved in designing a cake a form of speech under the First Amendment? When should claims of religious liberty trump the principle of nondiscrimination? The resolution of those issues, Kennedy wrote, "must await further elaboration in the courts." By and large, conservatives and religious-liberty advocates saw little to celebrate in Monday's ruling — "empty calories," the Cato Institute's Ilya Shapiro called it — while those who opposed Phillips rejoiced in the narrowness of the decision. "We lost a battle, but won the war," gloated David Cole of the ACLU, which represented the gay Colorado couple in the case.

Yet the real significance of the ruling, and of the fact that only two justices dissented, isn't the narrowness of its legal grounds. It is the sharpness of its rebuke to the members of the Colorado Civil Rights Commission for their bigoted comments when Jack Phillips was summoned to a hearing before them. After the baker explained that his Christian faith does not allow him to use his creative talent to celebrate same-sex marriage, one of the commissioners dismissed his plea for freedom of conscience as "one of the most despicable pieces of rhetoric." No other commissioner objected as he lectured Phillips that "freedom of religion" is just a pretext that has been used to "justify all kinds of discrimination throughout history," including slavery and the Holocaust.

The commissioners' anti-religious animus appalled Kennedy, who first raised the point during oral arguments in the case last December. "Tolerance is essential in a free society," he told Colorado's solicitor general. "The state in its position here has been neither tolerant nor respectful of Mr. Phillips's religious beliefs." Six months later, Kennedy's outrage was

undiminished. The “clear and impermissible hostility toward the [baker’s] sincere religious beliefs” was inexcusable, he wrote for the court’s majority. Through their naked contempt for Phillips’s religious views, Colorado’s commissioners had “violated the state’s duty under the First Amendment.” Seven justices agreed.

The importance of this message shouldn’t be underestimated. Proponents of same-sex marriage have long trashed defenders of traditional marriage as bigots and excoriated dissenters’ religious concerns as a mask for hate. But the real bigots and haters in this case, the Supreme Court decided, were the government officials who treated Phillips with such antipathy. If this view were held only by the court’s staunch conservatives, it might be easy for passionate “marriage equality” activists to ignore. But the majority includes three of the court’s strongest supporters of gay and lesbian rights, and the justice who wrote it is the author of the landmark *Obergefell* decision, which legalized same-sex marriage nationwide.

“Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises,” Kennedy wrote in *Obergefell*, “and neither they nor their beliefs are disparaged here.” His opinion this week puts teeth in those words, and puts progressives on notice: Just as the court will not let government abuse gay couples, neither will it permit the state to mistreat religious believers.

At a time when the nation’s political discourse is awash in polarized and toxic rhetoric, the Supreme Court has handed a stinging defeat to officials because they trafficked in polarized and toxic rhetoric. I can’t think of another case where the justices have issued a comparable rebuke. As a matter of law, the scope of their ruling was narrow. But the law, perhaps, wasn’t the only thing on their minds.