

# NATIONAL REVIEW

## Freedom Does Not Stop at the Bakery Door

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Any day now, the U.S. Supreme Court will rule on the narrowly argued case *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*. The Supremes must weigh the religious liberty of Christian baker Jack Phillips against the equal-treatment claims of Charlie Craig and David Mullins, a gay couple. But the Court also should decide whether this pair's demand that Phillips produce their gay-wedding cake also vanquishes his First Amendment rights to freedom of association and creative expression.

Liberals have cheered as local and state officials have used wedding cakes to tame allegedly backward, savage Christians and drag them from the Dark Ages into the 21st century.

Just how hard would the Left trample the pious? As Roger Pilon, the Cato Institute's resident constitutionalist, writes: "Imagine if Craig and Mullins had asked for a cake with writing that said 'Gay Marriage Is God's Will.' Would we force a devout Christian like Phillips to make such a cake?"

How would Democrats treat a sharia-compliant Muslim baker who told two gay men that crafting their wedding cake violated the Koran? Picture MSNBC's Rachel Maddow empretzeling herself over that one. Which aspect of diversity would a certified Leftist celebrate — gay marriage or fundamentalist Islam?

Regardless, why are *religious* bakers seemingly the only ones who may declare their independence from a heavy-handed and intrusive state? What about the 25 percent of Americans without faith? Why is their freedom of association not protected, or at least asserted? Must an *atheist* who opposes gay marriage bake for such occasions?

Wedding-cake litigation is analogous to D-Day. When valiant Allied forces attacked France's Normandy coast on June 6, 1944, they stormed five beaches code-named Omaha, Utah, Juno,

Sword, and Gold. Limiting wedding-cake lawsuits to religious-liberty arguments is like dispatching all the troops to Omaha while ignoring the other four beaches.

Freedom of association should be one such landing spot, yet it barely gets mentioned. Every American enjoys a sacred right to associate privately with whomever she wishes. But the reverse is true, too: Every citizen's right *not* to associate privately with those he prefers to avoid should be preserved, protected, and defended. A vegan photographer's refusal to shoot a celebrity pig roast deserves equal protection.

Crucial point: Freedom of association applies to the *private* sector, not the government. Equal justice under law requires the *public* sector to treat all Americans the same way. A government bakery, perhaps at a military PX store or VA hospital, must bake whatever kinds of cakes people request — to commemorate gay weddings, straight nuptials, shacking up, or even a really good one-night stand.

Thus, the Founding Fathers' constitutional structure correctly bequeathed us two spheres of human affairs: one in which Americans privately may choose those with whom we wish to associate, and one in which we publicly are treated as equals by a government that serves us all.

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Another metaphorical Normandy beach should be that of compelled speech. As the Cato Institute observes in its [amicus curia brief](#), "The fact that Jack's media are icing and chocolate rather than ink or paint does nothing to diminish the artistic content of his work." He no more should be coerced into creating something that contradicts his vision than Rembrandt should have been squeezed into yielding a Jackson Pollack. More concretely, Jack Phillips's pen is filled with icing, just as mine is filled with ink. Forcing Phillips to write "Happy Wedding Day, Charlie & David" detonates his rights to free expression no less than if government made me write "Hillary Clinton is a paragon of virtue and a font of truth. May all power flow to her forever."

As Cato's brief wisely notes, "when a baker tells a couple that he does not want to bake the cake for their wedding, the couple may understandably be offended by this rejection. But the First Amendment does not treat avoiding offense as a sufficient interest to justify restricting or compelling speech."

Democrats and liberals — who loudly insist that Christian bakers produce gay-wedding cakes — proudly refuse to serve supporters of President Donald J. Trump.

Greg Piatek of Philadelphia walked into a Manhattan bar called The Happiest Hour in January 2017. His red hat read "Make America Great Again." A bartender barked at Piatek, "Anyone who supports Trump — or believes in what you believe — is not welcome here! And you need to leave right now because we won't serve you!"

Piatek sued. And, on April 25, he lost.

"Here the claim that plaintiff was not served and eventually escorted out of the bar because of his perceived support for President Trump is not outrageous conduct," ruled Gotham judge David

Cohen, and rightly so. As a private establishment on private property, Happiest Hour was free to eject someone in a pro-Trump hat.

But how might Judge Cohen have ruled if someone were booted from a bar for wearing a T-shirt that read “I’m with her!”? A single standard, that supports the rights of both bars to refuse service to those with whom they disagree, would be fair. Tough, but fair.

Similarly, several top designers have announced that they will neither make garments for nor otherwise adorn Melania and Ivanka Trump. As designer Joseph Altazzura declared, “I don’t want to dress people I disagree with.”

As the justices decide this case, they should ask themselves this question: If it’s fashionable to refuse to style a gown for someone with whom one disagrees, why is it evil to refuse to bake a cake for someone with whom one disagrees?