



Court sides with baker who refused same-sex couple's wedding cake

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WASHINGTON – The Supreme Court on Monday ruled in favor of a Colorado baker who had refused to bake a wedding cake for a gay couple, saying that doing so would violate his deeply held religious opposition to same-sex marriage.

The court's 7-2 decision left open many questions surrounding Masterpiece Cakeshop owner Jack Phillips' refusal to bake a cake for Charlie Craig and Dave Mullins in 2012, noting that there might still be times when Phillips might "have his right of free exercise of religion limited by generally applicable laws."

But the court said the Colorado Civil Rights Commission's ruling against Phillips should be reversed because some commission members showed "clear and impermissible hostility" during hearings, which "disparaged Phillips' faith as despicable and characterized it as merely rhetorical."

Both sides of the case saw hope for the future in the ruling.

Michael Farris, president of the Scottsdale-based Alliance Defending Freedom, which represented Phillips, said that "religious freedom was affirmed by the court," adding Monday's ruling proves that "tolerance is a two-way street and he (Phillips) needs to be tolerated, just like anyone else."

But Sarah Warbelow, legal director for the Human Rights Campaign, said that ruling "reaffirmed the humanity and dignity of LGBTQ community and did not give businesses a license to discriminate" against them.

"No business owner should walk away from today's decision believing that they have a right to discriminate against LGBTQ people," Warbelow said on the steps of the Supreme Court. "Justice (Anthony) Kennedy was very clear that our nation's civil rights laws are still applicable and can be used to protect LGBTQ people."

Kennedy wrote the opinion for the court, which found fault not with the law, but with the way Colorado officials applied it in this case. He cited instances in which commission members said

“religion has been used to justify all kinds of discrimination,” including slavery and the Holocaust.

“The Commission’s hostility was inconsistent with the First Amendment’s guarantee that our laws be applied in a manner that is neutral towards religion,” Kennedy wrote.

“Phillips was entitled to a neutral decisionmaker who would give full and fair consideration to his religious objection as he sought to assert it, in all of the circumstances in which this case was presented, considered, and decided,” the opinion said.

Justice Ruth Bader Ginsburg, in a dissent joined by Justice Sonia Sotomayor, highlighted the opinion’s many findings that gay people should be protected from “indignities when they seek goods and services in an open market” and that businesses cannot “put up signs saying ‘no goods or services will be sold if they will be used for gay marriages.’” That was all the more reason, Ginsburg wrote, for the court to rule against Phillips and in favor of the couple.

Ginsburg rejected the majority’s argument that the Colorado Civil Rights Commission had treated Phillips differently than three other bakers who refused to bake cakes with messages opposing same-sex marriage. While those bakeries were objecting to a “demeaning message the requested product would literally display,” she wrote, Phillips objections arose “solely by the identity of the customer requesting it.”

Kennedy’s opinion went on to say that the “outcome of cases like this in other circumstances must await further elaboration in the courts.” But those cases, he wrote, must be “resolved with tolerance, without undue disrespect to sincere religious beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market.”

Aubrey Elenis, director of the Colorado Civil Rights Division, the agency that investigates discrimination complaints, said the court’s ruling will act as a guide for the division and commission moving forward. But she stressed that the “Colorado Anti-Discrimination laws remain unaffected” by Monday’s ruling.

“This means that the law still protects members of the LGBTQ community who visit places of public accommodation,” Elenis said. “What matters most is when reviewing cases, the commission and the division will need to take into consideration consistently and objectively all of the evidence that is submitted in the case.”

The Alliance Defending Freedom is pressing several similar cases, including a challenge to a Phoenix anti-discrimination law by two women who own a calligraphy business, Brush & Nib Studio.

The women directed requests for comment Monday to the alliance. But they have claimed in the past that if they were forced to produce wedding invitations for a same-sex couple, as they fear the city law requires, it would violate their religious beliefs.

With its tensions between religious rights, free speech, civil rights and anti-discrimination laws, the Masterpiece Cakeshop case was one of the most highly anticipated cases considered by the

Supreme Court this term. The case attracted 95 friend-of-the-court briefs from groups on both sides of the debate.

Arizona Attorney General Mark Brnovich joined a brief with 19 other attorneys general in support of Phillips, while close to 300 members of Congress joined briefs for and against the cakeshop.

Three Arizona Republicans – Reps. Andy Biggs of Gilbert and Paul Gosar of Prescott and former Rep. Trent Franks of Glendale – signed a brief in support of Phillips, while Democratic Reps. Raul Grijalva of Tucson and Kyrsten Sinema and Ruben Gallego, both of Phoenix, joined more than 200 Democrats in support of the Colorado Civil Rights Commission.

“The issue is freedom of expression. Where do you draw the line?” said the Cato Institute’s Ilya Shapiro, who wrote a brief in support of Masterpiece Cakeshop. Shapiro said he was not surprised by the ruling, given the questions Kennedy asked during oral arguments.

The National LGBT Task Force said in a prepared statement Monday that it is concerned that “the Court’s action will lead to future cases that may weaken the rights of LGBTQ people.” But Jack Nadler, a lawyer with Squire, Patton and Boggs, which filed a brief in support of Colorado and the couple, said the ruling helps recognize government’s “obligation to protect the rights of LGBT people from a discrimination in access to public accommodation.”

Robert McNamara, a senior attorney at the Institute for Justice, said that the court’s decision offers a better-defined scope of the First Amendment.

“Some people have skepticism about whether baking a cake is actually properly considered speech or whether baking a cake is considered expression, but I think at the core of it ... we should all care about the scope of protection we get from compelled speech,” McNamara said. “That core issue, even though it wasn’t resolved today, is something that I think should be important to all of us as Americans.”