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The real significance of the Masterpiece Cakeshop decision

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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.