

ALERTS

U.S. Supreme Court Rules In Favor Of Colorado Baker, Leaves Unresolved Issues Of Refusing To Serve Same-Sex Couples

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The U.S. Supreme Court ruled June 4 in favor of a Colorado baker who refused to make a wedding cake for a same-sex couple. The 7-to-2 decision was based on very narrow grounds and left unresolved whether business owners have a First Amendment right to refuse to sell goods and services to same-sex couples.

The case, *Masterpiece Cakeshop, LTD., et al. v. Colorado Civil Rights Commission et al.*, started when a same-sex couple filed a complaint with the state civil-rights commission after Jack Phillips, a baker and owner of Masterpiece Cakeshop, refused to design their wedding cake. Colorado, like most states, has a state anti-discrimination law that applies to businesses that sell to the public. The Colorado Civil Rights Commission and the Colorado Supreme Court both ruled in favor of the couple.

Observers expected a decision resolving the conflict between the baker's First Amendment rights and the couple's rights under the statute. Instead, the U.S. Supreme Court concluded that the Colorado Civil Rights Commission's consideration of the case was "compromised" by the comments of one of seven commissioners who disparaged the baker's arguments as "despicable."

The majority stressed the narrowness of its decision, saying that "the outcome of cases like this in other circumstances must await further elaboration in the courts, all in the context of recognizing that these disputes 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."

Although seven justices agreed that Phillips was entitled to a fair hearing from the Colorado commission, and the hearing he received didn't meet that standard, there were four separate opinions filed for the majority.

Kagan and Breyer wrote to say that bakers may refuse to make a cake with a message they find offensive, so long as they would refuse the same message to any customer.

Gorsuch and Alito argued that, because the Colorado commission had previously allowed bakers to refuse to decorate cakes with anti-gay designs, its decision to rule against the baker in this case was inherently inconsistent, and discriminated against some religious groups.

Thomas and Gorsuch, argued that cake decorating is expressive and protected from government restriction under the first amendment.

Ginsburg and Sotomayor dissented, contending that principles of

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anti-discrimination required ruling against Phillips. The offensive remarks of a single commission member, they said, did not taint the proceedings, which were reviewed by two courts afterward.

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