

SCOTUS Rules Colorado Agency Violated Free Speech Rights in Wedding Cake Case

Article By:

Nonnie L. Shivers

Hera S. Arsen

On June 4, 2018, the Supreme Court of the United States settled a controversy stemming from a bakery's refusal to make a cake for a same-sex couple's wedding reception. Justice Kennedy, writing for the majority, ruled that the Colorado Civil Rights Commission violated the Free Exercise Clause of the First Amendment by failing to consider the case with religious neutrality. [Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission](#), No. 16-111, Supreme Court of the United States (June 4, 2018).

Background

In 2012, a same-sex couple inquired with a bakery in Colorado about making a cake for their wedding reception. The owner of the bakery told the couple that he would not create a cake because he was opposed to same-sex marriages on the basis of his religion. The couple filed a charge with the Colorado Civil Rights Commission alleging sexual orientation discrimination in violation of the Colorado Anti-Discrimination Act. The Commission ruled in favor of the couple, and Colorado's state courts affirmed the ruling.

The Supreme Court agreed to hear the case to decide whether applying state law to compel the shop owner to create expression that violates his sincerely held religious beliefs about marriage violates the Free Speech or Free Exercise Clauses of the First Amendment.

The Supreme Court's Decision

According to Justice Kennedy's analysis, the shop owner "was entitled to the neutral and respectful consideration of his claims in all the circumstances of the case," but that consideration was compromised by the Commission. The Court recounted public hearings that the Commission had conducted, including in particular, the statement of one commissioner:

I would also like to reiterate what we said in the hearing or the last meeting. Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust, whether it be—I mean, we—we can list hundreds of situations where

freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to—to use their religion to hurt others.

The Court also compared the Commission's treatment of the baker in this case to the Commission's treatment of other bakers who had refused to make cakes for same-sex couples.

The Court concluded that describing "a man's faith as 'one of the most despicable pieces of rhetoric that people can use' is to disparage his religion in at least two distinct ways: by describing it as despicable, and also by characterizing it as merely rhetorical—something insubstantial and even insincere." The Commission's treatment of the case, the Court ruled, violated the state's First Amendment duty to refrain from basing "laws or regulations on hostility to a religion or religious viewpoint."

Practical Impact

The Court's narrow decision focuses on the Commission's failure to exhibit "religious neutrality" toward the baker. The Court's decision today does not reach the core intersectionality of free speech, religious rights and existing nondiscrimination protections. However, the Court reiterates that "the laws and the Constitution can, and in some instances must, protect [gay persons and gay couples] in the exercise of their civil rights. Employers—whether places of public accommodation or not—should therefore remain acutely aware of their nondiscrimination obligations in and outside Colorado, which remain unimpacted by today's Court decision.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volume VIII, Number 155

Source URL: <https://natlawreview.com/article/scotus-rules-colorado-agency-violated-free-speech-rights-wedding-cake-case>