

Masterpiece Cakeshop v. Colorado Civil Rights Commission

Facts

Masterpiece Cakeshop is a specialty cakeshop owned by a baker, Jack Phillips, who is Christian. He refuses to design cakes that conflict with his religious beliefs. That means that he won't design and decorate cakes for Halloween, or those with alcohol in them. He believes that same-sex couples should not be able to marry. When a same-sex couple visited his shop and tried to order a specialized cake to celebrate their upcoming wedding, Phillips said they were free to purchase items in his store, but refused to make them a specialized cake.

The couple believed that they had been discriminated against because of their sexual orientation. Colorado has a law that prohibits discrimination in places of public accommodation. That means that business that sell to the public cannot discriminate based on race, religion, disability, or sexual orientation, among other things. The couple complained to the Colorado Civil Rights Division, which enforces the law. That agency ruled that Phillips had violated Colorado's law. They said that if Phillips was going to create cakes for opposite-sex weddings, he had to do the same for same-sex weddings.

Phillips appealed that ruling, and a Colorado court confirmed that he had violated the Colorado law. Phillips then asked the Supreme Court to hear his case, and the Court agreed to do so.

Issue

Does enforcement of Colorado's anti-discrimination law require Masterpiece Cakeshop to create expression in a way that violates the baker's Free Speech or Free Exercise rights under the First Amendment?

Constitutional and State Law

- **U.S. Constitution, First Amendment:** "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech..."
- **Colorado's Anti-Discrimination Law:** Colorado bans discrimination in places of public accommodation, which include restaurants, hospitals, hotels, retail stores and public transportation, among others. Discriminatory actions include denial of service, terms and conditions, unequal treatment, failure to accommodate and retaliation. Places of public accommodation are prohibited from taking discriminatory actions against people because of their: race, color, disability, sex, sexual orientation (including transgender status), national origin/ancestry, creed, or marital status.

Legal Precedents***Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston (1995)***

The South Boston War Veterans Council was authorized by the City of Boston to organize the St. Patrick's Day Parade. The Council refused a request by the Irish-American Gay, Lesbian and Bisexual Group of Boston (GLIB) to join the parade in order to express gay pride. The state had a law prohibiting discrimination on account of sexual orientation in public accommodations. GLIB challenged the Council's refusal in court. The case went to the Supreme Court of the United States, which ruled in favor of the Council. The Court said that if the Council (a private group) was required to include in the parade a group expressing a message that the Council did not want to convey, that would violate the Council's First Amendment rights. The First Amendment means that speakers can choose not only what to say but also what not to say.

Bob Jones University v. U.S. (1983)

Bob Jones University is a private, Christian institution. The University was dedicated to fundamentalist Christian beliefs and prohibited interracial dating and marriage. In 1970, the Internal Revenue Service (IRS) began to deny tax exempt status to private schools engaging in racial discrimination. The University claimed that the IRS had violated their religious beliefs by revoking their tax exempt status. In an 8 – 1 ruling, the Supreme Court ruled in favor of the IRS, saying that racial discrimination in education violated a fundamental national public policy and that not all burdens on religion are unconstitutional.

Arguments for Masterpiece Cakeshop

- The First Amendment protects expression, which includes visual art. Like paintings and sculptures, elaborately designed and decorated cakes are works of art. The Constitution does not permit the government to force artists to create art that goes against their beliefs.
- Phillips' cakes convey messages – wedding cakes celebrate marriage and the couple being married. The state would violate his First Amendment beliefs by forcing him to express a message he disagrees with.
- Laws that prohibit discrimination by public-serving businesses can still apply to anyone who simply provides goods or services, because that is conduct and not expression. Conduct is not protected by the First Amendment. For example, renting a banquet hall or limousine service is not a form of expression. Artistic endeavors like cake decorating are expression and protected as speech.
- When a law limits someone's exercise of their religious beliefs, courts should look at it very closely. The government must have an extremely good reason to interfere with someone's religious beliefs, and Colorado does not have an extremely good reason to force Phillips to design cakes that go against his beliefs.
- There are plenty of other bakeries that happily design same-sex wedding cakes. The couple could easily go to another bakery.
- The Supreme Court has acknowledged that "opposition to same-sex marriage long has been held—and continues to be held—in good faith by reasonable and sincere people." And there is no dispute in this case that Phillips' objection to same-sex is based on a genuine and sincere religious belief, not a religious belief claimed only as a pretext for discrimination.
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- If the Court rules that Phillips must design a cake in violation of his beliefs, then it is hard to see why the government could not also force people to participate in, or even officiate, same-sex marriages in violation of their sincerely held religious beliefs.
- As the Supreme Court said in the *Hurley* case, the First Amendment not only protects what a person says but it also protects persons from being forced to say something they don't believe.