

U.S. SUPREME COURT SAYS WEDDING CAKE BAKER'S RELIGIOUS OBJECTIONS MUST BE CONSIDERED WITH NEUTRALITY

On June 4, 2018, the U.S. Supreme Court issued its decision in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and ruled in favor of Jack Phillips, a Colorado baker who refused to create a wedding cake for a same-sex couple due to his religious opposition to same-sex marriages. The Supreme Court held that the Colorado Civil Rights Commission ("Commission"), when it applied the Colorado Anti-Discrimination Act ("CADA") and determined that Phillips could not refuse to bake a wedding cake for a same-sex couple if he baked wedding cakes for opposite-sex couples, showed an animus towards Phillips based on his religious beliefs that was not consistent with the First Amendment's guarantee that laws be applied in a manner that is neutral to religion.

This decision does not resolve the central question of whether a person who is subject to a law like CADA and offers products or services to the public may refuse to provide, based on the person's sincerely held religious beliefs, certain products and services to gay individuals. The decision, however, reminds government decision makers that the First Amendment requires them to apply laws in a religiously neutral way.

The full text of the Court's decision may be found [here](#).

BACKGROUND

In 2012, David Mullins and Charlie Craig entered Phillips' bakery to order a cake for their wedding reception in Denver. The pair planned to wed legally in Massachusetts, because same-sex marriages were not legal in Colorado at the time, but hold their reception in Colorado. Phillips refused to bake a wedding cake for their reception, citing his faith, and the pair filed a complaint with the Commission against Phillips. Applying CADA, which prohibits a place of business from discriminating against certain classes of individuals, including sexual orientation, the Commission ruled against Phillips. Phillips appealed the decision to the Colorado Court of Appeals, citing his First Amendment rights to free speech and free exercise of religion. The Court of Appeals also ruled against Phillips, finding that CADA was a neutral law of general applicability and, therefore, did not violate Phillips' free exercise rights. Phillips appealed the decision to the U.S. Supreme Court after the Colorado Supreme Court declined to hear the case.

In a 7-2 decision written by Justice Anthony Kennedy, the Court set aside the Commission's order, finding that the Commission's application of CADA was inconsistent with the First Amendment's guarantee that laws be applied in a manner that is neutral toward religion. The opinion noted that "it is unexceptional that [a state's laws] can protect gay persons, just as it protects other classes of individuals, in acquiring whatever products and services they choose on the same terms and conditions as are offered to other members of the public." But, the Court took issue with the Commission's apparent hostility to Phillips' religious beliefs, finding the hostility compromised the "neutral and respectful consideration to which Phillips was entitled." Phillips was entitled to, but did not have, a neutral decision maker who would give full and fair consideration to his religious objection.

In her dissent, joined by Justice Sonia Sotomayor, Justice Ruth Bader Ginsburg disagreed with the majority's view that the Commission's decisions and statements revealed a hostility that signaled a free exercise violation.

PRACTICAL TAKEAWAYS AND RECOMMENDATIONS

The Court largely limited the impact of its decision and envisaged future cases. Justice Kennedy concluded, "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."

Like other organizations that comply with public accommodation laws, health care entities and practitioners should watch for developments in this area. For some health care practitioners and organizations, providing certain services implicate deeply and sincerely held religious beliefs. Protecting both the rights of patients and health care providers can be difficult. When working to address these issues, health care organizations and practitioners must consider, in addition to public accommodation laws, other anti-discrimination laws, rules of professional conduct, licensing laws and legal mandates, among other laws that work to protect patients, while also considering protections against

employment discrimination, state and federal conscience laws and other laws and standards that can protect or affect health care providers. Ultimately, open discussion and engagement among the parties involved in policy-making and implementation can help reduce risk and resolve conflicts.

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