

# Supreme Court: Colorado's Civil Rights Commission Anti-Religious Bias Violated Cake Baker's Rights

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June 4, 2018

## Meet the Authors



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The U.S. Supreme Court has issued a narrow ruling in favor of a baker who refused to make a wedding cake for a same-sex couple. [\*Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission\*](#), No. 16-111 (June 4, 2018).

The Court's 7-2 decision resolves the specific conflict between the owner of Masterpiece Cakeshop, Jack Phillips, and the Colorado Civil Rights Commission's decision and state court's order that would have compelled Phillips to make a wedding cake for a same-sex couple under Colorado's Anti-Discrimination Law (CADA). CADA prohibits places of public accommodation from discriminating against individuals on the basis of certain protected characteristics, including sexual orientation.

### Background

The controversy between the cake baker and the couple he refused to bake a wedding cake for centered on Phillips' sincere religious beliefs and the couple's identity as gay men. Counsel for Phillips argued that the Commission's decision and the subsequent state court order violated Phillips' protection by the First Amendment's Free Exercise clause and should be considered compelled speech.

During oral argument, Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan alluded to the broad repercussions of a decision that could undercut public accommodation laws and civil rights protections. Chief Justice John Roberts and Justices Samuel Alito and Neil Gorsuch focused on safeguarding sincerely held religious beliefs and the potential for overreach by companies that refuse services because of an individual's sexual orientation or other protected characteristics.

For more background on the oral argument, please see our article, [Supreme Court Argument: Baker's First Amendment Rights vs. Colorado's Anti-Discrimination Law](#).

### Supreme Court's Decision

The Court's ruling focused on the hostility and biased process executed by the Commission against Phillips. How the Commission handled the baker's right under the First Amendment informed the Court's decision and ultimately a ruling in his favor.

Writing for the majority, Justice Anthony Kennedy said, "The Commission's hostility was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion. Phillips was entitled to a neutral decisionmaker who would give full and fair consideration to his religious objection as he sought to assert it in all of the circumstances in which this case was presented, considered, and decided."

The Commission's impermissible hostility was the primary factor discussed and evidenced throughout the Court's decision. The Court identified this hostility by comparing the Commission's treatment of Phillips with similar cases of other bakers. For example, the Commission ruled that any messages on the requested cake would be attributed to the

customer, but did not make this point where bakers received requests for messages with anti-gay marriage symbolism.

Though the case was highly publicized, the Court's ruling leaves the question many had in mind unanswered. Whether individuals who hold sincere religious beliefs can refuse service to individuals within a protected class, including same-sex couples, is not resolved in this Supreme Court decision. Kennedy acknowledged this when he said, "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."

The Court recognized the potential for individuals and companies to assert a sincerely held religious belief as an avenue for discrimination. However, it chose to focus on the impermissible hostility shown by the Colorado Civil Rights Commission toward Phillips in *Masterpiece Cakeshop*.

The case was remanded back to the Colorado's Civil Rights Commission for a further examination of this legal issue consistent with the Court's decision.

### Implication for Employers

*Masterpiece Cakeshop* will not affect the protected status of individual employees' sexual orientation.

The Court specifically acknowledged the equal rights of persons who identify with the LGBTQ community. This emphasizes the importance of addressing sexual orientation, religious accommodation, and other protected groups in anti-harassment trainings and training materials.

This case does not change any of our nation's fundamental civil rights laws that protect individuals of protected classes from discrimination in the workplace. However, it underscores the importance of unconscious bias and LGBTQ sensitivity trainings for all employees.

As an employer, it is imperative that across all levels of employment and throughout all offices, the proper precautions are taken to reduce risk of potential suits. As we approach the celebration of LGBTQ Pride this month, employers must be mindful and respectful in taking measures to promote a work environment in which employees can bring their whole self to the workplace.

Jackson Lewis attorneys are available to discuss this case and other legal developments.

Summer Clerk Laurence Thompson, in our Washington, D.C. Region office, contributed significantly to this article.

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