

The promising gay-rights message in the Masterpiece Cakeshop ruling



By SUZANNE B. GOLDBERG JUN 05, 2018 | 12:00 PM



Supporters of baker Jack Phillips, owner of Masterpiece Cakeshop, hug inside Phillips' shop Monday, June 4, 2018, in Lakewood, Colo., after the U.S. Supreme Court ruled that he could refuse to make a wedding cake for a same-sex couple. (David Zalubowski / AP)

Many news headlines announcing the Supreme Court's ruling in Masterpiece Cakeshop vs. Colorado Civil Rights Commission — "Supreme Court rules for Colorado baker" is a typical one — suggest that the baker won an all-out right to refuse to make wedding cakes for gay Coloradans. And that other businesses around the nation can now refuse service to gay couples planning a wedding.

But these headlines tell a misleading story. In fact, what the baker won was just the tiniest sliver. The Court ruled that his arguments hadn't received "neutral and respectful" consideration by the Colorado Civil Rights Commission that found he had discriminated by turning away two men who sought to buy their wedding cake from his shop.

This isn't news. Commissions of this sort have a legal obligation to be fair and impartial when they evaluate faith-based claims. In this case, the Court found that some parts of the decision-making process did not meet that standard. This included a commissioner's comment that "it is one of the most despicable pieces of rhetoric that people can use to — to use their religion to hurt others."

Justice Anthony Kennedy wrote that this comment, with its dismissal of the baker's sincerely held faith as "mere rhetoric," showed that the Colorado commission had not fulfilled its responsibility to enforce the nondiscrimination law fairly and neutrally.

In other words, the Supreme Court's decision is not about whether the baker discriminated unlawfully but instead about whether he received a fair hearing when the state's commission decided this particular case.

The Court also stressed that this case was about a service refusal that happened in 2012 when gay couples did not have the legal right to marry in Colorado. Indeed, the couple had planned to marry in Massachusetts and then return to Denver to celebrate.

With that in mind, Kennedy noted that the baker's actions were "understandable given the background of legal principles . . . in Colorado at that time." Simply put, the baker could have believed his decision to deny a gay couple a wedding cake was "not unreasonable" when the state denied marriage itself.

Because the Court decides cases based on the facts before it, rather than the imagined facts of future cases, the opinion does not tell us what will happen if a baker or any other business owner refuses on religious grounds to serve a gay couple today. But these cases are coming.

And for these future cases, the Court has given us guidance that is far more promising for the future of civil rights than the headlines suggest. In fact, the opening line of the Court's reasoning affirms society's recognition that gay people and gay couples "cannot be treated as social outcasts or as inferior in dignity and worth."

Next, the Court makes clear that while religious organizations are protected in teaching the principles of importance to them, including objections to same-sex couples' marrying, "it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services."

The Court supported this proposition by citing one of its own rulings from 1968, that a barbecue restaurant chain had to comply with anti-discrimination law even though the owner argued that his religious beliefs compelled him to refuse service to African-American customers. The same principle of equality applies, whether discrimination is based on race or sexual orientation.

The Court noted that clergy are protected in their right to refuse to marry a same-sex couple, consistent with their exercise of their religion. But — and here's the key — the Court adds that if this exception were expanded much further, "then a long list of persons who provide good and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations."

To be sure, we can see outlines of the debates ahead about the extent to which individuals and businesses should be able to rely on religion to exempt themselves from these laws. The multiple concurring and dissenting opinions filed alongside Kennedy's majority opinion present a variety of paths forward.

It is clear is that the "baker victory" headlines reflect a limited — and potentially misleading — understanding of what the Court has told us. The larger portion of the Court's decision affirms the Constitution's respect not only for religious faith but also for the laws that protect equal access to the public marketplace. It is these laws, after all, that seek to ensure our dignity as individuals and as a nation committed to justice for all.

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