

Masterpiece Cakeshop v. Colorado Civil Rights Commission

DIRECTIONS:

Students will be provided background information and a video to become familiar with the Masterpiece Cakeshop case. Students will then read the two short opinion pieces.

After reading both opinions, students will explain in one paragraph how they think the decision should go. Arguments must be grounded in knowledge of the Constitution and it must be stated whether or not it is believed that the free exercise clause was violated and why.

Students will be randomly split into two groups, one in favor of Phillips and one opposed. Each group will do a 5 minute presentation to argue their position.

As a class, students will review the Supreme Court's ruling and discuss.

BACKGROUND:

In the summer of 2012, Charlie Craig and Dave Mullins entered Jack Phillips' cakeshop and requested that he create a custom-designed cake for their wedding. Phillips, a devout Christian who opposed same-sex marriage on the basis of his faith, refused to do so. Craig and Mullins filed a complaint with the Colorado Civil Rights Commission under the Colorado Anti-Discrimination Act. The case eventually made its way all the way up to the Supreme Court.

Video: [Masterpiece Cakeshop v. Colorado Civil Rights Commission](#)

OPINIONS:

Here's why I can't custom-design cakes for same-sex weddings

Jack Phillips, Opinion contributor Published 5:00 a.m. ET Dec. 4, 2017 | Updated 7:47 p.m. ET Dec. 4, 2017

We don't have to agree on questions of sexual morality. But what we should be able to agree on is our freedom, to live out our most important ideals.

What I didn't say was that I wouldn't sell them a cake.

I'm happy to sell a cake to anyone, whatever his or her sexual identity. People should be free to make their own moral choices. I don't have to agree with them.

But I am responsible for my own choices. And it was that responsibility that led me to decline when two gentlemen came into my shop and invited me to create a wedding cake



for their same-sex ceremony.

Designing a wedding cake is a very different thing from, say, baking a brownie. When people commission such a cake, they're requesting something that's designed to express something about the event and about the couple.

What I design is not just a tower of flour and sugar, but a message tailored to a specific couple and a specific event — a message telling all who see it that this event is a wedding and that it is an occasion for celebration.

In this case, I couldn't. What a cake celebrating this event would communicate was a message that contradicts my deepest religious convictions, and as an artist, that's just not something I'm able to do, so I politely declined.

But this wasn't just a business decision. More than anything else, it was a reflection of my commitment to my faith. My religious convictions on this are grounded in the biblical teaching that God designed marriage as the union of one man and one woman.

Obviously, not everyone shares those convictions. I don't expect them to. Each of us makes our own choices; each of us decides how closely we will hold to, defend and live out those choices.

The two men who came into my shop that day were living out their beliefs. All I did was attempt to live out mine. I respect their right to choose and hoped they would respect mine.

They did not. And, considering all of the hate mail, obscene calls and death threats my family has received since I was sued, a lot of other people don't see tolerance as a two-way street, either.

But the Constitution does. The First Amendment defends my right to create custom cake art that is consistent with my faith, while declining requests that ask me to celebrate events or messages that conflict with my faith. As a cake artist, I can live out my faith in my day-to-day life, and make that faith the basis for my creative decisions.

We live in a big, diverse nation. We don't all have to agree on religion. We don't have to agree on questions of sexual morality. We don't even have to agree on the meaning of marriage.

What we should be able to agree on is our mutual freedom, as Americans, to live out the ideals that are most important to us.

Just as I shouldn't be able to use the law to force others to design something that promotes my beliefs, others shouldn't be able to force me to design a cake that celebrates theirs.

That, for me and those at Alliance Defending Freedom who are defending me, is what this case is about. I hope the U.S. Supreme Court affirms that basic freedom.



And if those who oppose me would grant me a certain measure of respect — not as someone they agree with, but as a fellow citizen free to stand by my own moral choices, well ... that would be icing on the cake.

Baker's case is not about the First Amendment

The Editorial Board, USA TODAY Published 4:50 p.m. ET Dec. 4, 2017 | Updated 7:46 p.m. ET Dec. 4, 2017

Supreme Court hearing is about treating a gay couple as second-class citizens: Our view

When the Supreme Court in 2015 recognized a constitutional right for same-sex couples to marry, it was a huge step forward for equality, but the ruling didn't resolve the deep religious divisions over gay marriage that endure.

One of those battles arrives Tuesday at the Supreme Court, a case in which Colorado baker Jack Phillips cites his religious and free expression rights for refusing in 2012 to design a custom cake for a gay couple's wedding.

It is a landmark battle that, in essence, pits the baker's right to practice his Christian faith against the rights of Charlie Craig and David Mullins to be free from discrimination as they go about their public lives. Respecting religious rights is one of the nation's fundamental values, but so is respecting the rights of individuals to be treated equally.

In front of the justices, the arguments will be couched in the complexities of the First Amendment's guarantee of free expression: Phillips argues that his artistic cakes express his ideas about marriage and are entitled to full constitutional protection. But the battle also comes down to a simple idea enshrined in American law and values: When you open a business in this country and sell to the public, you agree to abide by public accommodation laws.

On those grounds, the Colorado Civil Rights Commission and a state appeals court ruled against Phillips. And unless the Supreme Court decides to turn its back on that core principle of equality, it should do the same.

For the court to rule otherwise would open the door to discrimination by all sorts of vendors who claim artistic expression: photographers, chefs, suit and dress designers, florists and wedding planners, to name a few.

While the First Amendment's guarantee of freedom of religion and expression are both fundamental rights, neither is unlimited. An old saying, "Your right to swing your arms ends just where the other man's nose begins," is apropos. Phillips has an absolute right to his religious beliefs, but when the practice of his religion infringes on the rights of others to equal treatment, it goes too far.



In the past, the Supreme Court has set limits on freedom of speech and religion. The court has repeatedly ruled that constitutional rights do not nullify neutral laws on everything from racial equality to taxes. An Amish farmer, for example, refused to pay Social Security taxes for workers based on his religious belief that the community and not the government should care for the elderly and needy. The Supreme Court ruled unanimously in 1982 that by becoming an employer, Lee freely entered into commercial activity and accepted certain limits on the exercise of his beliefs.

And so it is with Phillips.

Forty-five states have public accommodation laws that prohibit discrimination on the grounds of race, gender, ancestry and religion. Twenty-two also prohibit discrimination on the basis of sexual orientation. Colorado is one of them.

Phillips and his lawyers try to make a distinction: The baker isn't discriminating against gay people because he's willing to sell them anything off his store shelves, but he is not willing to use his artistry to celebrate their marriage. No doubt he is sincere.

Even so, the distinction does not change the fact that Mullins and Craig and others will be summarily turned away, if the court rules for Phillips. Of course they can get a cake somewhere else, which Mullins and Craig did. That's not the point. They were humiliated and treated as second-class citizens when Phillips turned them away.

In passing the Civil Rights Act of 1964, the Senate recognized that discrimination "is about the humiliation, frustration and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color." Or, today, because he loves someone of the same sex and chooses to get married. Allowing that sort of unequal treatment is not what America is about. The public will be better served if the Supreme Court puts a stop to it now.

SUPREME COURT'S RULING:

Decision

On June 4, 2018, the Supreme Court ruled 7-2 in favor of Jack Phillips using the free exercise clause of the First Amendment to uphold the right of Phillips to refuse to custom design a cake for a same-sex wedding.

Majority opinion

Justice Kennedy's majority opinion for the U.S. Supreme Court stressed that "gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth." Kennedy also recognized that "When it comes to weddings, it can be assumed that a member of the clergy who objects to gay marriage on moral and religious grounds could not be compelled to perform the ceremony without denial of his or her right to the free exercise of religion," which would be protected by the free exercise clause. In the case at hand, Phillips had not refused to sell all products to gays but argued that he should not be forced "to use his artistic skills to make an expressive statement" endorsing same-sex marriages.



Citing the decision in *West Virginia State Bd. of Ed. v. Barnette* (1943), which upheld the right of students to refrain from saluting the flag, Justice Kennedy said that the free exercise clause prohibits the government from choosing which opinions are “orthodox” and which are not.

Concurring opinions

Justice Neil Gorsuch authored a concurring opinion, joined by Samuel Alito, reiterating that the free exercise clause protects unpopular, as well as popular, religious beliefs. Gorsuch further used the distinction between “intended and knowingly accepted affects” to indicate that Phillips was not attempting to discriminate against same-sex couples but only to distance himself from endorsing a celebration that he thought was ungodly. Gorsuch denied the suggestion “that cakes with words convey a message but cakes without words do not.” He argued that wedding cakes conveyed a symbolic message much as flags or other emblems. Phillips had not refused to bake a generic cake but only one that celebrated a same-sex union that he thought violated his religion.

Justice Clarence Thomas wrote an additional opinion concurring in the judgment, which Gorsuch also joined. Whereas the majority opinion focused on the free exercise clause, Thomas wanted to stress Phillips’ free speech claim. Thomas believed that designing a cake was just as much “expressive conduct” as nude dancing or flag burning, which the Court had protected in other cases. Moreover, he believed that requiring Phillips to bake a cake was an unconstitutional form of compelled speech. Thomas pointed out that Phillips considered himself to be an artist, and that forcing him to celebrate a ceremony that he disapproved could not simply be remedied by allowing him to post a disclaimer. Thomas further argued that the decision on *Obergefell* made it even more important that those with minority opinions be allowed to express them.

Dissenting opinion

Justice Ruth Bader Ginsburg authored the only dissent, which Sonia Sotomayor joined. Both agreed that gay persons should be protected and denied that the Free Exercise clause had been violated. They distinguished this case from ones involving the refusal to make a cake with an anti-gay message on the basis that the baker would have made the same decision regardless of the customer’s religion. Ginsburg thus thought there was a difference between denying service on the basis of a customer’s identity rather than on a judgment that a particular message was demeaning.

REFERENCES:

supremecourt.gov
The First Amendment Encyclopedia
FIRE’s First Amendment Library
USA Today - Jack Phillips
USA Today - Editorial Board

