



The Masterpiece Cakeshop Decision – Bakery Owner Wins, But on Narrow Grounds

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On June 4, 2018, the Supreme Court of the United States issued its highly anticipated decision in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, Case No. 16-111. In its opinion, found [here](#), the Court vacated an administrative order entered by the Colorado Civil Rights Commission (“CCRC” or the “Commission”) against the bakery, which had refused to sell custom wedding cakes to same-sex couples on the grounds that doing so would violate the owner’s sincerely held religious beliefs. The Court made it clear that judges and administrative officials violate a litigant’s constitutional rights if they engage in conduct that displays hostility toward a particular set of religious beliefs. But the majority opinion left many questions unanswered. It remains to be seen if a business owner may refuse to do business with a prospective customer because of the customer’s sexual orientation when the refusal is based on a sincerely held religious belief.

Background Facts and Procedural History

Since 2008, the Colorado Anti-Discrimination Act (“CADA”) has prohibited discrimination on the basis of sexual orientation in places of public accommodation.

Masterpiece Cakeshop, Ltd. (“Masterpiece Cakeshop”) is a bakery in Colorado that bakes custom wedding cakes. Its owner, Jack Phillips, is a devout Christian who sincerely believes that marriages should only occur between members of the opposite sex. In the summer of 2012, a same-sex couple entered Masterpiece Cakeshop and ordered a custom wedding cake. Masterpiece Cakeshop refused to make a wedding cake for the couple but was willing to make any other type of cake or baked good for the couple (e.g. “birthday cakes, shower cakes, cookies, or brownies”). The couple subsequently filed a charge of discrimination against Masterpiece Cakeshop with the Colorado Civil Rights Division (“CCRD”). The CCRD investigated the matter and determined there was probable cause that unlawful discrimination had occurred.

In the administrative proceedings before the CCRD, there was no dispute that Masterpiece Cakeshop was a place public accommodation under the CADA and that the sole reason for the refusal of service was the fact that the cake would be used in a same-sex wedding. However, Mr. Phillips argued that he acted lawfully because, as applied in this context, the CADA was unconstitutional. Specifically, he argued that requiring him to make the wedding cake would violate his First Amendment right to free speech or, alternatively, that requiring him to make the wedding cake would violate his First Amendment right to the free exercise of religion. An administrative law judge (“ALJ”) for the Commission rejected Mr. Phillip’s constitutional arguments and held that Masterpiece Cakeshop acted unlawfully. The order entered against Masterpiece Cakeshop required the bakery to cease and desist from discriminating against same-sex couples by refusing to sell them wedding cakes, to comprehensively train its staff on the CADA’s requirements, and to submit quarterly compliance reports to the Commission for a period of two years. Mr. Phillips appealed the ALJ’s decision to a CCRC administrative appellate panel. While Mr. Phillips’ administrative appeal was pending, the CCRD found no support for allegations of religious discrimination in cases filed by William Jack, and involving three bakeries that refused to place anti-gay messages or images on cakes (the “Jack Cases”).

Several months after the CCRC dismissed the religious discrimination cases, it heard Masterpiece Cakeshop’s administrative appeal. During a public hearing, one commissioner made the following comment: “Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, . . . And to me it is one of the most despicable pieces of rhetoric that people use to – to use their religion to hurt others.” The Commission ultimately affirmed the ALJ’s holding and that holding was then affirmed by the Colorado Court of Appeals.

AUTHORS

- [Brian Peterson](#)

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The Majority's Holding

In a 7-2 opinion, the Supreme Court concluded that the Commission engaged in conduct that demonstrated hostility toward certain religious beliefs and therefore violated Mr. Phillips' rights under the Free Exercise Clause of the First Amendment. Noting that litigants are constitutionally entitled to the neutral and respectful consideration of their claims, the Court held that the CCRC commissioner's commentary during the public hearing in combination with the seemingly inconsistent results in the Masterpiece Cakeshop matter when compared to the Jack Cases suggested that the State of Colorado rejected Mr. Phillips' constitutional arguments because it disagreed with his religious views. Justice Kennedy, writing for the majority, stated:

The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion. Here, that means the Commission was obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of Phillips' religious beliefs. The Constitution 'commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures. . . . 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.

See *Slip Op.*, pg. 17. The Court did not, however, provide specific guidance as to the contours of the right to free exercise of religion in this context, stating 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." See *Slip Op.*, pg. 17.

Key Takeaways

1. It is still unclear whether and to what extent sincerely held religious beliefs can take precedence over the protections created by anti-discrimination statutes.
2. Employers should regularly review their employment policies and practices to ensure that the rights of employees in each protected category are being properly balanced.

This blog post was drafted by [Brian Peterson](#). He is an Associate in Spencer Fane's Kansas City Office. For more information, please visit www.spencerfane.com.