

HR Heads-up

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JULY 5, 2018

U.S. Supreme Court Avoids Ruling on Whether Religious Beliefs Can Justify Violations of Discrimination Laws

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On June 4, 2018, the U.S. Supreme Court (“Court”) issued a decision in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*. The Court held that the Colorado Civil Rights Commission (“Commission”) was hostile towards a cake shop owner’s sincere religious beliefs when it ruled that he violated the Colorado Anti-Discrimination Act (“CADA”) by refusing to bake a cake for a same-sex wedding. There has been some confusion in the media and the general public over the scope of the Court’s decision that warrants clarification. The only takeaway from this decision is that government agencies enforcing discrimination laws need to act neutrally toward any party that asserts religious objections to discrimination laws. The decision does not provide that parties can successfully assert their religious beliefs to justify violating discrimination laws. Employers should be aware that all existing federal, state, and local discrimination laws will continue to be enforced.

The difficult issue of whether a religious belief can justify a violation of a discrimination law will likely continue to be raised in front of government agencies and lower courts. However, such challenges have so far been generally unsuccessful because governmental agencies and lower courts are bound by the current state of the law. The current state of the law as generally stated by the Court in *Masterpiece Cakeshop* provides that “a general rule that [religious and philosophical] 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 under a neutral and generally applicable public accommodations law.”

A more detailed look at the facts of the case will clarify the Court’s decision further. Jack Phillips was the owner and operator of Masterpiece Cakeshop in Colorado. In 2012, prior to the nationwide legalization of same-sex marriage, he refused to bake a wedding cake for a same-sex wedding reception. To Phillips, creating a wedding cake for a same-sex wedding was equivalent to participating in a celebration that was contrary to his deeply held religious belief that marriage was the union of one man and one woman. The CADA prevents discrimination on the basis of sexual orientation in any place of public accommodation, which includes any business engaged in sales to the public. The Commission upheld the decision initially made by a state administrative law judge that

Phillips violated the CADA. After proceeding through the Colorado court system, Phillips asked the Court to hear an appeal of his case.

The Court ruled that the decision-making process of the Commission was affected by impermissible hostility toward the cake shop owner's sincere religious beliefs. Because of this hostility, the Court overturned the Commission's decision but did not reach the more complex question of whether the cake shop owner's sincere religious belief could justify violating the discrimination law.

Justice Kennedy, writing for the Court, stated that "our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth. For that reason the laws and the Constitution can, and in some instances must, protect them in the exercise of their civil rights."

However, the Court held that the Commission did not provide Phillips with a neutral and respectful consideration of his claims. Colorado law allowed bakers to decline to create cakes with decorations that demeaned gay persons or gay marriages, but the Commission acted inconsistently when it treated the secular objections of those bakers as legitimate but treated Phillips' religious objections as illegitimate. The Court acknowledged that Colorado might have been able to provide a principled rationale for this difference in treatment, but it cannot be based simply on the government's own assessment of offensiveness.

Additionally, the Court was troubled by statements made by commissioners on the record that the Court believed showed hostility toward Phillips' sincere religious belief. Most concerning to the Court, was a statement by a commissioner that "Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust. . . . it is one of the most despicable pieces of rhetoric that people can use to—to use their religion to hurt others." The other commissioners never objected to this statement. Therefore, the Court concluded that these statements cast doubt on the fairness and impartiality of the Commission's adjudication of Phillips' case.

The Commission had to weigh the State's interest in enforcing laws that prohibit discrimination against Phillips' sincere religious objections consistent with the strict observance of religious neutrality. Phillips was entitled to a decisionmaker who would give full and fair consideration to his religious objection. "[T]hese 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."

Going forward, presumably government agencies and courts hearing religious objections to discrimination laws will take care to act neutrally toward religion when ruling on such objections. However, Masterpiece Cakeshop does not fundamentally change the legal landscape for agencies and courts determining the merits of any religious objections to discrimination laws. Discrimination laws will continue to be enforced. Employers should continue to monitor this evolving area of the law and consult with legal counsel if their sincere religious beliefs potentially come into conflict with the enforcement of discrimination laws.