



What You Should Know about the Masterpiece Cakeshop Case

By: Nathan Kasai

In 2012, a couple walked into a cake shop in Colorado planning to buy a cake for their wedding. They were refused service by the owner, who he said he didn't sell wedding cakes to gay couples. The couple won a discrimination lawsuit in Colorado state court under the *Colorado Anti-Discrimination Act*, which bars discrimination by businesses that are open to the public.¹ The shop owner then appealed the case to the U.S. Supreme Court, and the Court is poised to rule on the case this spring.

What might the Court decide?

The Court has a range of options available to it, with Justice Kennedy – the Court's swing vote – being the likely decider of the case.

- The Court could uphold Colorado's non-discrimination laws and rule that religious beliefs do not entitle a private business owner to discriminate against members of the LGBT community at a business that is open to the public.²
- On the other end of the spectrum, the Court could say the First Amendment requires an exemption to non-discrimination laws based on the religious beliefs of a business owner, or at least when their business involves "expressive conduct."³ A decision like this could put similar laws in other states at risk.

- The Court could also attempt to avoid a broad ruling by tailoring its decision very narrowly to the facts of this one case.⁴ A decision like this could be crafted to neither overturn Colorado’s law, nor make an explicit decision on when a business owner can assert a religious objection to discrimination laws.

What are the current laws about this kind of discrimination?

It may seem surprising when marriage equality is the law of the land in all 50 states, but discrimination against LGBT Americans remains alarmingly commonplace across the country. And a majority of states still do not have protections on the books for LGBT people who face discrimination in public accommodations.

- A recent survey by the Center for American Progress found that 1 in 4 LGBT Americans faces discrimination because of his or her sexual orientation or gender identity.⁵ This includes discrimination in public accommodations, like in *Masterpiece Cakeshop*, but also discrimination in workplaces, classrooms, healthcare, and other arenas.
- 29 states have no protections against discrimination on the basis of sexual orientation or gender identity in public accommodations, and 2 additional states have laws that only cover sexual orientation.⁶ A business in one of these states is allowed to turn away a gay or transgender customer, without any justification, and the person who was turned away would have no recourse.
- There are zero federal laws which protect LGBT Americans when they are refused service because of their gender identity or sexual orientation. So when a state lacks protections, there is nothing to fill the gap.
- In terms of population, 51% of Americans – roughly 166,770,000 million people – live in states that have no protections like those at issue in *Masterpiece Cake*.⁷

To whom do these laws apply?

- Businesses that open their doors to the general public are subject to public accommodations anti-discrimination laws, where they exist. In everyday terms, this means if a store sells products to the public, they cannot single out a specific group of people and refuse them service because of who they are.
- Public accommodation laws do not cover private organizations or religious groups, meaning these laws cannot force a private club or group to admit LGBT members. And a church that does not support weddings for gay couples cannot be forced to hold a ceremony for them.

What do Americans think about this issue?

A strong majority of Americans believe that businesses should not be able to turn away customers based on who they are.

- 61% of American oppose religious exemptions for small business owners that would allow them to refuse service to gays or lesbians.⁸
- Opposition to exemptions holds steady amongst most religious Americans as well. Only 50% of white Evangelicals, 42% of Mormons, and 25% of black Protestants support religious exemptions in public accommodations laws.⁹
- And support for marriage for gay couples continues to grow year after year. Just seven years ago, Americans were split on the issue, with 46% in favor and 45% opposed. As of 2017, 62% of Americans support marriage for gay couples, with just 32% opposed.¹⁰

Conclusion

Religious liberty must be protected, but it should not be used as a license to discriminate. Public accommodation laws already balance religious liberty and the need for discrimination protections by exempting religious organizations and private groups. Of course, a pastor or priest whose religious beliefs do not recognize marriage for gay couples should not be forced to officiate a wedding. But businesses that deal with the general public and hold open their doors broadly to everyone should serve everyone equally. Because in America, no one should have to fear being turned away at a public business because of who they are.

ENDNOTES

1. Ariane de Vogue, "Supreme Court Hears Same-Sex Marriage Cake Case," CNN, December 5, 2017. Accessed March 13, 2018. Available at: <https://www.cnn.com/2017/12/05/politics/supreme-court-masterpiece-cake-shop/index.html>.
2. Amy Howe, "Wedding Cakes v. Religious Beliefs?: In Plain English," SCOTUSblog, September 11, 2017. Accessed March 13, 2018. Available at: <http://www.scotusblog.com/2017/09/wedding-cakes-v-religious-beliefs-plain-english/>.
3. Amy Howe, "Wedding Cakes v. Religious Beliefs?: In Plain English," SCOTUSblog, September 11, 2017. Accessed March 13, 2018. Available at: <http://www.scotusblog.com/2017/09/wedding-cakes-v-religious-beliefs-plain-english/>.
4. "Julie Moreau, "Analysis: Masterpiece Cakeshop Case could have "Tremendous Implications,"" NBC News, December 6, 2017. Accessed March 13, 2018. Available at: <https://www.nbcnews.com/feature/nbc-out/analysis-masterpiece-cakeshop-case-could-have-tremendous-implications-n826951>.
5. Sejal Singh and Laura Durso, "Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways," Center for American Progress, May 2, 2017. Accessed March 13, 2018. Available at: <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.
6. "Non-Discrimination Laws," Movement Advancement Project. Accessed March 13, 2018. Available at: http://www.lgbtmap.org/equality-maps/non_discrimination_laws.
7. "Non-Discrimination Laws," Movement Advancement Project. Accessed March 13, 2018. Available at: http://www.lgbtmap.org/equality-maps/non_discrimination_laws.
8. Daniel Cox, Rachel Lienesch, and Robert Jones. "Who Sees Discrimination? Attitudes on Sexual Orientation, Gender Identity, Race, and Immigration Status," PRRI, June 21, 2017. Accessed March 13, 2018. Available at: <https://www.prrri.org/research/americans-views-discrimination-immigrants-blacks-lgbt-sex-marriage-immigration-reform/>.
9. Daniel Cox, Rachel Lienesch, and Robert Jones. "Who Sees Discrimination? Attitudes on Sexual Orientation, Gender Identity, Race, and Immigration Status," PRRI, June 21, 2017. Accessed March 13, 2018. Available at: <https://www.prrri.org/research/americans-views-discrimination-immigrants-blacks-lgbt-sex-marriage-immigration-reform/>.
10. "Changing Attitudes on Gay Marriage," Pew Research Center, June 26, 2017. Accessed March 13, 2018. Available at: <http://www.pewforum.org/fact-sheet/changing-attitudes-on-gay-marriage>