

## **Supreme Court rules in favor of baker who would not make wedding cake for gay couple**

*by Robert Barnes*

*June 4, 2018 at 11:26 AM*

The Supreme Court on Monday ruled for a Colorado baker who refused to create a wedding cake for a gay couple.

In an [opinion](#) by Justice Anthony M. Kennedy that leaves many questions unanswered, the court held that the Colorado Civil Rights Commission had not adequately taken into account the religious beliefs of baker Jack Phillips.

In fact, Kennedy said, the commission had been hostile to the baker's faith, denying him the neutral consideration he deserved. While the justices split in their reasoning, only Justices Ruth Bader Ginsburg and Sonia Sotomayor dissented.

Kennedy wrote that the question of when religious beliefs must give way to anti-discrimination laws might be different in future cases. But in this case, he said, Phillips did not get the proper consideration.

"The Court's precedents make clear that the baker, in his capacity as the owner of a business serving the public, might have his right to the free exercise of religion limited by generally applicable laws," he wrote. "Still, the delicate question of when the free exercise of his religion must yield to an otherwise valid exercise of state power" needed to be done in a setting where "religious hostility on the part of the State itself would not be a factor."

As he had in oral arguments in the case, Kennedy noted comments from Colorado commissioners that he thought denigrated Phillips' faith, implying that, as Kennedy put it, "religious beliefs cannot legitimately be carried into the public sphere or commercial domain, implying that religious beliefs and persons are less than fully welcome in Colorado's business community."

Still, to achieve a wide majority, the opinion withholds judgment on how future cases might be decided in instances where the state displays no religious animosity.

"The outcome of cases like this in other circumstances must await further elaboration in the courts, all in the context of recognizing 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," Kennedy wrote.

Such cases already are lined up.

Ginsburg, joined by Sotomayor, said that the actions of a few commission members did not obscure that Phillips had violated the Colorado Anti-discrimination Act.

“What matters is that Phillips would not provide a good or service to a same-sex couple that he would provide to a heterosexual couple,” Ginsburg wrote.

Phillips contended that dual guarantees in the First Amendment — free speech and the free exercise of religion — protect him against Colorado’s public accommodations law, which requires businesses to serve customers equally regardless of “disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.”

Alliance Defending Freedom Senior Counsel Kristen Waggoner, who represented Phillips, praised the ruling. “Government hostility toward people of faith has no place in our society, yet the state of Colorado was openly antagonistic toward Jack’s religious beliefs about marriage,” she said “The court was right to condemn that. Tolerance and respect for good-faith differences of opinion are essential in a society like ours. This decision makes clear that the government must respect Jack’s beliefs about marriage.”

Scattered across the country, florists, bakers, photographers and others have claimed that being forced to offer their wedding services to same-sex couples violates their rights. Courts have routinely turned down the business owners, as the Colorado Court of Appeals did in the Phillips case, saying that state anti-discrimination laws require businesses that are open to the public to treat all potential customers equally.

There’s no dispute about what triggered the court case in 2012, when same-sex marriage was prohibited in Colorado. Charlie Craig and David Mullins decided to get married in Massachusetts, where it was legal. They would return to Denver for a reception, and those helping with the plans suggested they get a cake from Masterpiece bakery.

The couple arrived with Craig’s mother and a book of ideas, but Phillips cut short the meeting as soon as he learned the cake was to celebrate the couple’s marriage.

Phillips recalled: “Our conversation was just about 20 seconds long. ‘Sorry guys, I don’t make cakes for same-sex weddings.’”

The couple then learned that Colorado’s public accommodations law specifically prohibited discrimination based on sexual orientation, and they filed a complaint with the Colorado Civil Rights Commission. The commission ruled against Phillips, and the appeals court upheld the decision.