

## Slicing Through the Layers of the SCOTUS Cake Baking and Religious Freedom Decision

by Dennis J. Merley - Thursday, June 07, 2018



It was hoped that the U.S. Supreme Court decision on a Christian baker's right to refuse to design a wedding cake for a same-sex couple would feed our hunger for certainty on the issue of a business's religious freedom. Instead, they just gave us crumbs.

Charlie Craig and Dave Mullins sought to hire Masterpiece Cakeshop of Lakewood, Colorado, to provide the cake for their same-sex wedding. Masterpiece owner Jack Phillips declined, stating that his religious beliefs would not allow him to accommodate them. Craig and Mullins filed a complaint with the Colorado Civil Rights Commission under Colorado's Anti-Discrimination Act, which forbids businesses open to the public from discriminating on the basis of sexual orientation. Phillips responded that his right to practice his religious beliefs took precedence.

The Commission ruled in favor of Craig and Mullins, and Colorado courts affirmed their decision primarily on the grounds that creating a custom cake was neither an expression of free speech nor an exercise of religious belief. Phillips then appealed to the United States Supreme Court.

### Commission's Decision was Half-Baked

In a 7-2 decision, the court vacated the determination against Phillips but essentially side-stepped the big issues of discrimination and religious freedom. Instead, they ruled that the Colorado State Commission proceedings were riddled with hostility and religious bias such that Phillips did not receive a fair hearing on his defense.

A substantial factor to this ruling was the behavior of then-Commissioner Diann Rice who stated during the proceedings that “freedom of religion and religion has been used to justify all kinds of discrimination throughout history .... to me it is one of the most despicable pieces of rhetoric that people can use.” This prompted Justice Kennedy to observe in the majority decision that the Commission seemed “neither tolerant nor respectful of Mr. Phillips’ religious beliefs.” He found the “commission’s hostility to be inconsistent with the First Amendment’s guarantee that our laws be applied in a manner that is neutral toward religion.”

## **Bottom Line**

It would appear that the Colorado Commission’s handling of the case was a recipe for disappointment for those who await determination of the critical question of whether a business can refuse to conduct business if doing so impinges upon the business owner’s religious beliefs. The question will have to wait for another day and another case, and the Supreme Court’s decision left significant room for doubt as to how they might rule if and when the religious issue is properly presented to them.

Until then, Minnesota employers should continue to operate just as they have and wait for these issues to rise.

*We gratefully acknowledge Summer Associate Kau J. Guannu’s substantial contribution to this post.*