

Masterpiece Cakeshop: Core Questions Left For Another Day

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It's unusual for the U.S. Supreme Court to grant certiorari and then dodge the issues that it undertook to resolve. That's what happened this week in *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission* — the long-awaited case involving a baker who declined to bake a cake for a gay couple's wedding. The case pits several fundamental rights against one another — the free exercise of religion, freedom of speech and civil rights for gay Americans.

In its majority opinion, the Supreme Court did not attempt to decide which right trumps the other. Instead, the court decided the case in favor of the baker on grounds that are so narrow and case-specific that they are hardly useful as precedent in future cases.

It may be that after granting certiorari, the Supreme Court discovered factual problems in the record, which made the case a poor vehicle for deciding such an important issue. Or it could be that upon serious reflection, the court determined that this already-divided country needed more time to fully digest the right to gay marriage, made law just three years ago in *Obergefell v. Hodges*.

Whatever the reason, the court refused to pick sides in *Masterpiece Cakeshop*. The court did not resolve whether an original wedding cake was protected speech, or whether a religious objection to gay marriage is grounds for avoiding a civil rights law protecting gay individuals. Instead, the court held that the court of appeals' decision must be reversed on facts unique to the dispute — the administrative body reviewing the baker's case did not give neutral, respectful consideration of his sincerely held religious beliefs. Wedding service providers, gay couples and courts should be careful not to read too much into the opinion. The Supreme Court's majority opinion qualified at least three times that future controversies involving similar facts could be resolved differently. The court also emphasized that in 2012, when the baker refused to serve the couple, gay marriage was not yet legal in Colorado where the baker lived.

Still, the opinion provides some hints for approaching future cases. Notably, the opinion indicates that the court views the dispute as a free exercise of religion issue, not a free speech issue. Although the baker's brief largely focused on free speech, arguing that his cakes were a form of protected expression, the court relegated the free speech discussion to a single paragraph in its opinion. Instead, the court focused almost exclusively on the tension between free exercise of religion and civil rights.

The opinion also sets forth some guidelines impacting both sides of the debate. The court emphasized that governmental bodies cannot act in a manner that passes judgment upon religious beliefs and practices. The court built upon its position in *Obergefell* that religious objections to gay marriage are protected views. As Justice Neil Gorsuch noted in his concurrence, "Popular religious views are easy enough to defend. It is in protecting unpopular religious beliefs that we prove this country's commitment to serving as a refuge for religious freedom."

At the same time, the court acknowledged that the U.S. Constitution protects gay persons and couples in the exercise of their civil rights. The opinion explains that courts must give "great weight and respect" to gay persons' exercise of freedom "on terms equal to others." The court emphasized that "gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth."

Sprinkled throughout its opinion, the court also provides hypotheticals that may indicate how the court would rule on future cases. On one end of the spectrum, the court explained that clergy who object to gay marriage on religious grounds could not be compelled to perform the ceremony. On the other end of the spectrum, the court indicated that business owners could not put up signs saying that goods will not be sold for use in gay weddings. Between these two extremes, the court explained that a baker likely could not refuse to sell any goods or cakes for gay weddings. This, the court explained, would go beyond the protected rights of the baker.

But these are questions to be confronted on another day. The primary holding in *Masterpiece Cakeshop* is that both sides must be treated with tolerance. The court concluded its opinion with a message about the need to balance religious beliefs with the rights of gay individuals: “[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.”

When the next wedding case reaches the court, as it inevitably will, that sounds like a good place to start.

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