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Breaking news: SCOTUS rules in favour of Masterpiece Cakeshop

Law & Religion UK (04.06.2018) - <https://bit.ly/2Mdr9g6> - Masterpiece Cakeshop, Ltd. is a Colorado bakery owned and operated by Jack Phillips, an expert baker and devout Christian. On 4 June, in ***Masterpiece Cakeshop Ltd et al v Colorado Civil Rights Commission et al* 584 U. S. ____ (2018) 3**, the US Supreme Court ruled by 7-2 (Justices Ginsburg and Sotomayor dissenting) that the Colorado Civil Rights Commission's actions in assessing Mr Phillips's reasons for declining to make a cake for a same sex couple's wedding celebration violated the Free Exercise Clause in the First Amendment to the US Constitution.

In an opinion by Justice Kennedy, the Court **reversed** the decision of the Court of Appeals of Colorado. Justice Kagan filed a concurring opinion in which Justice Breyer joined. Justice Gorsuch filed a concurring opinion in which Justice Alito joined. Justice Thomas filed an opinion concurring in part and concurring in the judgment in which Justice Gorsuch joined. Justice Ginsburg filed a dissenting opinion in which Justice Sotomayor joined.

The majority held that, while the laws and the Constitution can, and in some instances must, protect gay persons and gay couples in the exercise of their civil rights, religious and philosophical objections to gay marriage were protected views and in some instances protected forms of expression. Though Colorado law could protect gay persons in acquiring products and services on the same terms and conditions as were offered to other members of the public, the law had to be applied in a manner neutral toward religion.

Mr Phillips's claim that using his artistic skills to make an expressive statement – a wedding endorsement in his own voice and of his own creation – had a significant First Amendment speech component and implicated his deep and sincere religious beliefs. The Court also noted that in 2012 Colorado had not recognized the validity of gay marriages, nor had the Supreme Court itself handed down judgment in Obergefell. There was some force to Mr Phillips's argument that he was not unreasonable in believing that his decision had been lawful:

“State law at the time also afforded storekeepers some latitude to decline to create specific messages they considered offensive. Indeed, while the instant enforcement proceedings were pending, the State Civil Rights Division concluded in at least three cases that a baker acted lawfully in declining to create cakes with decorations that demeaned gay persons or gay marriages. Phillips too was entitled to a neutral and respectful consideration of his claims in all the circumstances of the case.”

In the opinion of the Court, the Colorado Civil Rights Commission's treatment of Mr Phillips's case had "showed elements of a clear and impermissible hostility toward the sincere religious beliefs motivating his objection", to an extent that called into question the fairness and impartiality of the Commission's adjudication. There had also been a difference of treatment as between Mr Phillips's case and the cases of other bakers with objections to anti-gay messages who had been successful before the Commission.

The Commission's treatment of Mr Phillips had therefore violated the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint:

"The government, consistent with the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices."

Can LGBT rights and religious rights coexist? Kim Davis-like case tests the waters

By Sarah Pulliam Bailey



Gayle Myrick resigned from her position as a North Carolina magistrate in 2014 because she didn't want to perform same-sex ceremonies. (The Becket Fund)

The Washington Post (07.02.2018) - <http://wapo.st/2nNaOnV> - Since the Supreme Court legalized same-sex marriage nationwide in 2015, a slew of controversial cases have raised questions over whether LGBT rights can coexist with religious rights. One of the most hotly debated cases involved Kim Davis, a Kentucky county clerk who famously refused to let her staff issue marriage licenses to same-sex couples in 2015 and went to jail for six days during a legal battle that went to the Supreme Court.

As the battles continue in the courts and in legislatures, some religious-freedom advocates who would like to see a compromise have expressed fears that the country is at an impasse and that the law will ultimately favor one set of rights or the other.

The Supreme Court could clarify controversial questions when it decides later this year whether a bakery owner has the constitutional right to decline to make a cake for a same-sex wedding.

Meanwhile, some advocates are pointing to a case in North Carolina that they say could provide a national blueprint for compromise on the issue.

In 2014, after same-sex marriage was legalized in North Carolina, Gayle Myrick resigned from her job as a magistrate in the state because she believed that performing civil marriages for same-sex couples went against her faith.

Unlike Davis, Myrick did not object to marrying any specific couple, and she did not ask other employees in the office to refuse to do so. (Davis has recently said she no longer objects to issuing licenses for same-sex couples since Kentucky changed the rules so clerks do not have to attach their names to licenses.)

When Myrick, who attends a Southern Baptist church, raised her discomfort with performing a same-sex ceremony, her supervisor suggested she could remove her from the duties of performing marriages altogether. However, a higher-level supervisor said her schedule could not be adjusted to excuse her from marriage duties.

"I didn't want to stop anyone from getting married," said Myrick, who is 68 and lives in Monroe, N.C. "I also knew my religious convictions would not allow me to perform those marriages personally."

A federal judge ruled last year that she should have been allowed to opt out of performing marriages because of her religious beliefs. As a result, Myrick reached a settlement in January with the government to compensate her for her pay, retirement pay and attorneys' fees. She has been represented by the Becket Fund, which has taken up high-profile cases such as Hobby Lobby's Supreme Court case on insurance coverage for contraception.

In 2015, North Carolina passed a law that allows magistrates (who work as lay judges) to opt out of performing all marriages based on a "sincerely held religious objection." The law requires counties to make other magistrates available to handle marriage licenses and same-sex weddings if they have recusals.

Some religious-freedom observers and activists see the state law and Myrick's case as a victory in the tension between LGBT rights and government workers' religious rights. A same-sex couple seeking to wed wouldn't know that a government official intends to discriminate against them, as the official would be opting out of all marriages, activists argue.

"Nobody's entitled to the right to insult someone or deny someone to their face," said Ira Lupu, a law professor emeritus at George Washington University who specializes in the First Amendment. "People have a right to be accommodated in the workplace so long as there's little harm to the people being served."

Title VII of the Civil Rights Act of 1964 states that employers must reasonably accommodate the religious practices of employees if that can be done without undue hardship. The problem with Davis's case was that she didn't seek just to exempt herself, said Douglas Laycock, a professor at the University of Virginia Law School. Instead, she sought to exempt the whole county. Laycock said he believes that exemptions in government offices should be narrower than those in businesses because the government

must treat all citizens equally — but that Myrick’s case seemed like a win-win compared with Davis’s case.

“[Davis] wouldn’t let anyone issue licenses,” Laycock said. “But the county is not an employee, the county has no religion, and exempting the county would deprive all same-sex couples of essential government services. Substituting a different [official] for Myrick doesn’t deprive anyone of anything.”

But others are fearful that such laws could give government workers license to discriminate.

“The law already draws the line for ministers and religious institutions. But this is a government officials, said Louise Melling, deputy legal director of the American Civil Liberties Union. “The question is where the law draws the line.”

Claims for exemptions based on religious beliefs aren’t new, Melling said, and they were raised after civil rights laws were enacted to prevent racial discrimination. Bob Jones University, which previously banned interracial dating, lost a Supreme Court case when the court ruled that the First Amendment did not prevent the IRS from revoking the tax-exempt status of a religious university whose practices are contrary to compelling government interest.

“If you say a magistrate wants exemption ... the government is then licensing discrimination,” Melling said.

Several states have wrestled with similar cases. The “Utah compromise” in 2015 was hailed by some as an accommodation between Mormon leaders and LGBT activists, a signal that leaders on both sides could be open to giving a bit. The law banned employers and landlords from discriminating against people on the basis of sexual orientation and gender identity, and it also protected employees from being fired for talking about religious or moral beliefs.

The North Carolina law has some similarities to the Utah law, but Utah’s law didn’t specifically allow government officials to opt out of performing marriages. Utah made it so that the state would perform marriages using “willing clerks” or others in the community authorized to marry people. And if a same-sex couple comes into the office for a license and no willing clerks are available, then the elected town clerk does the service.

No state anti-discrimination laws have been passed since the Utah legislation, according to Robin Fretwell Wilson, a professor at the University of Illinois College of Law who worked on the Utah legislation.

Could laws similar to those in these two states be enacted across the country? Some observers, including Laycock, believe that compromises may be difficult to find in the future and that the country could be at a stalemate.

“The challenge here is to protect the rights of both sides as much as possible, and more often than not, that is entirely possible if we had just a smidgen of goodwill on both sides,” Laycock said.

The Supreme Court’s decision on the bakery case, which is expected late spring, could cause a kind of stalemate between the sides, said Charles Haynes of the Newseum’s Religious Freedom Center.

"In this fight, we have reached a point where both sides see this as a zero-sum game," he said.

Judge rules bakeshop owner doesn't have to bake wedding cake for gay couple

Daily Caller (06.02.2018) - <http://bit.ly/2BKoZCU> - A California judge ruled Monday the state couldn't force a cake shop owner to bake a cake for a gay couple's wedding, ruling that doing so would constitute a violation of free speech.

Superior Court Judge David Lampe denied the state of California's request for a preliminary injunction that sought to force bakeshop owner Cathy Miller to [design a wedding cake for a gay couple](#).

"For this court to force such compliance would do violence to the essentials of Free Speech guaranteed under the First Amendment," Lampe ruled, according to a press release sent to The Daily Caller News Foundation. The injunction also posited that if Miller refused to design the cake, the state would force her to close her Tastries Bakery shop altogether.

"We are pleased that the judge recognized that the First Amendment protects Cathy's freedom of speech," Charles LiMandri, chief counsel and president of the Freedom of Conscience Defense Fund, said after the ruling, the press release reports.

LiMandri argued in Friday's court hearing that Miller doesn't discriminate against same-sex couples, but refuses to use her artistic talents to express a message that conflicts with her religious beliefs about marriage.

The ruling comes after two women [asked Miller to design their wedding cake](#) and filed a complaint with the state, alleging that Miller discriminated against them on the basis of sexual orientation. They also posted about the event on social media. Following their complaint, the state launched an investigation and sought a court order to force Miller to bake the wedding cake.

"This is a significant victory for faith and freedom because the judge indicated in his ruling that the state cannot succeed in this case as a matter of law," LiMandri said. "No doubt the California officials will continue their persecution of Cathy, but it is clear that she has the Constitution on her side."

The cake baking incident comes after the Supreme Court announced in June that it would hear a similar case that occurred in 2012, when a baker in Colorado refused to bake a wedding cake for a gay couple. Lower courts had previously ruled that Jack Phillips, the owner of Masterpiece Cakeshop, had violated the state's accommodation laws by refusing to serve a customer based on sexual orientation, according to The Washington Post.

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100 Iranian Christians waiting to enter U.S. could be sent back to Iran

By Nina Shea

Washington Free Beacon (09.01.2018) - <http://bit.ly/2qMfz4U> - U.S. government action could send 100 mostly Christian Iranians stranded in Vienna back to Iran this week, where their return during the harsh government crackdown on dissidents could target them for further persecution, human rights activists warn.

The deportation threat looms despite the Trump administration's and Congress's vocal support for protesters in Iran, who are waging the strongest nationwide uprising against the government in Tehran in eight years.

"These deportations, during a human-rights crackdown in Iran no less, could be a death sentence for these persecuted Christians and other minorities," Nina Shea, an international human rights lawyer who directs the Hudson Institute's Center for Religious Freedom, told the Washington Free Beacon. "They would undermine the important statements against Iran's repression by President Trump, Vice President Pence and U.N. Ambassador [Nikki Haley]."

"The administration needs to act fast to stop this travesty," she said, noting that the U.S. government could give the refugees notices denying them entry to the U.S. as early as this week. This would leave the Austrians with little choice but to send them back to Iran.

Activists say the timing of the deportation threat is also particularly troublesome for the Trump administration, after the State Department last week designated Iran among 10 countries "of particular concern" for "systematic, ongoing, and egregious violations of religious freedom."

The Iranian Christian refugees traveled to Vienna in January 2017 under a 27-year-old U.S. law passed by Congress to help Jews escape persecution in the Soviet Union. Under a 2004 update of the law, known as the Lautenberg amendment, the State Department has helped tens of thousands of Iranian Jews, Christians, and Baha'is who were at risk in their home country to resettle in the United States.

During the end of the Obama administration, the State Department initially signed off on plans to resettle the latest group of mostly Iranian Christian refugees but then placed a hold on them toward the end of last year before Trump took office, according to Anna Buwalda, executive director of the Jubilee Campaign. The Jubilee Campaign is a nonprofit organization that advocates for religious minorities who suffer persecution in their home countries.

Buwalda says she and other human-rights activists don't know why the U.S. appears to be on the brink of denying them entry to the United States, and no one at the State Department or DHS has provided any answers.

"This is part of the mystery, and nobody's been able to receive any information to explain it," she said.

One-third of the refugees were set to resettle in California, where many of their relatives who have already gone through the refugee resettlement process are located, according to the activists.

The Department of Homeland Security, which has an office in Vienna, helped interview and vet the refugees, along with HIAS, the global Jewish nonprofit that works with the State Department on Lautenberg program refugee cases, Buwalda said.

HIAS referred a request for comment to its partner, the State Department Bureau of Population, Refugees and Migration. Neither the State Department nor the DHS provided a response.

The refugees, most of them Armenians and Assyrians, have been waiting in Vienna for a year as U.S. courts have weighed in on the constitutionality of the travel ban, and recently were informed they must go back to Iran, according to Shea and Buwalda.

It is unclear if the Trump administration is behind the deportation threat or if Austria is becoming impatient with these cases remaining in limbo.

Human rights groups are urging the administration to take action and are worried the refugees and other priorities involving religious minorities in hotspots around the world are falling through the cracks as key Trump administration posts remain vacant a year into his presidency.

"The U.S. has broken its promise to Iranian religious minorities," Buwalda said. "They traveled to Vienna at the invitation of the United States, with the understanding that they would soon be reunited with their American families. Instead, the groups of refugees have been forced to wait there for more than a year with no explanation. They have no source of income, and many have spent down their life savings."

"The U.S. government must solve this situation quickly and humanely," she said.

One key post that would normally handle Lautenberg program issues remains vacant. Kansas Gov. Sam Brownback's nomination to the State Department post of ambassador at large for religious freedom is in limbo after Democrats placed a hold on it late last year and blocked the Senate from approving him.

The White House re-nominated Brownback on Monday but has not publicly disclosed whether it intends to expend the political capital to lean on the Senate to quickly confirm him. Senate GOP leaders would have to devote at least three days of precious floor time to hold a floor vote on the nomination if Democrats continue to oppose him instead of passing him quickly by unanimous consent.

The White House did not respond to an inquiry into Brownback's nomination.

Catholic and other Christian leaders have praised the Trump administration's rhetoric on the issue. They point to the administration's National Security Strategy report, unveiled in late December, and its pledge to "protect religious minorities" abroad.

Pence in October received a standing ovation at a dinner devoted to religious freedom issue when he pledged that "help is on the way" to religious minority communities in Iraq struggling to recover from Islamic State genocide.

However, Trump also has yet to appoint a special adviser for international religious freedom at the White House's National Security Council and has kept a special envoy for religious freedom post downgraded in power, as it was during the Obama administration.

The faith office at USAID also remains without a leader.

