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CHILE: First gay couple weds as same sex marriage law takes effect

By Fabian Cambero

Reuters (11.03.2022) - https://reut.rs/3tPgFdy - Chile's Javier Silva and Jaime Nazar became the first two men to tie the knot in the South American country's history on Thursday after a law allowing same-sex marriage went into effect.

In December, Congress approved legislation guaranteeing legal rights for same-sex couples in a milestone for the conservative nation after a decade-long battle by LGBTQ communities and rights groups. read more

"Being the first couple to get married in Chile for us is an honor, something to be proud of," Silva told reporters after the civil ceremony. "We did it! It's something we didn't think could happen."

Silva and Nazar have been together for seven years and have two young children. They have had a civil union for the last three years, but marriage is a significant step forward for their whole family.

"Now our children have the same rights (as other families) and they will be able to have, we hope, a better future, that they will not be discriminated against for having two parents who love each other," Silva added.

Despite its long conservative tradition, Chile has been making progress in recent years in recognizing LGBTQ rights.

"My congratulations to Jaime and Javier for being the first couple to marry under the new #EqualMarriage law. To continue advancing for a Chile with equal rights and freedoms for all people," President-elect Gabriel Boric, who takes office on Friday, said on Twitter.

Same-sex marriage legislation was first discussed in 2017 and pushed by former President Michelle Bachelet, but was delayed until last year.

Before that, starting in 2015, same-sex couples were able register a Civil Union Agreement (AUC), which allowed some legal benefits.

"I think we're putting ourselves at the level the rest of the world is living in, which is great," Nazar said. "I know our society is very conservative, but I also know we have a promising future as a country."

GUATEMALA: Congress bans same-sex marriage

Guatemala's Congress has voted in favour of a law which prohibits same-sex marriage.

BBC News (10.03.2022) - https://bbc.in/3KUYla3 - The law will also prohibit the teaching of sexual diversity in schools and raise the prison sentences for women seeking abortion. Abortion is banned in Guatemala except in cases where the woman's life is at risk.

In order to come into force, the law still needs to be signed by Guatemala's president, Alejandro Giammattei.

The "Life and Family Protection Law" was passed by an overwhelming majority in the conservative-led Congress. Only eight lawmakers out of 160 voted against it.

It is not yet clear, whether Mr Giammattei, a conservative, will sign it but many members of his party gave their backing to it.

Under the law, women who "have induced their own abortion or given their consent to another person to carry it out" will face a minimum of five years in jail, but the sentences could be much higher.

If signed by the president, it will reform Guatemala's Civil Code to "expressly prohibit same-sex marriages".

The law also stipulates that schools be banned from teaching pupils that "anything other than heterosexuality is normal".

One of the lawmakers who supported the bill, Patricia Sandoval, said that "under the concept of family we understand the union between a man and a woman".

Guatemala's human rights ombudsman, Jordán Rodas, called it a violation of rights and a "setback to freedom" and vowed to challenge it.

Opposition lawmaker Lucrecia Hernández urged President Giammattei to veto the law, arguing that it was unconstitutional.

USA: Minnesota public school allows Somali Muslim families to opt out of LGBT curriculum

St. Louis Park Public Schools was slapped with two demand letters in recent months

By Jon Brown

Christian Post (15.02.2024) - A Minnesota public school district is allowing six Somali Muslim families to opt of its curriculum material that affirms LGBTQ behavior after attorneys at two law firms fired off demand letters last year.First Liberty Institute and True North Legal announced earlier this week that St. Louis Park Public Schools (SLP) near Minneapolis is now not only permitting elementary school students to opt out of such material, but also students in the district's middle and high school, according to a press release.

The two firms were representing six Muslim families who had immigrated to the U.S. from war-torn Somalia within the past 20 years, according to First Liberty. The parents wanted to know when their children would be encountering material that touched on sexuality, and

LGBTQ sexuality in particular.

Fatuma Irshat, one of the mothers involved in the case, said her family believes "that we have a sacred obligation to teach the principles of our faith to our children without being undermined by the schools."

Hodan Hassan, another parent, said her family "came to America because of its rich heritage of protecting religious liberty and the opportunity to raise our children in a place where they have access to success."

"We were shocked that our children were being taught material that violates our beliefs, but we're grateful that the school has granted our opt-out requests," Hassan added.

Kayla Toney, associate counsel at First Liberty Institute, told The Christian Post that the attorneys sent the district their first demand letter in November and another in December asking it to grant the parents' opt-out requests, which they claim were at first denied.

The second letter sent to the district took issue with its "Alternative Learning Procedure," which was created in response to parental concerns, but which attorneys argued exhibited "burdensome prerequisites inconsistent" with state law and exposed families to unnecessary scrutiny.

"[We explained] how the Free Exercise Clause of the First Amendment protects parents' right to raise their children according to their sincerely held religious beliefs without being undermined by the school," Toney said. "And we also explained how Minnesota has a state law that guarantees parents the ability to review curriculum and then to request alternative learning if there's something that they are concerned about."

"And so, thanks to our demand letters and advocacy there, we were able to get a win for the clients without needing to go to court," she added.

Toney told CP that what was at stake with the case was nothing less than the right of parents "to know about what their kids are learning in school."

"And when that conflicts with their sincerely held religious beliefs, do they have a right to opt their children out of that teaching?" she asked.

"I think the big takeaway here is that diversity and inclusion need to extend to religious families, too," she said. "That's why the First Amendment specifically protects religious exercise. And with all the focus on inclusion, it's important to recognize who we're excluding as a result of that."

"And so here, opt-outs are a great, peaceful, pluralistic way to give a chance for everyone to be included and to make sure that no one's beliefs are being trampled upon. And so that's really been our goal from the beginning," she added.

Following news stories on the case, SLP Interim Superintendent Dr. Kate Maguire released a statement Tuesday emphasizing the district's commitment to "upholding inclusivity in SLP curriculum" while noting that state law mandates them to accommodate families who wish to opt out.

Maguire wrote that the district is "committed to ensuring that the district's learning communities honor and respect the identities of all of our students, families, staff and broader community, including diverse gender identity and gender expression."

The school "has always complied with the state law regarding parents' statutory right to opt out of instructional materials, and we will continue to do so," Maguire continued, adding that

"opt-outs based on representation of protected classes do not uphold our values of creating safe and inclusive learning and working environments in our schools."

"However, because it is required within state law, any change would need to happen with the involvement of state lawmakers," the superintendent added.

Toney noted that parents being allowed to opt their children out of objectionable curriculum materials has become a hot-button issue nationwide. She pinpointed the similar case of *Mahmoud v. McKnight*, a lawsuit that emerged last year amid a similar situation in Montgomery County, Maryland.

An interfaith group of parents claimed in August 2023 they were not allowed to opt their elementary school-aged children out of lessons they found offensive and inappropriate. Later that month, a federal judge rejected the parents' motion for a preliminary injunction to restore the opt-out option as the case is adjudicated.

USA: Court case: LGBT cake v. Christian baker

Colorado Supreme Court to hear case against Christian baker who refused again to make LGBTQ cake

By Brooke Migdon

The Hill (03.10.2023) - The Colorado Supreme Court agreed Tuesday to hear the case of a Christian baker who refused to make a birthday cake for a transgender woman.

Jack Phillips, the owner of a Denver area bakery, won a partial victory before the U.S. Supreme Court in 2018 after refusing to make a gay couple's wedding cake. He argued that baking the cake would violate his religious beliefs and his First Amendment right to free speech.

Autumn Scardina, a Colorado attorney and transgender woman, later sued Phillips after his bakery, Masterpiece Cakeshop, refused to make a pink cake with blue frosting to celebrate her birthday and gender transition.

"It was very obvious that it wasn't about the cake. It was about who I was as a person and how that would impact their decision on whether or not they would serve me," Scardina told Them, an online LGBTQ magazine, in a 2021 interview.

Scardina, who is also a Christian, said she sought out Masterpiece Cakeshop for her birthday cake because she empathized with Phillips in the initial case and could appreciate the "nuance" of his argument.

"I remember him saying several times: 'This is about a singular religious event. This doesn't have to do with the individuals,'" Scardina told the outlet. "I disagreed with his ultimate position, but some part of me understood how difficult it must be… to watch the world change on him. I wanted to believe him."

A Denver court sided with Scardina in 2021. District Court Judge Bruce Jones wrote in a ruling that the case is less about compelled speech than it is about upholding anti-discrimination laws "intended to ensure that members of our society who have historically been treated unfairly… are no longer treated as 'others.'"

The Colorado Court of Appeals affirmed that decision in January, ruling that the requested cake is not a form of speech. It also found that Phillips violated Colorado's anti-discrimination law, which makes it illegal to refuse services to people based on protected characteristics including sex.

Attorneys for Phillips appealed that decision in April and asked the state Supreme Court to take up the case in July, citing a U.S. Supreme Court ruling in June that allowed a Christian web designer to refuse to create wedding websites for same-sex couples.

Jake Warner, senior counsel with Alliance Defending Freedom (ADF), the conservative Christian legal group that is representing Phillips, said the Supreme Court decision should be applied to Phillips's case to reverse the lower court's decision. The Christian web designer, Lorie Smith, was also represented by ADF.

"Because the attorney asked Jack to create a custom cake that would celebrate and symbolize a transition from male to female, the requested cake is speech under the First Amendment," Warner said in a news release.

"Jack works with all people and always decides whether to create a custom cake based on what message it will express, not who requests it," Warner said.

USA: Religious freedom and LGBTQ+, a study of 62 cases

By Kelsy Burke and Emily Kazyak

The Conversation (03.07.2023) - Does a Colorado designer's belief that marriage is between one man and one woman merit an exemption to state law barring discrimination against LGBTQ+ people? On June 30, 2023, the Supreme Court decided 6-3 that the answer is yes: Requiring a conservative Christian business owner to create wedding websites for gay couples would violate the free speech clause of the First Amendment.

Creating a website constitutes an "expressive activity" protected by the First Amendment, Justice Neil Gorsuch wrote in the majority opinion, and Colorado's anti-discrimination law would "compel an individual to create speech she does not believe." Thus, designer Lorie

Smith has the right to follow "her conscience about a matter of major significance" and refuse her services for same-sex weddings.

303 Creative v. Elenis is the latest of a trio of Supreme Court cases where conservative Christian plaintiffs have argued that they should have the constitutionally protected right to refuse service to LGBTQ+ people. In 2018, it was a Colorado baker refusing to bake a cake for a gay wedding. In 2021, it was a Catholic adoption agency arguing it should not be forced to place foster children with gay couples and thus be exempt from Philadelphia's nondiscrimination policy.

These cases are no doubt important, signaling a broader trend on the current court, which has frequently ruled in favor of Christian plaintiffs on high-profile cases, particularly when it comes to cases that also involve gender and sexuality – although the Colorado baker's win was a narrow one that avoided broader questions about civil rights, free speech and free religious exercise.

The big-picture view, however, is more complicated.

As sociologists of religion and sexuality, we have analyzed every federal court case between 1990 to 2020 that involves religious beliefs and LGBTQ+ people's rights – a total of 62 cases. From this analysis, we know that the ruling in 303 Creative LLC v. Elenis runs counter to legal patterns of the past 30 years.

The latest Supreme Court rulings make it seem as if cases that deal with plaintiffs' faith are usually successful in federal courts. More broadly, however, the opposite is true. Throughout U.S. history, litigants have drawn from ideas about religious liberty to attempt to justify violating the law, whether related to taxes, child labor, desegregation or dress codes. Most of the time they lose, and cases related to LGBTQ rights are no exception.

Three types of claims

Cases that involve religious freedom can take many forms. We focused our analysis on three types: those based on the free exercise clause of the First Amendment; those about free speech, as in 303 Creative, that are also based on the First Amendment; and religion claims citing Title VII of the Civil Rights Act, which prohibits employment discrimination.

We found that in only 21 of the 62 cases did a federal court side side with the religious litigant. What's more, courts ruled in favor of the litigants' specific religion-based legal claim – as opposed to some other element of their argument – in only three cases.

In our analysis, cases focused on wedding-related services, like 303 Creative, were the most likely to have justices side with the party bringing forth a religion-based claim, or to remand the case for further proceedings. In cases related to employment, housing, incarceration, education or physical and mental health care, on the other hand, federal courts were unlikely to side with religion-based claims.

The relative success of wedding-related cases points to a broader trend we observed. Over time, fewer cases dealt with plaintiffs' opposition to LGBTQ+ identity and more on LGBTQ+ relationships, specifically same-sex marriage.

Take Ward v. Polite, a 2012 case where a graduate student in a master's counseling program requested "that she be allowed to refer gay and lesbian clients seeking relationship advice to another counselor," even though she, according to case documents, "had no problem counseling gay and lesbian clients." The university believed that Ward's refusal to counsel gay and lesbian clients in relationships violated its code of ethics and expelled her from the program.

She sued the university, claiming it had violated her right to freely exercise her religion. The 6th U.S. Circuit Court of Appeals criticized the university for not having an exception clause to its nondiscrimination policy, which students like Ward could have used to request to transfer a client, and remanded the case for additional proceedings.

Not always the 'usual story'

Our findings also revealed that federal court cases about faith and sexual orientation often affirm a stereotype that gender scholar Janet Jakobsen calls the "usual story" about religion and LGBTQ+ rights: that the two are in tension with one another.

In other words, even when the court doesn't side with litigants whose cases are related to their faith, most lawsuits about these topics give the impression that religious beliefs endorse heterosexuality over any alternative. The majority of cases brought over the past 30 years – 50 of the 62 in our sample – were indeed brought by people who say their religious beliefs oppose LGBT identities or relationships.

Still, there are examples of plaintiffs who use religion-based claims to advance LGBTQ+ rights.

For instance, attorney Robin Joy Shahar sued the attorney general of Georgia, Michael Bowers, after he withdrew his job offer to her upon finding out that she married her partner, another woman, in a religious ceremony. The case, Shahar v. Bowers, was eventually decided in 1997, when sodomy laws were still on the books, and long before U.S. states legally recognized same-sex marriages – a fact the court emphasized by putting quotation marks around every reference to Shahar's marriage and wedding.

Shahar, who had held a Jewish wedding ceremony at her synagogue, argued that the attorney general had violated her right to freely exercise her religion, among other rights. But the U.S. Court of Appeals for the 11th Circuit sided with Bowers, reasoning that the interests of the government – in this case the attorney general's office – outweighed Shahar's individual rights.

Other litigants have integrated their religious beliefs or identity into federal court arguments, seeking to protect LGBTQ+ people and their rights. In our analysis, the court ruled against each of their religion-based claims.

The road ahead

Today, hours after the court's decision was announced, it is too early to predict the consequences of the ruling. It's worth noting, however, that the Supreme Court declined to consider Smith's claims that Colorado's law violated the free exercise clause of the First Amendment. In other words, they were willing to consider – and ultimately decided – that the law violated her right to create, or not create, content based on her religious beliefs. Yet they were not willing to consider whether the law impeded her ability to freely practice her faith.

In this way, the court did not overturn precedent related to other forms of religious freedom.

Still, as Justice Sonia Sotomayor noted in her dissent – joined by Justice Elena Kagan and Justice Ketanji Brown Jackson – this ruling leaves open the possibility that other religious business owners will claim their services are "expressive" acts of speech and thus refuse to serve LGBTQ+ people.

"Today, the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class," Sotomayor wrote. "The law in question targets conduct, not speech, for regulation, and the act of discrimination has never constituted protected expression under the First Amendment."