

A Cakewalk Case?

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The Justices seem split — on the “gay cake” case.

A Christian baker had no trouble selling a gay couple a pre-made cake, out of his showcase, but balked at selling a custom wedding cake of any kind. According to NPR’s Nina Totenberg, the couple understood that requesting a “gay” themed cake would go too far. But the baker’s refusal to decorate any wedding cake seemed unacceptable.

In Colorado, where the cake didn’t get made, there is a public accommodations law that says businesses must serve all customers regardless of race, religion, or sexual orientation. So Colorado went after the baker, the baker



rights of citizens as defined and protected by a state law, it almost defies easy solution.

One could argue that the First Amendment right to *freely associate* (including the right *not* to associate) should extend to business. But that goes against legislation built up since the 1964 Civil Rights Act, which in many places ended an often violent racial segregation** no one wants back. However, a custom-made wedding cake is also expressive and therefore speech.

One could decide for Colorado on federalist grounds. And the late Justice Antonin Scalia, Ms. Totenberg tells us, argued that a general law not directed at a religion does not allow a specifically religious defense.

But one defense of the baker may work. The Colorado Civil Rights Commission has not applied its rulings equally. It sided with *non-Christian* bakers who refused to make cakes for Christians requesting Bible-verse cakes.

And that “takes the cake.”

This is Common Sense. I’m Paul Jacob.

** In this regard, Justice Kennedy stated from the bench that it seemed to him “that the state in its position here has been neither tolerant nor respectful of Mr. Phillips’ religious beliefs.” Kennedy will likely be the swing vote.*

*** No small amount of this violence, segregation and discrimination was coerced by state laws in defiance of the Fourteenth Amendment and the Bill of Rights.*

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hired a lawyer, and *Masterpiece Cakeshop v. Colorado Civil Rights Commission* was heard by the Supreme Court this week.

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