

Supreme Court Hands Down Highly Anticipated Public Accommodation Ruling

by CHRIS MORGAN and JOHNNY HONG

On June 4, 2018, the United States Supreme Court handed down their highly anticipated decision in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.



The case, which pitted public accommodation laws against religious freedom and expression protected under the First Amendment of the Constitution, had the potential to broadly change the way that local and state courts across the country would be forced to analyze and address similar issues. Instead, the Court levied a narrow decision that essentially deferred on the broader issue — leaving the states, at least for now, to decide when and in what circumstances a business may deny service on the basis of sincerely held religious beliefs.

In 2012, Jack Phillips, a baker and devout Christian in Colorado, refused to create a wedding cake for a same-sex couple based upon a religious belief opposing same-sex marriages. In response, the couple filed a claim with the Colorado Civil Rights Commission, which eventually held in favor of the couple. Following a number of appeals which affirmed the Commission's decision, the case made its way to the Supreme Court, where it was argued just recently.

Colorado's anti-discrimination and

public accommodations statutes, which are largely similar to Oregon's, protect the right of all citizens to enjoy goods and services at places of public accommodation regardless of sexual orientation. Conversely, the First Amendment of the United States Constitution guarantees the rights of all persons to exercise fundamental freedoms of speech and free exercise of religion.

In a 7-2 decision, the Supreme Court ultimately held that the Commission violated the Free Exercise Clause of the First Amendment in evaluating Phillips' refusal to provide service. However, the decision was not based on the reasons that many had expected. In reversing the Court of Appeals decision, the Court made two key arguments.

First, the Court explained that the Commission had disparaged Phillips' religious beliefs, and therefore did not evaluate and adjudicate the case in a fair and impartial manner. Second, the Court noted that in similar past cases, bakers had been allowed to refuse to create cakes for same-sex marriages because the language on the cake was derogatory or discriminatory. The Court explained that such disparity in treatment reflected hostility towards Phillips' beliefs, noting that the Commission essentially took other bakers' conscience-based objections as legitimate, while treating Phillips' belief

as illegitimate. The Court emphasized that the government "cannot express or even suggest" whether Phillips' religious ground for objection is legitimate or not. Thus, the Commission failed to consider Phillips' case with "the neutrality that the Free Exercise Clause requires."

This decision may have at least a minor impact on cases in other states, including Oregon, who have a number of factually similar cases circulating in their judicial systems. Similar to federal law and the law in many other states, Oregon prohibits businesses from denying full and equal accommodations, advantages, facilities, and privileges of any place of public accommodation. Oregon broadly defines a place of public accommodation as any place or service that offers to the public any accommodations, advantages, facilities or privileges, whether in the nature of goods, services, lodgings, amusements, transportation, or otherwise. The definition also includes any place that is open to the public and owned or maintained by a public body.

An extremely similar case, *Klein v. Oregon Bureau of Labor and Industries*, has just recently been appealed to Oregon's Supreme Court. *Klein* also involves a baker, located in Gresham, Oregon, who refused to make a wedding cake for a same-sex wedding on the basis of his religious beliefs. In addition, the baker posted the complaint filed by the couple to a Facebook page and disclosed their personal contact

information. Oregon courts have thus far held in favor of the couple, with the Oregon Court of Appeals stating that the baker's denial of service was "on account of" the couple's sexual orientation for the purposes of Oregon's public accommodation statute (therefore warranting the imposition of a monetary fine). In addition, the Court held that the decision was not a violation of Klein's free speech rights because it merely required compliance with a neutral law prohibiting discrimination.

For now, it remains to be seen how, if at all, the recent Supreme Court decision will affect the Oregon Supreme Court's decision on the issue. Although the Oregon Supreme Court will be limited by the precedence set by the narrow issues decided upon by the Supreme Court—including the fact that the Free Exercise Clause requires a neutral application that is not hostile towards an individual religious beliefs — the limited basis of the decision leaves the Oregon Supreme Court with a significant amount of room to continue to apply Oregon's accommodation statute broadly and to penalize businesses who refuse service in a discriminatory manner.

Chris Morgan, an attorney at Barran Liebman LLP, represents management in employment, benefits, and higher education law. For more information on employees' obligations under federal and state public accommodation laws, contact Morgan at 503-276-2144 or cmorgan@barran.com