News



People walk outside the U.S. Supreme Court in Washington Nov. 8. The court announced Nov. 13 that it will hear a freedom of speech case involving a 2016 California law that requires the state's 200 crisis pregnancy centers to inform their clients, in specific detail, about the availability of free or low-cost abortion and contraceptive services and provide a referral number for them. (CNS/Tyler Orsburn)

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In a legal case with profound implications for LGBT rights and religion's place in public life, the opposing sides agree on this: It's not about the cake.

At its core, the case that goes before the U.S. Supreme Court for oral arguments on Dec. 5 is a showdown between a gay couple from Colorado and a Denver-area baker who in 2012 cited his Christian faith in refusing to make a cake for their wedding celebration.

Jack Phillips, owner of Masterpiece Cakeshop in Lakewood, was judged through multiple phases of litigation to have violated Colorado's anti-discrimination law. Through his lawyers, he now gets to argue before the highest court in the land that he's an artist who should not be compelled to create a cake that contradicts his religious views.

For Phillips' legion of supporters — including conservative politicians, advocacy groups and religious institutions — the case has ramifications for creative professionals of all kinds.

"Every American should be free to choose which art they will create and which art they won't create without fear of being unjustly punished by the government," Phillips recently told a rally of local supporters.

For advocates of LGBT rights, the stakes are perilously high. They fear a Supreme Court ruling in Phillips' favor would open the door to discrimination by a wide range of business owners and entrepreneurs.

"Cakes can often have artistic or creative designs. So can sandwiches, legal briefs, bicycles, cars, flowers, medical care," American Civil Liberties Union lawyer Chase

Strangio argued in a recent blog post.

"If a baker can reject LGBTQ people because of who we are, then what about the mechanic, the florist, the doctor, the teacher?" Strangio asked. "This is not about cake. This is not about art. This is about survival."

The case reaches the Supreme Court at a stressful time for the LGBT rights movement.

Just two years ago, the high court delivered the movement its greatest victory — a 5-4 decision paving the way for same-sex marriage to become legal nationwide. But that achievement, coming just 11 years after Massachusetts became the first state to recognize gay marriage, has been partly offset by subsequent political developments.

The sweeping Republican election victory in November 2016 solidified social conservatives' dominance in Congress and a majority of states and set the stage for President Donald Trump's administration to roll back several LGBT-friendly initiatives undertaken during Barack Obama's two terms in office.

Protections for transgender students have been weakened, and Trump is seeking to ban transgender people from military service. In October, Attorney General Jeff Sessions — a longtime skeptic of LGBT-rights initiatives — issued "religious exemptions" guidance that could override many anti-discrimination protections for LGBT people and others.

The net result: LGBT activists see little prospect of short-term progress at the federal level, even as they remain heartened by the ever-growing ranks of corporations and local governments that are acting to make LGBT people feel welcome and to curb discrimination against them. The local laws can be important, given that only 21 states have statewide laws barring discrimination against gays and lesbians in public accommodations.

Lambda Legal, a prominent LGBT-rights group, was among dozens of organizations submitting briefs to the Supreme Court on behalf of the Colorado couple, Charlie Craig and David Mullins.

The group argued that LGBT people, for all their recent civil rights advances, still encounter varied forms of discrimination in the public square. Among its examples: a

lesbian couple denied infertility treatment in San Diego, a gay Iowa couple rebuffed in efforts to rent a wedding venue, a transgender man turned away from a New Jersey hospital where he sought a hysterectomy.

"This is why nondiscrimination laws like Colorado's are so important," wrote Lambda's law and policy director, Jennifer Pizer. "So that people can live their lives without fearing that, at any moment, they may be turned away or verbally abused just for who they are."

Craig and Mullins spent only a few moments at the bakery in 2012 before Philipps' rebuff hit home.

"There was horrible pregnant pause," Mullins recalls. "It was publicly humiliating and it was painful."

"Never in a million years did we think that five years later we'd be going to the Supreme Court," he said. "It's been emotionally trying. You sort of have to relive that pain again and again."

For opponents of same-sex marriage, religious liberty and religious freedom have become watchwords for a broad campaign to carve out more public space for their viewpoints.

There have been defeats. Earlier this year, Washington state's Supreme Court ruled unanimously that florist Barronelle Stutzman broke the state's anti-discrimination law by refusing to provide flowers for a same-sex wedding. In October, two women who specialize in hand-lettering and calligraphy for weddings lost the latest round of their challenge of a Phoenix ordinance requiring them to provide their services for same-sex weddings.

There have been some victories as well.

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In Michigan, a federal judge recently ordered the city of East Lansing to make room for a farmer who was barred from selling apples at a seasonal market because he doesn't let gay couples get married at his orchard, which is a popular wedding spot. A panel of U.S. appellate judges has allowed a sweeping Mississippi law to take

effect that lets government workers and business owners cite religious beliefs to deny services to LGBT people. The law, now the subject of an appeal to the Supreme Court, protects three beliefs: that marriage is only between a man and a woman, that gender cannot be changed and that sex outside of marriage is wrong.

Back in 2014, the Supreme Court declined to weigh in on a case with similarities to the Colorado dispute. The justices rebuffed a request to review a New Mexico Supreme Court decision holding that a photography studio violated the state's anti-discrimination laws by refusing to photograph a same-sex commitment ceremony.

Three years later, the high court has opted to wade into the same high-voltage issues, assessing whether Phillips' right to freedom of speech outweighs Colorado's interest in protecting Mullins and Craig from discrimination. It will mark the most important LGBT-rights case for conservative Coloradan Neil Gorsuch since he joined the Supreme Court in April.

However, the outcome could turn on the vote of Justice Anthony Kennedy, as it often does in cases that otherwise break along the court's liberal-conservative divide.

Kennedy's legacy is firmly tied to his authorship of major gay rights rulings dating back to 1996, including the landmark 2015 decision making same-sex marriage legal nationwide. At the same time, Kennedy, 81, has forcefully defended free-speech rights in his nearly 30 years as a justice.

Each side has tailored its arguments to appeal to one of those two strains in hopes of attracting Kennedy's vote.

Phillips still stoutly defends his 2012 rebuff of Mullins and Craig, saying he offered to sell them virtually any of his baked goods except a custom cake for their wedding.

"I don't create custom designs for events or messages that conflict with my conscience," he said at the recent rally of his supporters. "I don't create cakes for Halloween, bachelor or bachelorette parties, and anti-American cakes. I've turned down a cake order for an anti-LGBT message."

To the other side, Phillips' arguments seem like an invitation to intolerance.

"This case is not about a cake. It's not about a baker," Craig says. "It's about us being able to be free to be treated equally in the public realm."

(Associated Press writers Mark Sherman in Washington and P. Solomon Banda in Denver contributed to this report.)