News



Colorado lawyer Autumn Scardina poses for photos outside the Ralph Carr Colorado Judicial Center in Denver, Wednesday, Oct. 5, 2022. Scardina, who is transgender, sued Colorado baker Jack Phillips after he refused to make her a cake intended to celebrate her gender transition. (AP Photo/Colleen Slevin, File)

Colleen Slevin

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The Colorado baker who won a partial U.S. Supreme Court victory after refusing to make a gay couple’s wedding cake because of his Christian faith lost an appeal Jan. 26 in his latest legal fight, involving his rejection of a request for a birthday cake celebrating a gender transition.

The Colorado Court of Appeals ruled that that the cake Autumn Scardina requested from Jack Phillips and Masterpiece Cakeshop, which was to be pink with blue frosting, is not a form of speech.

It also found that the state law that makes it illegal to refuse to provide services to people based on protected characteristics like race, religion or sexual orientation does not violate business owners' right to practice or express their religion.

Relying on the findings of a Denver judge in a 2021 trial in the dispute, the appeals court said Phillips' shop initially agreed to make the cake but then refused after Scardina explained that she was going to use it to celebrate her transition from male to female.

"We conclude that creating a pink cake with blue frosting is not inherently expressive and any message or symbolism it provides to an observer would not be attributed to the baker," said the court, which also rejected procedural arguments from Phillips.

Phillips, who is represented by Alliance Defending Freedom, maintains that the cakes he creates are a form of speech and plans to appeal.

"One need not agree with Jack’s views to agree that all Americans should be free to say what they believe, even if the government disagrees with those beliefs," ADF senior counsel Jake Warner said in a statement.

John McHugh, one of the lawyers who represent Scardina, said the court looked carefully at all the arguments and evidence from the trial.

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"They just object to the idea of Ms. Scardina wanting a birthday cake that reflects her status as a transgender woman because they object to the existence of transgender people," he said of Phillips and his shop.

In 2018, the U.S. Supreme Court ruled that the Colorado Civil Rights Commission had acted with anti-religious bias in enforcing the anti-discrimination law against Phillips after he refused to bake a cake celebrating the wedding of Charlie Craig and Dave Mullins in 2012. The justices called the commission unfairly dismissive of Phillips' religious beliefs.

The high court did not rule then on the larger issue of whether a business can invoke religious objections to refuse service to LGBTQ people, but it has another chance to do so.

Last year it heard another case challenging Colorado's anti-discrimination law, brought by a Christian graphic artist who does not want to design wedding websites for same-sex couples. Lorie Smith, who is also represented by ADF, claims the law violates her freedom of speech.

Scardina, an attorney, attempted to order her cake on the same day in 2017 that the Supreme Court announced it would hear Phillips' appeal in the wedding cake case. During trial, she testified that she wanted to "challenge the veracity" of Phillips' statements that he would serve LGBTQ customers.

Before filing her lawsuit, Scardina first filed a complaint against Phillips with the state and the civil rights commission, which found probable cause that he had discriminated against her.

Phillips then filed a federal lawsuit against Colorado, accusing it of a "crusade to crush" him by pursuing the complaint.

In March 2019, lawyers for the state and Phillips agreed to drop both cases under a settlement Scardina was not involved in. She pursued the lawsuit against Phillips and Masterpiece on her own.