News



Jack Phillips, who's case was heard by the Supreme Court five years ago after he objected to designing a wedding cake for a gay couple, speaks to supporters outside the Supreme Court in Washington, Dec. 5, 2022. (AP/Andrew Harnik, File)

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Colorado's Supreme Court on Tuesday dismissed on procedural grounds a lawsuit against a Christian baker who refused to bake a cake for a transgender woman. Justices declined to weigh in on the free speech issues that brought the case national attention.

Baker Jack Phillips was sued by attorney Autumn Scardina in 2017 after his Denver-area bakery refused to make a pink cake with blue frosting to celebrate her gender transition.

Justices said in the 6-3 majority opinion that Scardina had not exhausted her options to seek redress through another court before filing her lawsuit.

“We express no view on the merits of these claims,” Justice Melissa Hart wrote for the majority.

Phillips’ attorney, Jake Warner with the Arizona-based firm Alliance for Defending Freedom, had argued before the high court that the baker’s actions were protected free speech and that whatever Scardina said she was going to do with the cake mattered for his rights.

Warner said Tuesday that his client had been pursued and mocked for years by those who disagreed with him.

“Enough is enough,“ Warner said. ”Jack has been dragged through courts for over a decade. It’s time to leave him alone.”

Scardina’s attorney, John McHugh, expressed disappointment and said he was evaluating if there were any remaining legal options.

“The Colorado Supreme Court decided to avoid the merits of this issue by inventing an argument no party raised,” McHugh said.

The justices in the minority faulted the ruling and said it gave Phillips “a procedural pass." They noted that every factfinder and judicial officer who heard the case concluded the baker’s conduct violated the Colorado Anti-Discrimination Act.

The dissenters also said they were concerned that Phillips would construe the ruling as a vindication.

However, Hart wrote that nothing in the ruling alters protections under the anti-discrimination law.

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The case was among several in Colorado pitting LGBTQ+ civil rights against First Amendment rights. In 2018, Phillips scored a partial victory before the U.S. Supreme Court after refusing to bake a cake for a gay couple’s wedding.

The case dismissed Tuesday drew attention from numerous attorneys general from Republican-led states who submitted a joint brief in support of Phillips.

Scardina's side was supported by advocacy groups that warned any finding of a First Amendment violation would curtail Colorado's prohibitions on discrimination.

Scardina attempted to order her cake the same day the U.S. Supreme Court announced it would hear Phillips’ appeal in the wedding cake case. Scardina said she wanted to challenge Phillips' claims that he would serve LGBTQ+ customers and denied her attempt to get the cake was a set up for litigation.

Before filing her lawsuit, Scardina first filed a complaint against Phillips with the state and the Colorado Civil Rights Commission, which found probable cause he discriminated against her.

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 Cakeshop on her own.

That’s when the case took a wrong turn, justices said in Tuesday’s ruling. Scardina should have challenged the state’s settlement with Phillips directly to the state's court of appeals, they said.

Instead, it went to a state judge, who ruled in 2021 that Phillips had violated the state's anti-discrimination law for refusing to bake the cake for Scardina. The judge said the case was about refusing to sell a product, and not compelled speech.

The Colorado Court of Appeals also sided with Scardina, ruling that the pink-and-blue cake — on which Scardina did not request any writing — was not speech protected by the First Amendment.