

303 CREATIVE LLC V. ELENIS

And the future of LGBTQ+ equality



This past June, the U.S. Supreme Court issued a ruling in the case of *303 Creative LLC vs. Elenis* which has sweeping implications for civil rights law, making it easier for businesses to discriminate under the guise of freedom of speech and religious freedom. **Businesses providing “expressive” services, such as web design and custom artwork, may now refuse to serve all people equally.**

What was the Supreme Court Ruling?

In a 6-to-3 vote, the U.S. Supreme Court (SCOTUS) sided with the web designer and created an exception to public accommodation laws, holding that businesses that are “expressive” in some capacity may discriminate on the basis of free speech. The conservative majority opinion, written by Justice Neil Gorsuch, states: "If there is any fixed star in our constitutional constellation," he said, "it is that the government may not interfere with an 'uninhibited marketplace of ideas.'"

This decision sets a dangerous precedent making it easier for businesses to use freedom of speech and religious freedom as excuses to discriminate against the LGBTQ+ community and any “protected group.” Protected groups under federal law include race, color, religion, national origin, plus sexual identity and gender identity and other classes when required by state law as in Colorado.

What are the circumstances of the case?

A web designer in Colorado was seeking to expand her services into wedding websites but opposes same-sex marriage on religious grounds. She did not want to create content for same-sex weddings and additionally wanted to post a message on her website explaining her objection to providing services to same-sex couples.

Colorado has a law called the Colorado Anti-Discrimination Act that prohibits businesses from discrimination based on a variety of identity factors. Before the state of Colorado sought to forbid her from discrimination, she challenged the state law in federal court on the grounds that the law violated her First Amendment rights to free expression and religious freedom.

This case is unique because it did not rise as a result of actual harm to a person who was denied service and therefore alleged discrimination. Instead, the web designer filed a lawsuit preemptively because she wanted to advertise that she wouldn't make wedding websites for same-sex couples, which would have broken Colorado law. This thrust the case into the realm of hypotheticals, since no one had ever been turned away from her business. This case is part of a coordinated, calculated national effort by Christian nationalists to curtail the rights of LGBTQ+ Americans under the guise of religious freedom.



Didn't SCOTUS already decide this about a cake?

You may be thinking... "Haven't I heard about something out of Colorado along these lines before?" The answer is – Yes. *Masterpiece Cakeshop v. Colorado Civil Rights Commission* challenged the same Colorado anti-discrimination law five years ago, examining the question of the right to exercise fundamental freedoms under the First Amendment: freedom of speech and free exercise of religion. In that case, SCOTUS ruled in favor of the baker but declined to actually decide the legal question of whether he could refuse to bake a wedding cake for same-sex couples under his right to freedom of religion, instead answering a narrower question of whether the baker was discriminated against by the Colorado Civil Rights Division, leaving the larger question to today.

In both this case and the case involving the Colorado baker, the plaintiffs were represented by lawyers from the Alliance Defending Freedom (ADF), which describes itself as "protecting religious freedom, free speech, the sanctity of life, parental rights and God's design for marriage and family." These cases were strategically brought by the ADF in order to create an exemption in Colorado law, and loosen nondiscrimination protections. This is one part of the national extremist effort to weaponize religion against LGBTQ+ rights.

What is the impact of this ruling?

As Justice Sonia Sotomayor said in her dissent, "Today, the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class."

This ruling creates a break in well-established civil rights law and has given a green light to certain businesses to discriminate based on identity. The businesses in question are specifically those that involve creative services and free speech, like commissioning website design and custom artwork, but this sets a dangerous precedent that right-wing groups will use to further erode our nation's civil rights laws.

We are going to see more businesses claim that their services are expressive, and therefore that they have the right to refuse service to those who violate their religious beliefs. Judges will now be required to make extremely difficult decisions on whether a service is expressive enough to allow businesses the right to discriminate.

Notably, this decision is not limited to the LGBTQ+ community, but applies to all protected groups. If a business operator believes anti-discrimination law is going to force them to express something they don't believe in, such as implicit support for interracial marriage, or elements of Jewish or Muslim faith, we may see discrimination in these spheres as well.



So what role do religion and religious freedom play in this ruling?

In both *Masterpiece Cakeshop* and *303 Creative*, the plaintiffs claimed it was their religious beliefs that made them unwilling to serve same-sex couples. It is impossible to separate these cases from the rhetorical campaign of the Religious Right, seeking to elevate the “freedom” of some over the rights of others. Though the legal tactics may vary, the goal remains the same: to use religion as a license to discriminate.

SCOTUS’s decision is another feature in a national landscape in which LGBTQ+ people are under attack. Hundreds of anti-LGBTQ+ bills are being advanced in state legislatures across the country, many targeting trans youth. Hate-based violence against LGBTQ+ people is on the rise, and all too often, defense of this hate is cloaked in the language of religion.

We should not look at this ruling in isolation from the cultural context in which it exists. Whether in the courts, in state legislatures, or on school boards, the Religious Right is targeting LGBTQ+ people to consolidate power and advance an extremist agenda. Religion has been weaponized in this effort, so it is imperative that people of faith fight back to change the narrative.

How can people of faith do their part to fight back?

The majority of faith groups and congregations across the country are inspired by their traditions to celebrate the inherent dignity and worth of all people, including the LGBTQ+ members of their communities. Our sacred texts, community leaders, and histories teach us to work against systems of oppression and cultures of bigotry while advocating for those who experience the most harm. LGBTQ+ people deserve equal treatment under the law, protection, and the opportunity to thrive—as do all people. Here’s what you can do to fight back against anti-LGBTQ+ extremism:

Urge your Members of Congress to Co-Sponsor the Equality Act.

Every one of us should be able to live free from discrimination. If passed, the Equality Act would update the Civil Rights Act to prohibit discrimination on the basis of sexual orientation and gender identity in employment, housing, public accommodations, public education, federal funding, credit, and the jury system. [Tell your Members of Congress to co-sponsor the Equality Act](#). Together, we can make our vision of an inclusive democracy a reality.

Learn about anti-LGBTQ+ extremism and where it shows up.

Christian nationalist ideology is used as a thinly-veiled cover for anti-LGBTQ+ policies, extremism, and discrimination. Learn about where and how anti-LGBTQ+ extremism is showing up in your state and community. Some good websites to start your learning journey include: [Southern Poverty Law Center](#), [GLAAD](#), and the [Anti-Defamation League](#).



Mobilize to strike down anti-LGBTQ+ legislation.

Under the guise of religious freedom, the Religious Right and their elected allies are pushing legislation targeting LGBTQ+ children, parents, and educators. You can organize a media campaign or show up in person to let your legislators and community know that you support full rights for LGBTQ+ people and organize to create ways to show up for the LGBTQ+ community. Also, learn about what pro-LGBTQ+ organizations, including faith-inspired ones, are doing and join them in the fight for equality and justice. Take action by calling your legislators [here!](#)

Form a LGBTQ+ solidarity working group in your house of worship.

Religion has been weaponized throughout history as a license to harm marginalized groups. But, there is an even longer history of faith moving people to speak out against oppression and fight for the rights of all people. Carry on that legacy by forming a working group within your community or congregation. LGBTQ+ advocacy is not a Pride month-long effort, but an ongoing movement that builds power over time, working together. For ideas on how you can get engaged, explore [Faith for Pride](#): a month-long effort to activate faith communities in support of LGBTQ+ equality.