

High Court Quandary: What Will Supreme Court Decree About Same-Sex Weddings?

The U.S. Supreme Court returns to work next month and once again the justices will hold the future of precious freedoms in their hands. That's because controversies over religious liberties keep popping up—and this being such a litigious age—those controversies inevitably end up before the courts, sometimes even the nation's highest court.

A panel of legal experts gathered on Capitol Hill to look at some of those likely cases, such as the one involving the Masterpiece Cake Shop. The state of Colorado punished shop owner Jack Phillips for refusing to make a cake celebrating a same-sex wedding. His side is represented by Alliance Defending Freedom, which will argue it as a free-speech case.

“The Supreme Court has said that the free speech clause protects all kinds of speech, and that includes artistic expression,” ADF senior counsel Kristen Waggoner explained. “Jack's cakes are art. His Masterpiece Cake Shop has been referred to as an art gallery of cakes.”

Is Resisting Same-Sex Weddings Actual Anti-Gay Discrimination?

Panelist Scott Keller, the Texas solicitor general, discussed the Masterpiece Cake Shop case and a similar one involving a florist in Washington state unwilling to do the floral arrangements for a same-sex wedding, explaining why neither represents anti-gay discrimination.

“In this case and also in *Arlene's Flowers*, Jack Phillips and Barronelle Stutzman would in fact serve and sell products to LGBT customers,” Keller said. “And in this case, Jack would

have sold brownies or cupcakes or whatever he had already made that were in his store for public sale. He would have sold them to the complainants in this case. He would have even sold them custom cakes, provided that it was not (an) expression that was going to be part of a same-sex wedding.”

But Louise Melling of the ACLU Center for Liberty—another panelist—characterized the case as a clear-cut example of discrimination.

“It’s hard for me to understand how a same-sex wedding isn’t about same-sex people, which is about sexual orientation,” she argued. And she compared it to the case accusing Bob Jones University of racial discrimination because of its rules against interracial marriage or dating.

Is Resisting Same-Sex Weddings an Act of Hate?

Panelist and attorney Yaakov Roth, a partner in the global law firm Jones Day, shot back.

“Are we as a society going to turn every observant Christian, Jew, Muslim into a member of the KKK? Is that how we want to handle this tension in our society?” he asked. “I hope not, but I also watched the confirmation hearing last week where a senator was haranguing a judicial nominee for having spoken to ADF, which he called a hate group, based on positions not dissimilar from the position we’re debating here.”

Meanwhile, the Supreme Court may decide on September 25 whether it takes up a case involving a California law that critics say bullies pro-life pregnancy centers.

Forcing Pro-life Clinics to Advertise Abortions

Waggoner told CBN News, “The issue there is whether pro-life clinics that are licensed medical centers—and also those that are unlicensed providing resources to pregnant women—can

essentially be forced to refer for low-cost abortions, to notify those women who they're trying to help that they could seek an abortion through a state program. And that's unconstitutional. You can't force people to engage in that kind of speech."

Court watchers believe if the high court takes the National Institute of Family & Life Advocates v. Becerra case, it could likely mean victory for the pro-life pregnancy centers because the justices often side with free speech.

"There are very stiff penalties that are in place under this California law," Waggoner said. "And we've seen other states, other courts, that have struck down these kinds of laws. But California continues to persist in really trampling on the free speech rights of those who are involved in pro-life issues."

Cases involving Ten Commandments memorials and local politicians opening up local council meetings with prayer could also wind their way to the justices. So as in most years, the Supreme Court is going to take up at least one big religious liberty case—and during this term, maybe several.

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