

June signifies a month-long Pride celebration for the LGBT community and its allies. As if on cue, in early June the United States Supreme Court released a timely ruling in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, which unleashed a social media frenzy with commentary on the decision. In *Masterpiece*, a Colorado baker refused to sell a wedding cake to a same-sex couple, citing religious beliefs as his reasoning. The baker offered to sell other products to the customers, such as birthday cakes, cupcakes, or brownies, but refused to create a cake in celebration of their marriage.

On the surface, the decision may not *seem* like a win for the gay community. However, the lengthy and complicated majority opinion suggests otherwise. Justice Kennedy spent a noticeable amount of time stressing that the *Masterpiece* ruling does not mean that companies can refuse to do business with same-sex couples based on freedom of religion.

“Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth. For that reason the laws and the Constitution can, and in some instances must, protect them in the exercise of their civil rights. The exercise of their freedom on terms equal to others must be given great weight and respect by the courts. At the same time, the religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression.

Nevertheless, while those religious and philosophical objections are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.” The Court concluded that both parties are entitled to their own rights, based on their respective beliefs. At the end of the day, the bakery only prevailed because the Colorado Civil Rights Commission, which represented the couple, failed to establish a “neutral and respectful consideration” of its claims.

The trend in both the Supreme Court and federal circuit courts is to emphasize that sexual orientation is a subset of sex and therefore a protected class under Title VII. In the Second Circuit’s *Zarda v. Altitude Express*, which was decided in February of this year, the Court ruled that sex discrimination “applies to any practice in which sex is a motivating factor.... Sexual orientation discrimination is a subset of sex discrimination because sexual orientation is defined by one’s sex in relation to the sex of those to whom one is attracted.” The court reasoned that it would be impossible to discriminate on the basis of sexual orientation without taking sex into account.

Similarly, in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, the U.S. Court of Appeals for the Sixth Circuit affirmed protection of transgender people under Title VII. In *Harris*, an employee informed the Christian funeral home owner that she would be changing genders and wanted to present herself as a woman publicly, which also included at work. The Christian owner fired her because she was no longer going to present herself as a man. The owner cited religious beliefs as reasoning firing the employee and being unable to continue employment of a transgender person.

The *Harris* case made its way to the Sixth Circuit by way of the Eastern District of Michigan. The Equal Employment Opportunity Commission (EEOC) sued on the employee’s behalf, citing a Title VII violation by the funeral home. The EEOC also argued that the funeral home discriminated against female employees through its clothing allowance policy. Specifically, the funeral home only provided male employees with a clothing allowance, but not female

employees. The District Court dismissed the EEOC's claim, concluding that although the EEOC had established sex discrimination, the Religious Freedom Restoration Act acted as an exemption to Title VII for the funeral home. In October of 2016, the EEOC appealed the District Court's decision.

The Sixth Circuit concluded that "an individual's transgender status is *always* based on gender-stereotypes," making it another facet of sex discrimination. The Sixth Circuit further held that transgender individuals are protected under Title VII because "transgender or transitioning status constitutes an inherently gender-nonconforming trait." This ruling affirms protection for transgender employees under Title VII, and eliminates any argument that an employer's religious belief can create an exception to discrimination under Title VII.

This string of cases demonstrates a promising step in the right direction for the LGBT community during a time of political and social unrest.