

Three Modern-Day Martin Luthers Before the Supreme Court



I am bound by the Scriptures I have quoted and my conscience is captive to the Word of God. I cannot and I will not retract anything, since it is neither safe nor right to go against conscience. I cannot do otherwise, here I stand, may God help me, Amen.

MARTIN LUTHER AT THE DIET OF WORMS (1521)

BY KIM COLBY

October 31, 2017 marks the 500th anniversary of the Reformation, which birthed freedom of individual conscience on religious matters. Five hundred years later, the struggle to protect individual religious conscience continues, including in the United States Supreme Court when it hears a case that may determine whether citizens who hold traditional religious beliefs regarding marriage and

human sexuality will be allowed breathing space to live according to their religious consciences.

In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Court will decide whether the First Amendment is violated when a state punishes a citizen for refusing, for reasons of religious conscience, to create a cake that celebrates

a same-sex wedding. Jack Phillips, owner of Masterpiece Cakeshop, declined to create a cake for a same-sex wedding because he believes it would be a sin to participate in celebrating a same-sex wedding. Despite the fact that another bakery readily created the cake they wanted, the couple brought a sexual orientation discrimination claim against Jack Phillips. A state civil rights commission found Jack Phillips had violated Colorado law and prohibited him from creating cakes for any wedding unless he created cakes for same-sex weddings.

Jack Phillips appealed to Colorado's appellate court, which upheld the Commission's ruling, and the Colorado Supreme Court declined to hear his appeal. The U.S. Supreme Court, however, granted review of his free speech and free exercise claims with oral argument likely to be heard in December.

Arlene's Flowers v. State of Washington: Barronelle Stutzman, the owner of Arlene's Flowers, sold flowers to a same-sex couple for many years but declined to arrange flowers for their wedding. The Washington State Attorney General initiated proceedings against her, after which the ACLU brought a lawsuit against Mrs. Stutzman on behalf of the couple. A state trial court found she violated the state law prohibiting sexual orientation discrimination and awarded fines, damages, and attorney's fees against her. The state supreme court agreed. Mrs. Stutzman stands to lose her business and her home because the attorney's fees are likely to be hundreds of thousands of dollars. Mrs. Stutzman has filed a petition for review in the United State Supreme Court, asking that it be heard alongside *Masterpiece Cakeshop*.

Neely v. Wyoming Commission on Judicial Conduct & Ethics: A third case raises the question of whether a judge may be punished by the government for refusing to perform a same-sex wedding ceremony, despite the judge's belief that such marriages are prohibited by God.

Judge Neely held two judicial positions, a state judgeship in which she was not authorized to perform weddings for anyone and a local, part-time magistrate position in which she performed weddings for couples who independently contacted and paid her. Wyoming magistrates may decline to perform a wedding for a variety of reasons.

In 2015, after same-sex marriage became legal in Wyoming, a local newspaper reporter called Judge Neely to ask whether she was "excited" about performing same-sex marriages.

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Judge Neely responded that her religious beliefs would not allow her to so but that other magistrates were willing. Even though no same-sex couple had asked Judge Neely, and numerous other magistrates were willing to perform same-sex weddings, the Wyoming Commission on Judicial Conduct & Ethics brought charges against Judge Neely and ordered that she be removed from both judicial positions.

On appeal, the Wyoming Supreme Court reduced her punishment to a reprimand but required her to stop performing any weddings unless she performed same-sex ones. Judge Neely has filed a petition for review with the U.S. Supreme Court.

Should Jack Phillips Bake Two Cakes?

Would God have Jack Phillips just bake the cake? Of course, there is really only one answer to that question: Whether Jack Phillips should create a cake is between him and his God. Likewise, whether Mrs. Stutzman should create a floral arrangement is between her and her God, as is Judge Neely's decision whether to perform a same-sex wedding ceremony.

These mature Christians sincerely believe that God requires them not to perform or celebrate a same-sex wedding. Granted that mature Christians are imperfect people, they nonetheless often have experience in discerning God's direction. When mature Christians believe God is calling them to risk their reputations and their businesses to do something that is countercultural, it is quite possible that God is actually calling them to make a costly sacrifice.

Many Christians confidently, even carelessly, opine that Jack should bake the cake or, better yet, two cakes. Certainly it is possible that God might lead a Christian to

create a cake or floral arrangement for a same-sex wedding. It is more difficult to believe that God would condone a Christian performing a same-sex wedding.

But surely all Christians should be able to respect fellow Christians who believe they would be disobeying God if they participated in a same-sex wedding. Consider an analogous situation in the early Church when the Corinthian Christians disagreed whether a Christian could in good conscience eat meat that had been sacrificed to idols. The Apostle Paul instructed the Christians who could eat meat in good conscience to “[b]e careful . . . that the exercise of your rights does not become a stumbling block” to those whose consciences would not allow them to eat meat. (I Corin. 8:9). Might it even be judgmental to criticize other Christians for refusing to create a cake or floral arrangement or to perform a wedding ceremony—especially when one is not privy to how God has responded to their prayers for guidance?

Recently, Jack Phillips appeared on the talk show *The View*. To cheers from the studio audience, two of the show’s co-hosts castigated him for his religious beliefs. One co-host lectured him about what Jesus would have him do, without any apparent sense of irony that she should be lecturing another person regarding what his faith required. A second co-host flailed him for being “judgmental,” again without any self-awareness that she was being judgmental.

The public demand for Jack Phillips’ head will reach a crescendo when the Court hears oral argument, probably in December. His case will trigger abundant opportunities for Christians to share their faith with co-workers, neighbors, and family. Now is the time to prepare for those conversations.

The Christian who chooses to say, “If it were me, I would bake the cake” needs to be prepared to continue the conversation by explaining why Jesus has the authority to command how we live. The Christian who chooses to say, “If it were me, I would not bake the cake” needs to be ready to explain Jesus’ boundless grace toward all of us sinners.

But regardless of the response, it is wrong to throw Jack Phillips under the bus of popular opinion. Just as we cannot imagine joining the Colosseum crowds’ cheers as Christians were delivered to the lions, so we should not remain silent as our culture condemns Christians who cannot in good conscience do what the crowd demands. The temptation to abandon Jack Phillips to his fate will be great. But, as Christians, we must decide now to resist that temptation and instead prepare to give a personal defense of the human right to live according to religious conscience.

Happily, the correct spiritual course aligns with the correct legal course. The First Amendment requires that we defend Jack Phillips’s ability to live according to what he understands God to require. The First Amendment’s protection of religious conscience does not turn on whether anyone else agrees with his decision not to create the cake. Indeed, the First Amendment particularly protects minority religious dissenters from government coercion.

On this 500th anniversary of the Reformation and its emphasis on the supremacy of individual conscience in religious matters—an emphasis that the Founders embedded in the First Amendment—it is fitting that the Court yet again protect the foundational right of all citizens to live according to their religious consciences.



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