



Written by [Joe Wolverton, II, J.D.](#) on May 30, 2018

The Supreme Court May Soon Set Boundaries on Religious Exercise and Use of Property

Very soon, the Supreme Court of the United States will issue a “ruling” that at once will draw legal boundaries around the acceptable exercise of religion in this country and will set rules for the acceptable use one may make of his own property and labor.

In June — the last month of its term — a majority of the nine justices will unite to decide the case of *Masterpiece Cakeshop vs. Colorado Civil Rights Commission*, the well-known case where a homosexual couple claim that they were denied the equal protection of the laws when Jack Phillips, the owner of the Masterpiece Cakeshop, refused to bake them a rainbow cake for use in their gay “wedding” ceremony.



Make no mistake. Phillips has served homosexuals in the past and would, had the current suit not financially ruined him, continued to serve them in the future. For Phillips, the issue was not the serving of homosexuals that he refused to do, it was the celebrating of a ceremony that his Christian faith teaches is immoral.

In other words, one might believe it is biblically forbidden by God for a man and woman to engage in premarital sexual relations. Suppose that person is a carpenter. Suppose a couple who is known to be cohabiting and engaging in premarital sexual relations comes to the carpenter and asks him to build them a coffee table. The carpenter would likely feel no religious restriction to such a job.

Now, imagine that instead of a coffee table, the couple comes to him and asks him to make them a plaque saying “We Don’t Need a Piece of Paper to Prove Our Love.” One could imagine that the carpenter would demur, citing his Christian faith’s doctrine that sexual relations are to be kept within the bounds of lawful marriage.

This is pretty much the case of the baker in Colorado whose adherence to his religious beliefs may soon prompt the country’s highest court to place such fidelity to faith beyond the protection of the law, including the First Amendment that was specifically designed to prevent the federal government from interfering in the spiritual realm.

On that very salient point, Justice William Kennedy may have already tipped his hand. This is important because many observers consider Kennedy the swing vote who could throw the victory to either party.

In the *Obergefell* opinion, wherein the Supreme Court forced all Americans to recognize the “marriage” of same-sex couples, Justice Kennedy wrote the following regarding the privileged position of religious expression:



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Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.

It will be worth reading the *Masterpiece Cakeshop* decision if for no other reason than to see if Justice Kennedy has had an anti-religious conversion.

Equally as disturbing as the fact the federal courts might soon usurp power to put limits on religious expression is the fact that the same case will grant the government power to punish Americans who use their property and labor in ways not approved by the black-robed oligarchs.

Property, one of the most fundamental of the natural rights, may soon be placed at the disposal of government for the unchallengeable use of those classes of people under its powerful protection.

Ryan Macken, writing for the Mises Institute, put a pretty fine point on the potential de facto confiscation of all property and labor by the kritarchs.

Anyone who claims there's too much democracy in the United States needs to keep in mind that American law and policy is ultimately decided by five millionaires at the Supreme Court.

This week, we're being reminded that the Supreme Court of the United States is hearing arguments in the case of a small-time baker who refused to bake a cake for a gay wedding.

This, apparently, is a matter of such importance that it requires the intervention of the federal government and its court system to decide for whom a tiny small business shall be forced to bake desserts. In other words, the court's majority of five people will decide for 320 million people what is mandatory for anyone who wants to open a small business in the United States.

There is not a single syllable of the Constitution granting (notice: the Constitution "grants" power, it does not "give" it) to the federal courts the authority to issue edicts enforcing limits on the labor of Americans and the property Americans create with that labor.

In fact, Article 4, Section 4 of the Constitution sets forth that "The United States shall guarantee to every State in this Union a Republican Form of Government."

The key to that crucial clause is the definition of a "republican form of government."

In *Federalist*, No. 10, James Madison provides a now famous formula for recognizing republican government: "A republic, by which I mean a government in which the scheme of representation takes place."

Not a single one of the justices who sit on the bench of the Supreme Court was elected by the people, and the justices are not accountable to the people and they do not in any meaningful way represent the people.

If the Supreme Court takes upon itself to legislate from its marble palace, then Article 4, Section 4 of the Constitution is violated and the states and people are justified in following the course suggested by Alexander Hamilton should such a despotism be attempted by any branch or officer of the federal government.

In *Federalist*, No. 33 Hamilton writes, "It will not follow from this doctrine that acts of the larger society



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[the federal government] which are *not pursuant* to its constitutional powers but which are invasions of the residuary authorities of the smaller societies will become the supreme law of the land. These will be merely acts of usurpation and will deserve to be treated as such.”

As the date of the decision approaches, it only remains to be seen whether any unconstitutional act of the Supreme Court will be treated as a usurpation or will be treated as the ultimate and final rule on religion and property in the United States.

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