



Written by [Bob Adelman](#) on February 24, 2022

Supreme Court to Hear Colorado Web Designer's Free-speech Lawsuit

Not long after Colorado passed its anti-discrimination law (the Colorado Anti-Discrimination Act, or CADA) the state's civil rights commission — staffed with hard-core liberals — saw an opportunity to weaponize the law against anyone holding traditional views of human sexuality, and they took it.

Colorado web developer Lorie Smith saw the imminent threat from the commission to her business and [filed a pre-emptive suit](#), claiming that the law, if enforced by the commission, would violate her First Amendment-protected rights. [On Tuesday, the Supreme Court accepted the case on appeal](#) after lower courts decided the law was enforceable.



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Lawyers from Alliance Defending Freedom (ADF) crafted the question the court will answer:

Artist Lorie Smith is a website designer who creates original, online content consistent with her faith. She plans to (1) design wedding websites promoting her understanding of marriage, and (2) post a statement explaining that she can only speak messages consistent with her faith.

But the Colorado Anti-Discrimination Act (CADA) requires her to create custom websites celebrating same-sex marriage and prohibits her statement....

The Tenth Circuit ... astonishingly concluded that the government [the commission] may, based on content and viewpoint, force Lorie to convey messages that violate her religious beliefs and restrict her from explaining her faith.

Specifically, the high court will be answering this key question: “Whether applying a public-accommodation law to compel an artist to speak or stay silent, contrary to the artist’s sincerely held religious beliefs, violates the Free Speech or Free Exercise Clauses of the First Amendment [to the United State Constitution].”

This should be a slam dunk for the high court. Nowhere in the Constitution are gay rights guaranteed, but rights of free speech, free exercise of religion, and due process are.

When the high court ruled in a similar case — *Masterpiece Cakeshop v. Colorado Civil Rights Commission* — it punted. Instead of settling the issue once and for all — that the Constitution overrides states’ efforts to negate it — it held that the commission failed “to act in a manner neutral to religion.” As a result, Jack Phillips, the owner of Masterpiece Cakeshop, continues to be harassed by the commission.



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Last July, Colorado's 10th Circuit Court of Appeals ruled that Smith cannot refuse to create websites celebrating same-sex marriages. The three-judge panel also ruled that she cannot express her reasons on her business website.

As ADF's Senior Counsel John Bursch explained, "Lorie Smith is being told that she must speak views she opposes and can't post about her beliefs on her own business website."

In other words, by weaponizing CADA, Colorado's Civil Rights Commission is both denying and compelling her speech to fit its perception of how they want the world to behave.

The ADF said this could be a "landmark" case:

No one should be banished from the marketplace simply for living and speaking consistently with their religious beliefs. This could be a landmark case for the freedom of speech, religious liberty, and artistic freedom. We look forward to representing Lorie before the high court.

On the other hand, the Left is afraid that the Supreme Court will finally do what it should have done in the first place: reaffirm the First Amendment. Mark Joseph Stern, writing for the far-left *Slate*, warned that by taking the case under appeal, "the court formally commenced its long-delayed project of dismantling non-discrimination laws that protect LGBTQ people ... [the justices] have indicated that they may take a wrecking ball to the edifice of civil rights law, dismantling the constitutional foundations of non-discrimination in public accommodations."

Stern fears that "if ADF [and Lorie Smith] prevails, the majority could relegate gay people to second-class status under civil rights law."

This is just plain silly. What he fears is that the Supreme Court will finally come to its senses and declare that LGBTQ individuals have no "special" rights or privileges just because they assume a particular lifestyle.

Stern is correct about one thing: "If a business' First Amendment rights outweigh the government's interest in ending discrimination, few non-discrimination laws will be safe from constitutional attack."

Precisely. Whether the Supreme Court seizes this opportunity to affirm the First Amendment is an open question. Most liberal commentators bemoan the fact that the high court is now ruled by conservatives, 6-3. In reality it's a draw: three liberals, three conservatives, and three waffles, including Chief Justice John Roberts himself.

Smith is going to have to wait another year and a half to find out, as the high court won't be hearing arguments on the matter until October, and then rendering its decision in June 2023.

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