Supreme Court Holds Web Designer Not Required to Create Websites that Violate Her Religious Beliefs

PUBLISHED ON
July 5, 2023

On Friday, June 30, 2023, during a whirlwind week of activity from the U.S. Supreme Court, a 6-3 majority voted to reverse the 10th Circuit Court of Appeals and held that a Colorado web designer could not be compelled by a state anti-discrimination statute to create wedding website designs that violate her religious beliefs. In *303 Creative LLC et al. v Elenis* et al, Colorado based wedding website designer Lorie Smith sought an injunction against the enforcement of the Colorado Anti-Discrimination Act (CADA), which in part prohibits *inter alia* discrimination based upon sexual orientation by a "place of business engaged in any sales to the public and any place offering services to the public." Ms. Smith contended that a same-sex couple requested her services to prepare a wedding website, but that she holds a sincerely held religious belief that marriage should only be between a man and a woman.

The case included stipulated facts, such as: both the State of Colorado and Ms. Smith agreed that the act of designing and providing content for wedding websites constitutes the expressive activity of speech. Further, the state and Ms. Smith stipulated that she was always willing to work with persons in all protected classes, including sexual orientation, but she refused to produce content that, in her mind "contradicts biblical truth". Thus, the case pitted the state's "compelling interest" in preventing discrimination based upon sexual orientation versus the individual's constitutionally protected right to the free expression of sincerely held religious beliefs found in the First Amendment.

The Federal District and Appellate Courts in Colorado denied Ms. Smith her requested injunctive relief. The Supreme Court, in an Opinion authored by Justice Gorsuch and joined by the five other conservative justices, held that the First Amendment right of free speech prohibits a state from forcing the individual website designer to create expressive designs speaking messages with which the designer disagrees. Justice Gorsuch stated: "The First Amendment protections belong to all, not just to speakers whose motives the government finds worthy. In this case, Colorado seeks to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance."

The court noted that it has a history of checking the power of the state when public laws interfere with an individual's First Amendment rights. In *Boy Scouts of America v. Dale*, 5330 U.S. 640, the court upheld the organization's decision to terminate a scout leader who was gay, which was in violation of the organization's s expressive beliefs. In *West Virginia Board of Education v. Barnette*, 319 U.S. 624, the court refused to compel school students to recite the pledge of allegiance in violation of their sincerely held beliefs. In *Hurley v. The Irish-American Gay Lesbian & Bisexual Group of Boston, Inc.* 515 U.S. 557, the Court refused to allow the state to use its public accommodation law to compel a military veterans group to allow the gay and

lesbian organization to march in its parade as to do so would be contrary to the expressive act of the parade and compel the veterans group to allow the expression of views which were contrary to their own.

Ultimately, the Court concluded: "No public accommodation law is immune from the demands of the Constitution .[W]hen the public accommodation law sweeps too broadly to compel speech so that the two collide, there can be no question which must prevail."

Justice Sotomayor, joined by Justices Kagan and Jackson, issued a stinging dissent, stating: "Today, the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class."

This decision represents a "win" for conservatives who contend that certain public accommodation laws impermissibly silence free speech, or at least compel speech that is contrary to sincerely held religious beliefs. It is important to note that not all commercial activity represents the expressive activity of web content and design. However, the decision is not a blanket protection for those who engage in commerce to utilize the First Amendment as a basis for protected-class discrimination. The facts of each case, and the balancing of interests between the "compelling state interest" of prohibiting discrimination versus the right to exercise the freedom of speech protected by the First Amendment, must be carefully reviewed before any person or business takes action in reliance thereon.

A consultation with legal counsel would be a prudent decision for businesses as other courts and legislatures react to the impact of this decision. Please reach out to Partner Kevin Moore or any member of the Barley Snyder Employment Practice Group with questions.

WRITTEN BY:

Kevin A. Moore

Partner

Tel: (610) 370-8110

Email: kmoore@barley.com