Justices Rule for Christian Designer in Gay Wedding Website Case

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FILE - Lorie Smith, a Christian graphic artist and website designer in Colorado, right, accompanied by her lawyer, Kristen Waggoner of the Alliance Defending Freedom, second from left, speaks outside the Supreme Court in Washington, Monday, Dec. 5, 2022, after her case was heard before the Supreme Court. (AP Photo/Andrew Harnik, File)

WASHINGTON — The Supreme Court ruled Friday that the First Amendment bars the state of Colorado from forcing a designer to create websites conveying messages that go against her evangelical Christian beliefs.

Writing for the majority in the 6-3 decision, Justice Neil Gorsuch said that as written, Colorado's Anti-Discrimination Act seeks to "force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance."

As Gorsuch and the conservative majority on the court saw it, the petitioner in the case, Lorie Smith, was simply wishing to

"engage in protected First Amendment speech" in the operation of her business, 303 Creative LLC.

"Colorado seeks to compel speech she does not wish to provide," Gorsuch wrote.

"While Ms. Smith's speech may combine with the couple's in a final product, an individual 'does not forfeit constitutional protection simply by combining multifarious voices' in a single communication," the justice added.

Smith established 303 Creative — its name derived from the metro Denver area code — after years of working in the corporate marketing and design industry.

As her business grew, she said in court filings, she decided she wanted to expand to include wedding websites.

However, Smith opposes same-sex marriage on religious grounds and did not want to design websites for such occasions. In addition, she wanted to post a message on her own website explaining her religious objections.

The problem, in her view, is that in taking such a position, she would run afoul of the Colorado Anti-Discrimination Act, which prohibited businesses from discriminating on the basis of, among other things, race, creed, disability, gender and sexual orientation.

The law goes on to describe discrimination as not only refusing to provide goods and services to potential customers, but also publishing any communications that says or implies that an individual's patronage is unwelcome because of a protected characteristic.

Despite the fact the state had not sought to enforce the law against her, Smith challenged it in federal court, alleging a number of constitutional violations.

In filings before the court, Smith stated that she is "willing to work with all people regardless of classifications such as race, creed, sexual orientation, and gender" and would "gladly create custom graphics and websites" for clients of any sexual orientation.

But, she said, she would not produce content that "contradicts biblical truth" regardless of who orders it, and that her belief that marriage is a union between one man and one woman is a sincerely held conviction.

Smith's lawyers went on to argue that their client provides design services that are "expressive" and her "original, customized" creations "contribute to the overall message" her business conveys "through the websites" it creates.

Her wedding websites, they said, would be similarly "expressive in nature."

A federal judge granted summary judgment for the state and the 10th U.S. Circuit Court of Appeals later affirmed that ruling.

The 10th Circuit held the state could compel Smith to make websites she disagreed with and still be constituent with the constitution.

Here, the majority disagreed with the appellate court's conclusion.

"In *Hurley*, *Dale*, and *Barnette*," Gorsuch wrote, citing earlier cases, "the court found that governments impermissibly compelled speech in violation of the First Amendment when they

tried to force speakers to accept a message with which they disagreed.

"Here, Colorado seeks to put Ms. Smith to a similar choice," the justice continued. "If she wishes to speak, she must either speak as the state demands or face sanctions for expressing her own beliefs, sanctions that may include compulsory participation in 'remedial … training,' filing periodic compliance reports, and paying monetary fines.

"That is an impermissible abridgement of the First Amendment's right to speak freely," Gorsuch said.

He went on to write that under Colorado's logic, "the government may compel anyone who speaks for pay on a given topic to accept all commissions on that same topic — no matter the message — if the topic somehow implicates a customer's statutorily protected trait.

"Taken seriously, that principle would allow the government to force all manner of artists, speechwriters and others whose services involve speech to speak what they do not believe on pain of penalty. The court's precedents recognize the First Amendment tolerates none of that," Gorsuch said.

In a dissent in which she was joined by Justices Elena Kagan and Ketanji Brown Jackson, Justice Sonia Sotomayor wrote, "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.

"That is wrong. Profoundly wrong. Our Constitution contains no right to refuse service to a disfavored group," Sotomayor wrote.

Later, she said, "The immediate, symbolic effect of the decision is to mark gays and lesbians for second-class status."

However, she added, "that does not mean that we are powerless in the face of the decision."

"The meaning of our Constitution is found not in any law volume, but in the spirit of the people who live under it. Every business owner in America has a choice whether to live out the values in the Constitution. Make no mistake: Invidious discrimination is not one of them," Sotomayor continued.

"[D]iscrimination in any form and in any degree has no justifiable part whatever in our democratic way of life," she said, quoting from a dissent in the 1944 case *Korematsu v. United States*, which dealt with the internment of American citizens of Japanese descent during World War II.

"It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States," she said, continuing to quote from the same case.

"The unattractive lesson of the majority opinion is this: What's mine is mine, and what's yours is yours. The lesson of the history of public accommodations laws is altogether different. It is that in a free and democratic society, there can be no social castes. And for that to be true, it must be true in the public market.

"For the 'promise of freedom' is an empty one if the government is powerless to assure that a dollar in the hands of [one person] will purchase the same thing as a dollar in the hands of a[nother]," Sotomayor wrote.

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