

**AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.**

To: Interested Persons
Date: August 2023
From: A. Eric Johnston
RE: SCOTUS 2023: Freedom of Speech and Freedom of Religion – Part I

Our freedom to speak and our freedom to believe are our first freedoms contained in the First Amendment to the U.S. Constitution. They are not only first in the list of individual rights, but they are the foundation for our free and prosperous culture. This year was no exception and SCOTUS decided two very important freedom cases.

In the last half century, the “administrative state” has done two things that affect rights guaranteed by the constitution. First, the Judiciary acted as a branch of the Executive or the Legislative. Accomplishing policy decisions otherwise unobtainable and creating rights that did not exist, *i.e.*, the *Roe* right to abortion and the *Obergefell* right to same sex marriage. Second, the Executive has expanded the “rule making authority” of federal agencies under its control. Over decades federal agencies have assumed more and more authority until today, President Biden, who controls these agencies under the separation of powers, openly abuses the limited rule making authority granted by Congress, *i.e.*, student loan forgiveness, Covid regulations, immigration, affirmative action, *etcetera*.

In the past, liberals could rely on federal courts to protect this administrative abuse. With the change in the make-up of SCOTUS (three new justices), it has returned to its proper function, *viz.*, interpreting the constitution and not expanding it to a liberal model. The U.S. Constitution is what makes America exceptional. Contrary to the cries of liberals that it must be interpreted to effect modern times, it must be held as a firm bulwark against such change. The present SCOTUS is now amending America’s fabric damaged by the moths for decades. Expect more cries of consternation from democrats.

All of this was no more evident than in the case of *303 Created LLC v. Elenis*. This case involved a Colorado public accommodation law which penalized Lori Smith, a creative web designer, who refused to design a website celebrating a same-sex marriage. Colorado charged her with discrimination. In reviewing the case, Justice Gorsuch writing for a 6-3 majority said:

“Ms. Smith is willing to work with all people regardless of classifications such as race, creed, sexual orientation, and gender... [But] she will not produce content that contradicts biblical truth... There are others that provide these services so there is no injury... Ms. Smith’s planned wedding website qualifies as pure speech protected by the First Amendment.” Colorado had to satisfy strict scrutiny before compelling speech from her that she did not wish to “create.” “All manner of speech – from pictures, films, paintings, drawings and engravings to oral utterance and the printed work – qualify for the First Amendment’s protection”. This protection goes both ways so “the government could force a male website designer married to another man to design websites for an organization that advocates against same sex marriage.” *Internal quotations and paragraphs omitted.*

In 2018, SCOTUS reviewed a similar Colorado law in *Masterpiece Cake Shop, Ltd. v. Colorado Civil Rights Commission* protecting the rights of a wedding cake maker not to make a cake for a same sex wedding. He would design cakes for anyone, including gay persons, but not one that would glorify the same sex wedding, because it violated his Christian beliefs. Addressing Colorado’s position:

“States may protect gay individuals such as they can protect other classes of individuals, in acquiring whatever products and services they choose on the same terms and conditions as are offered to other members of the public... At the same time, this court has also recognized that no public accommodations law is immune from the demands of the Constitution... 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... Tolerance, not coercion, is our Nation’s answer.”

The court said “it is difficult to read the dissent and conclude we are looking at the same case... Can a state force someone who provides her own expressive services to abandon her conscience and speak [the state’s] preferred message instead?” The three liberal dissenters suggested the burden on Ms. Smith’s speech is merely “incidental.” They suggested the meaning of the court’s opinion was to create “separate but equal” facilities for gay persons.

We see the agony of the left because SCOTUS is recognizing important constitutional rights and not culturally politicizing the power of the court. These conflicts are due to the rising tide of the LGBTQ+ juggernaut. The values of Christians conflict with those of the LGBTQ+ persuasion. As we have stated before, Christian values are what stands between maintaining important constitutional rights and complete cultural acceptance of the LGBTQ+ agenda.

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