

# U.S. Supreme Court Issues Landmark Rulings on Affirmative Action, Religious Accommodations and the Right of Businesses not to Serve LGBTQ+ Customers

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The U.S. Supreme Court issued three landmark decisions in the past 48 hours that are reverberating throughout the country.

In issuing its rulings, the Supreme Court deemed as unconstitutional affirmative action programs at institutions of higher education, ruled that employers cannot deny religious accommodations unless they are more than a minimal hardship for the employer, and sided with business owners in ruling they can refuse to service customers based on the business owner's own personal religious beliefs.

## **Affirmative Action Programs Deemed Unconstitutional**

In the first case, *Students for Fair Admissions Inc. v. President and Fellows of Harvard College*, the Supreme Court found that the admissions policies of Harvard and the University of North Carolina violated the 14<sup>th</sup> Amendment's Equal Protection Clause.

The decision upends decades of precedent and could end the abilities of educational institutions from considering race as one of many factors in deciding which of the qualified applicants is to be admitted. This colorblind criteria in admissions will impact not only institutions of higher education, but also selective primary and secondary schools throughout the country – though military academies were explicitly exempted from this in the opinion.

This decision overturned *Grutter v. Bollinger*, a 2003 ruling in which the court stated that race could be considered as one of the factors in the admissions process because colleges and universities had a compelling interest in maintaining diverse campuses. Although yesterday's majority opinion, written by Chief Justice John Roberts, did not explicitly state that it overturned decades of precedent, including the *Grutter* ruling, Justice Clarence Thomas said in his concurrence that they were, "for all intents and purposes, overruled."

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Conspicuously absent in the Roberts opinion was the issue of legacy admissions for children of parents who had attended prestigious universities.

### **Employee Religious Accommodation Requests Bolstered**

In the second case, *Groff v. DeJoy*, the justices ruled in favor of a U.S. Postal worker who claimed that he could not work on Sunday due to religious reasons.

In ruling against the Postal Service, the Supreme Court held that employers are required to accommodate religious beliefs as long as the accommodation does not impose an “undue hardship on the employer’s business.”

Justice Samuel Alito, who wrote the majority opinion, clarified that the term “undue hardship” as being more than a “de minimis” cost. The “de minimis,” or trifling, cost that the Supreme Court had defined in previous cases seems to have been discarded by Justice Alito. Instead, the opinion suggests that if an employer denies a religious accommodation, then the employer has the burden of showing that the accommodation would result in “substantial increased costs” for its business under Title VII of the Civil Rights Act.

Experts say that this decision will be especially important for religious minorities such as Muslims, Jews, Sikhs, and others who have in the past brought a sizable number of cases after being denied accommodations by employers. Other experts argue that the decision will be harmful because it could open the door to allow discrimination in the guise of religious freedom.

This unanimous decision by the court has drastically changed the “undue hardship” standard, and thus could make it easier for employees to secure religious accommodations in the workplace.

Understanding how to implement religious accommodations for workers, as well as protecting one’s business from new hardships will be an important consideration for employers moving forward. As always, it is important for employers to consult with legal counsel in order to better understand their ever-changing responsibilities.

### **Business Owners Can Refuse Service Based on Personal Religious Beliefs**

A decision by the U.S. Supreme Court today has further cemented the notion that people who provide business services may invoke their First Amendment rights when refusing service inconsistent with their beliefs.

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The main issue addressed by the Supreme Court had been raised previously in the case of *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission* concerning “whether applying a public-accommodation law to compel an artist to speak or stay silent violates the free speech clause of the First Amendment.”

The Supreme Court's ruling today in *303 Creative LLC v Elenis* that a Colorado website designer was able to refuse her services for same-sex weddings under the First Amendment, despite a Colorado state law that forbids discrimination against people who identify as LGBTQ+.

This case follows the ideological reasoning of the 2018 *Masterpiece Cakeshop* case wherein the trial court ruled in favor of a Christian baker that refused to make wedding cakes for same-sex couples. The two rulings demonstrate an important clash between the rights of LGBTQ+ individuals and those claiming religious freedom and freedom of speech, while also limiting the ability of state governments to enforce anti-discrimination laws.

Supporters of the ruling have celebrated the Supreme Court's decision, arguing it is unconstitutional to allow a state government to force artists to state things that are against their core beliefs.

Conversely, opponents of the ruling are concerned about the potential for this decision to open the door for discrimination against individuals because of their sexual orientation, notwithstanding numerous state and federal anti-discrimination laws. Interestingly, the Supreme Court did not address claims that one of the key pieces of evidence in the case was falsified. Specifically, reports have indicated that the initial request for services by a man named “Stewart” were faked, because the identified individual asserted he never sent the request.

Ultimately, the key takeaway from this notable ruling is that certain business owners, ones that see themselves as artists, will be able to refuse services to people who embody a message or a belief that they do not support. The Michigan State Legislature has recently expanded its anti-discrimination laws, so it is imperative to consult with an attorney to understand your rights as an employer in the changing legal landscape.