



# The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities

By Caitlin Rooney and Laura E. Durso | November 29, 2017

On December 5, the U.S. Supreme Court will hear oral arguments in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, a case about a Colorado bakery that refused to sell a wedding cake to a same-sex couple, citing the owner's religious beliefs.<sup>1</sup> The bakery is arguing that the constitution protects its right to turn away same-sex couples such as Charlie Craig and David Mullins, even though Colorado explicitly protects LGBTQ people from discrimination in stores and other places of public accommodation. This argument threatens to undermine long-standing federal and state laws against discrimination. The threat extends well beyond wedding-related services as well as beyond LGBTQ people. For instance, the American Civil Liberties Union's (ACLU) brief on behalf of Charlie and David argues that a ruling against the couple could open the gate for LGBTQ people to be legally turned away from a wide array of services.<sup>2</sup> The Lawyers' Committee for Civil Rights Under Law and others argue that a ruling against Charlie and David could undermine nondiscrimination protections for other minority groups, including racial minorities.<sup>3</sup> For example, Vanita Gupta, the CEO of the Leadership Conference on Civil and Human Rights, has argued that it could enable business owners to refuse service to interracial couples.<sup>4</sup>

This case is fundamentally about whether businesses have the constitutional right to turn away individuals because of who they are. In this debate, too many minimize the harm of the service refusal, arguing that LGBTQ people should simply take their business elsewhere. This argument fails on two fronts. First, it trivializes the discrimination LGBTQ people face at the time of service denial and the deep, negative impact that denial can have on individuals and families. Second, it implies that LGBTQ people can easily find alternative services nearby. In fact, some have asserted that same-sex couples turned away by a bakery can simply "go right down the street" to buy a wedding cake at a different shop, as then-presidential candidate Ben Carson stated.<sup>5</sup> The argument that alternatives are easy to access is used in several amicus briefs in support of *Masterpiece Cakeshop*, including from the Becket Fund for Religious Liberty, Cato Institute, et al., and the State of Texas, et al.<sup>6</sup> Many of the groups that penned these briefs, such as the Becket Fund, consistently espouse extreme anti-LGBTQ views.

In reality, service refusals act like a one-two punch. The discrimination itself causes harm that negatively affects both psychological and physical health and well-being, as shown by research and lived experiences of LGBTQ people and their families. Then, compounding that harm, the refusal can make it harder or impossible for LGBTQ people to access services at all, denying them full participation in the public square. New data from the Center for American Progress show that it is an all-too-common occurrence for LGBTQ people to suffer the indignity of facing additional barriers that limit their ability to participate in public life as full citizens.

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## The psychological and physical health effects of discrimination

Discrimination, including the denial of services at places of public accommodation—such as retail stores, hotels, and health centers—takes an emotional toll on people and can have long-term effects on their mental and physical health. When Naya Taylor, a transgender woman, was denied transition-related health care, she explained, “When they said, ‘we don’t have to treat people like you,’ I felt like the smallest, most insignificant person in the world.”<sup>7</sup> For LGBTQ people, discrimination—including in wedding-related services—also undermines the promise of equality. After Melisa McCarthy and her partner Jennifer were refused a wedding venue for being a same-sex couple, she explained the pain: “It is difficult to describe how heartbreaking it is when someone says to you that, because you are marrying someone of the same sex, you cannot have the options that heterosexual couples have.”<sup>8</sup>

### Emotional harm

While seemingly simple events, picking out a wedding cake, flowers, and a dress or tuxedo are staple activities for a couple preparing for one of the happiest days of their lives. But despite nationwide marriage equality, seeking those services can be a scary and painful experience for same-sex couples and their families.

Take the experience of the mother of Charlie Craig, who was with Charlie and his fiancée David when they were refused service at Masterpiece Cakeshop:

*When we returned to our car, I noticed Charlie’s shoulders were shaking. I soon realized he was crying ... As a parent, no matter how grown your children are, you want to shield them from harm. I felt I had failed him.*<sup>9</sup>

Before the couple even started looking for other vendors, they experienced harm. “It’s about what happened that moment when they were denied service, and what that’s meant for them every day since. They were told they weren’t good enough to be served in their own community,” explained Charlie’s mom.<sup>10</sup>

When Rachel and Laurel Bowman-Cryer were denied a wedding cake by Sweet Cakes in Portland, Oregon, they, too, were devastated. “When this all started, for the first year and a half or two years, I would just sit around and just cry about it all the time. Just sulk. We couldn’t talk to anybody about it,” Rachel said. Laurel added, “We were letting it hit us like a semi-truck over and over again.”<sup>11</sup> As Rachel and others testified, after being turned away, she felt “very sad and stressed” and was concerned about having to plan her wedding.<sup>12</sup> As one journalist who interviewed the couple for months relayed, “After visiting Sweet Cakes, Rachel had dreaded her own wedding.”<sup>13</sup>

### Long-term health implications

Research has shown that discrimination, prejudice, and stigma can lead to negative health outcomes, including higher rates of depression, anxiety, and substance abuse as well as an increased risk for physical health problems, such as cardiovascular disease.<sup>14</sup> According to a recent CAP survey, more than two-thirds of LGBTQ people who had experienced discrimination in the past year reported that discrimination at least somewhat negatively affected their psychological well-being, and nearly half said it negatively affected their physical well-being.<sup>15</sup> An American Psychological Association (APA) survey from 2016 showed that LGBT people who had experienced discrimination had higher average stress levels than LGBT people who had not.<sup>16</sup>

The impact of discrimination is not just limited to the moment of discrimination but can also affect a person for a lifetime. According to the APA, “Dealing with discrimination results in a state of heightened vigilance and changes in behavior, which in itself can trigger stress responses—that is, even the anticipation of discrimination can cause stress.”<sup>17</sup> As Louise Melling, the deputy legal director of the ACLU and the director for its Center for Liberty, asked, “What happens when you are turned away at an inn consistent with the law’s accommodation? How do you feel as you approach the next reception desk? And the next one? Or when next you go on vacation? How long does the anxiety linger, even if only one inn turns you away?”<sup>18</sup> After being refused service at Sweet Cakes, Rachel testified that she felt anxiety over facing rejection at other wedding vendors.<sup>19</sup> After Melisa and Jennifer were refused a wedding venue and they continued to plan their wedding, Melisa said they worried about a business refusing to serve them “with every element we planned and every vendor we spoke to.”<sup>20</sup> As a recent CAP survey showed, many LGBTQ people—especially those who have previously faced discrimination—have avoided certain services in order to avoid discrimination.<sup>21</sup>

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### The impact on access to services

Compounding the emotional and physical harm, service refusals clearly affect LGBTQ people’s equal access to services. Curt Freed and Robert Ingersoll, who were turned away from Arlene’s Flowers, not only felt “horrible” after being discriminated

against, they also feared being turned away by other vendors.<sup>22</sup> They said that, in response to that fear, “We moved up the date and decided to have the wedding in our home instead, with only 11 guests” and had a “much smaller, simpler celebration than we originally intended.”<sup>23</sup> According to a recent CAP survey, one-third of LGBTQ people who had experienced discrimination in the past year reported that they had avoided public places such as stores or restaurants in order to avoid anti-LGBTQ discrimination.<sup>24</sup> They were seven times more likely to do this than LGBTQ people who had not experienced discrimination.<sup>25</sup> Nearly half of LGBTQ people who had faced discrimination also reported making specific decisions about where to shop in order to avoid discrimination.<sup>26</sup>

Despite assertions by opponents of equality, not all LGBTQ people can easily access alternative services. This may be because they fear being discriminated against and have to consciously find nondiscriminatory options or it may be because they do not have easy access to transportation; information about alternatives; or the additional time needed to find and access alternatives.

### New data show difficulty accessing alternatives

In January 2017, CAP conducted a nationally representative survey of LGBTQ people to find out how difficult it would be for them to find alternative services if they were turned away. Results showed that, for some LGBTQ people, accessing services from alternative retail stores, bakeries, or florists if they were turned away would not be easy at all:

- **1 in 5 LGBTQ** people said it would be “very difficult” or “not possible” to find the same type of service at a different retail store selling wedding attire (21 percent)
- **1 in 10 LGBTQ** people said it would be “very difficult” or “not possible” to find the same type of service at a different bakery (11 percent)
- **1 in 10 LGBTQ** people said it would be “very difficult” or “not possible” to find the same type of service at a different florist (10 percent)

Access is even harder for LGBTQ people not living in a metropolitan area. Part of the assumption underlying the conservative argument that LGBTQ people can simply go down the street is that LGBTQ people live in cities, where services may be more concentrated. This assumption overlooks the fact that same-sex couples live together in 99.3 percent of U.S. counties, according to the most recent data available.<sup>27</sup> LGBTQ people living in rural counties—the majority of which are in nonmetro areas<sup>28</sup>—could be disproportionately affected by service refusals since they may need to travel farther to find an alternative or may have fewer options available. As Outserve-SLDN’s amicus brief in *Masterpiece* argues, LGBTQ service members on a military base in a rural area may have limited options for services if they are turned away.<sup>29</sup> For example, only two specialty

cake shops serve Naval Air Weapons Station China Lake, a rural military installation in California. If both of those shops refused to serve wedding cakes to same-sex couples, same-sex couples at that base would be left without a local alternative.<sup>30</sup>

The CAP survey shows that significant numbers of nonmetro LGBTQ people would be hard pressed to find alternatives if they were turned away from retail stores, bakeries, or florists:

- **4 in 10 nonmetro LGBTQ** people said it would be “very difficult” or “not possible” to find the same type of service at a different retail store selling wedding attire (39 percent)
- **3 in 10 nonmetro LGBTQ** people said it would be “very difficult” or “not possible” to find the same type of service at a different bakery (29 percent)
- **1 in 5 nonmetro LGBTQ** people said it would be “very difficult” or “not possible” to find the same type of service at a different florist (21 percent)

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## Conclusion

Businesses that are open to the public should be open to everyone. With the wide-ranging potential harms of *Masterpiece* on LGBTQ people and other marginalized groups, it is crucial to recognize the impact of a business turning someone away just because of who they are. In the public debate over religious exemptions and cases such as *Masterpiece*, too many trivialize the effects of refusals on LGBTQ people, arguing that LGBTQ people turned away should simply take their business elsewhere. However, research and personal testimony showing the immediate and long-lasting harm service refusals have on LGBTQ people’s mental and physical health challenge that argument. New data from CAP show that being turned away can also make it hard for LGBTQ people—and, in particular, LGBTQ people living in a nonmetro area—to access services. Part of the reason Curt and Robert are fighting the discrimination they faced at Arlene’s Flowers is to ensure LGBTQ people have equal access to services. In an op-ed, Curt and Robert wrote, “We didn’t want gay and lesbian couples to be forced to seek out LGBT-friendly florists and bakeries, or drive to more tolerant communities because all the wedding venues in their hometowns have turned them away for being gay.”<sup>31</sup>

Notably, the dual harm of being discriminated against and having to find alternative services is not limited to wedding-related services. One example of a service refusal in funeral services makes this clear. Lambda Legal has filed a lawsuit against a funeral home in Mississippi that it says refused to cremate the body of a man after finding out that he had been married to a man.<sup>32</sup> His widow and partner for 52 years, Jack, said that he “felt as if all the air had been knocked out of me ... Bob was my life, and we had always felt so welcome in this community. And then, at a moment of such personal pain and loss, to have someone do what they did to me, to us, to Bob, I just couldn’t believe it.

No one should be put through what we were put through.”<sup>33</sup> Jack ended up having to drive 90 miles to find an alternative funeral home that would take his late husband.<sup>34</sup> Due to the last-minute change and the distance to the new funeral home, John and his nephew in law were also “unable to gather friends in the community, as had been their original plan, to honor Bob and support them in their grief.”<sup>35</sup>

The indignity of being refused service just for being who you are is harmful in and of itself. Unfortunately, the ramifications of service refusals do not end there. Discrimination can take a serious psychological toll on LGBTQ people, lead to negative physical health outcomes, and affect how they plan their lives and engage in the marketplace and in their communities.

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## Methodology

To conduct this study, CAP commissioned and designed a survey, fielded by GfK SE, which surveyed 1,864 individuals about their experiences with health insurance and health care. Among the respondents, 857 identified as lesbian, gay, bisexual, and/or transgender, queer, or asexual, while 1,007 identified as heterosexual and cisgender/nontransgender. Respondents came from all income ranges and are diverse across factors such as race, ethnicity, education, geography, disability status, and age. The survey was fielded online in English in January 2017 to coincide with the fourth open enrollment period through the health insurance marketplaces and the beginning of the first full year of federal rules that specifically protect LGBTQ people from discrimination in health insurance coverage and health care. As part of the survey, LGBTQ respondents were presented with a hypothetical scenario: “Below is a list of businesses and services that are typically open to the public. Imagine that you needed the goods or services available from each one and that you went to the nearest place within your city or town to get them. Now imagine that when trying to access each place, you were denied service by the employees or staff.” Then, respondents were asked to “Please rate how difficult it would be for you to find the same type of service at a different location.” The data are nationally representative and weighted according to U.S. population characteristics. Metro is defined as a metropolitan core-based statistical area and nonmetro is defined as anything else, including micropolitan core-based statistical areas and locations outside of a core-based statistical area. All reported findings are statistically significant unless otherwise indicated. All comparisons presented are statistically significant at the  $p < .05$  level.

Additional information about study methods and materials are available from the authors.



## Endnotes

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