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California Bakery Can Refuse To Make Cakes For Same-Sex Weddings, Judge Rules

The ruling hinged on a small, but specific, detail.

By Curtis M. Wong

[\[Video\]](#)

An attorney for a same-sex couple who [were denied a wedding cake](#) by a California bakery says they'll continue to fight after [a judge issued a preliminary injunction ruling](#) in the baker's favor Monday.

Mireya and Eileen Rodriguez-Del Rio first [spoke out against](#) Bakersfield's Tastries Bakery in August, claiming the company's owner, Cathy Miller, turned them away when they told her they were seeking a wedding cake. At the time, [Miller didn't deny the couple's claims](#), stating that her Christian faith "will not allow me to participate in things that I feel are wrong."

In [an eight-page ruling](#) on Monday, Kern County Superior Court Judge David Lampe said Miller could continue to refuse to make wedding cakes for same-sex couples, as such confections were a form of "artistic expression" and "expressive conduct" and therefore protected by the First Amendment.

California's Department of Fair Housing had been [seeking an injunction](#) that would either force Miller to prepare wedding cakes for same-sex couples, or force her to stop selling them entirely.

Lampe denied this request, and said his decision hinged on the fact that Miller had not yet prepared the wedding cake, [The Bakersfield Californian reports](#). It would have been a discriminatory act, however, if the cake had been on display in the shop and Miller had refused to sell it to the Rodriguez-Del Rios.

"The difference here is that the cake in question is not yet baked," [the judge wrote](#). "The state asks this court to compel Miller to use her talents to design and create a cake she has not yet conceived with the knowledge that her work will be displayed in celebration of a marital union her religion forbids."

Miller, he added, "provided for an alternative means for potential customers to receive the product they desire through the services of another talent" when she recommended the Rodriguez-Del Rios visit a different bakery.

The next hearing in the case is set for June.

[Miller praised Lampe's ruling, telling The Bakersfield Californian](#), "I am very happy to serve everything from my cases to anybody. But I cannot be a part of a celebration that goes against my lord and savior."

Patricia Ziegler-Lopez, who is representing the Rodriguez-Del Rios, [told 23 ABC News](#) in a statement that her clients were "disappointed, but not surprised" by the ruling against the preliminary injunction, and stressed, "There is no lawsuit filed yet."

"Our fight against bigotry and discrimination is only beginning," she added.

The news comes as the Supreme Court prepares to grapple with a similar, albeit more high-profile, case. This spring, justices are set to rule on the case of [Masterpiece Cakeshop v. Colorado Civil Rights Commission](#), and will decide whether [Colorado baker Jack Phillips](#) was illegally discriminating against a same-sex couple when he [refused to create a cake](#) for their wedding ceremony.

LGBTQ rights advocates say that decision will be [the most significant for the queer community](#) since the [2015 ruling](#) on marriage equality.

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