



City Council

Approval of a Resolution Affirming Olympia's Commitment to Nondiscrimination Based on Sexual Orientation and Authorizing the Mayor to Support and Join, on the City's Behalf, an Amicus Brief in the United States Supreme Court Opposing Discrimination in Public Accommodations for Same Sex Couples

Agenda Date: 10/17/2017
Agenda Item Number: 4.E
File Number: 17-1048

Type: resolution **Version:** 1 **Status:** Passed

Title

Approval of a Resolution Affirming Olympia's Commitment to Nondiscrimination Based on Sexual Orientation and Authorizing the Mayor to Support and Join, on the City's Behalf, an Amicus Brief in the United States Supreme Court Opposing Discrimination in Public Accommodations for Same Sex Couples

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the Resolution Affirming Olympia's Commitment to Nondiscrimination Based on Sexual Orientation and Authorizing the Mayor to Support and Join, on the City's Behalf, an Amicus Brief in the United States Supreme Court Opposing Discrimination in Public Accommodations for Same Sex Couples.

Report

Issue:

Whether the City Council should approve a resolution supporting an amicus brief filed in the *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* case pending before the U.S. Supreme Court.

Staff Contact:

Mark Barber, City Attorney, 360.753.8338

Presenter(s):

None - Consent Calendar item.

Background and Analysis:

The United States Supreme Court will hear oral argument in the Fall 2017 term in a pending case entitled *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, which issue centers on whether a creative business can refuse service due to its First Amendment rights of free speech and free exercise of religion in light of public accommodation laws, and in particular, by refusing to provide creative services, such as a custom wedding cake, for same-sex marriage ceremonies on the basis of one's religious beliefs.

In 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that marriage is a fundamental right that extends to same-sex couples. Colorado, like Washington, is one of twenty-one (21) states that have anti-discrimination laws against sexual orientation.

Masterpiece Cakeshop, Ltd. petitioned the United States Supreme Court for review of the following question: whether application of Colorado's public accommodations law to compel the petitioner to create expression that violates his sincerely held religious beliefs about marriage violates the Free Speech or Free Exercise Clauses of the First Amendment. Both the Colorado Civil Rights Commission and the American Civil Liberties Union (ACLU) urged the United States Supreme Court to reject the appeal, fearing that a Court decision in favor of the business would create a "gaping hole" in civil rights laws on the basis of religion, which may permit a business under the public accommodation law to deny services to persons based on their religious beliefs, race, gender or sexual orientation.

Masterpiece Cakeshop has filed a request that the Colorado anti-discrimination law be reviewed by the United States Supreme Court under "strict scrutiny" and argued that Colorado's anti-discrimination law can be used to selectively discriminate against religion. In September 2017, the United States Department of Justice under President Donald J. Trump filed a brief in support of Masterpiece Cakeshop and its owner, asserting that anti-discrimination laws are necessary to prevent businesses that provide goods and services, these laws cannot be used to compel a business into expressing speech they do not agree with, nor used to provide goods and services with such expressions without the ability for the business to assert it does not agree with those expressions.

The Justice Department's brief was criticized by several groups, including those that support LGBTQ rights, alleging that the brief was a pattern of anti-LGBTQ actions by the current administration, and that a decision in favor of Masterpiece Cakeshop would enable such businesses to have a "license to discriminate."

The amicus brief will be filed in support of the Colorado Civil Rights Commission and the same-sex couple who was refused service, and will focus on (1) the critical importance of ensuring the continued enforcement of nondiscrimination laws, highlighting the range of local support for nondiscrimination laws and policies, and (2) the wide-ranging harms that granting the bakery's request for an exemption would do to the enforcement of local laws. Under the bakery's reasoning, any individual or business could ignore nondiscrimination laws on religious or free expression grounds.

Neighborhood/Community Interests (if known):

N/A

Options:

1. Approve the Resolution as presented.
2. Amend, then take action to approve the Resolution as amended.
3. Take no action.

Financial Impact:

None

Attachments:

Resolution