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The Rise to Equality

Imagine you have the legal right to marry the person you love. You decide to get married, and you want to plan your wedding day. As wedding planning goes, you will have to find someone to bake your wedding cake. If you decide you want a custom website to announce your plans, you will also have to find someone to design it for you. So, you call your local bakery and web designer, and as you excitedly inform them of your request, they respond with, “Sorry, we do not service gay couples.”

This scenario is just one of the many lived experiences of LGBTQ+ people in America. Since the legalization of gay marriage in 2015, the Supreme Court of the United States has heard two cases of business owners refusing to provide their services to same-sex couples. The most recent and prominent case being that of *Creative LLC v. Elenis*. In 2022, a Colorado web designer filed suit against her state’s Civil Rights Division claiming that its nondiscrimination protections violated her rights within the First Amendment. The state of Colorado, like 21 other states in the U.S., protects its residents from discrimination on the basis of sexual orientation in public accommodations. The plaintiff in *Creative LLC v. Elenis* cited religious beliefs to argue that a union is only between a man and a woman and that providing creative services that contradict those beliefs, interferes with her constitutional right to free speech. Ultimately, the Court ruled in favor of the web designer, setting a precedent across the United States in a landmark decision that allows businesses to deny services to Americans on the basis of their

sexual orientation. While the First Amendment protects the right to free speech, U.S. businesses should not be allowed to refuse their services to consumers because of their sexual orientation as the practice encourages discrimination, undermines existing nondiscrimination protections, and produces negative health outcomes for LGBTQ+ people.

Despite the significant progress achieved by the gay rights movement in the U.S., discrimination has and still continues to be a lived experience of the LGBTQ+ community. The motives behind discrimination are understood to result from various personal factors, such as history, sociocultural practices, family and community beliefs, and worst of all, deeply held destructive generalizations (Keita). As of 2022, more than fifty-three percent of adults who identify as LGBTQ+ have faced discrimination in public spaces, including workplaces and school environments, all because of their sexual orientation (McGovern et al.). The behavior attributed to discrimination involves treating a person less favorably by means of offensive comments, hostile body language, and any attempt to exclude them from rights and privileges as enjoyed by the general public. The outcome of *Creative LLC v. Elenis* plays a significant role in determining the acceptability of the treatment long endured by LGBTQ+ people.

Allowing businesses to openly deny their services to same-sex couples promotes discrimination and reinforces the disenfranchisement of the LGBTQ+ community. The landmark decision of *Creative LLC v. Elenis* holds great legal and social significance, reaffirming the prejudicial beliefs that have long been held against LGBTQ+ individuals. In 2021, a lesbian couple in Kentucky sought to file their tax returns at a business that had been recommended to them by family members. Upon arriving to the establishment, a sign posted by the business owner read, "Homosexual marriage not recognized." Though all fifty U.S. states recognize gay marriage, business owners can deny their services to those who are a part of these unions.

Despite mandatory tax filing requirements for Americans, same-sex couples are forced to find alternatives for basic services they should otherwise be entitled to.

Furthermore, the denial of access to common services like tax filing is only one of the many ways in which LGBTQ+ people continue to experience discrimination. In 2022, Braidwood Management Inc, a Christian-owned company that provides insurance plans to its employees, challenged the Affordable Care Act which requires private health insurers to provide preventative services at no cost to covered individuals. Included in these preventative services is an HIV prevention medication most used by gay men. In Braidwood Management Inc's suit against the United States, it was decided that religious beliefs are an exemption when choosing to decide whether to provide LGBTQ+ people with certain healthcare services. Jennifer Pizer, director for law and policy at Lambda Legal, an LGBTQ+ legal organization, emphasizes, "They [conservative religious organizations] want to get legal rulings that there are religious and free speech rights to violate these laws" (Yurcaba). The *Creative LLC v. Elenis* case serves as a legal foundation for preceding rulings that have implicitly endorsed discrimination. Such endorsement sets a dangerous precedent, signaling that certain individuals deserve less treatment, even for essential healthcare services.

Granting businesses the legal right to discriminate creates inconsistencies and erodes existing nondiscrimination protections in place for LGBTQ+ people. A landmark case in 2020, *Bostock v. Clayton County*, centered on a county worker who was terminated from his job after disclosing interests that revealed his sexual orientation. The case was heard by the Supreme Court of the United States after several lower courts failed to determine any grounds for unlawful discrimination. The case briefing explains that the Civil Rights Act of 1964 protects individuals from discrimination in employment circumstances. As described by the *Human*

Rights Campaign, an LGBTQ+ advocacy organization, the ruling “cemented the legal interpretation that discrimination on the basis of sexual orientation and gender identity is a form of discrimination prohibited by Title VII of the Civil Rights Act of 1964” (Olson). In other words, employers are prohibited from discriminating against employees for any aspects that regard their sexual orientation. This ruling not only clarifies the meaning of sex in the Civil Rights Act, but also establishes equal treatment for LGBTQ+ people. If sex includes sexual orientation, as defined by the highest Court, then the same definition must be withheld in public accommodations, a clear contradiction of the *Creative LLC v. Elenis* ruling.

Moreover, nondiscrimination protections for LGBTQ+ people in public accommodations exist in nearly half of all U.S. states. The push for such protections is a result of the lack of adequate federal legislation. As stated by the *American University Law Review*, “with the advent of marriage equality, the LGBTQ movement leapfrogged over certain important legal milestones, most notably blanket non-discrimination protections, resulting in the Equality Gap” (Knauer). States acknowledge these existing disparities and have pushed efforts to introduce legislation that protect LGBTQ+ people from discrimination. A landmark case like *Creative LLC v. Elenis*, obstructs the authority of states to enact legal safeguards for marginalized groups, in this case LGBTQ+ individuals. The erosion of state nondiscrimination protections through business-led discrimination is not only a setback to civil rights progress but also an undermining of public trust in our legal system. When businesses are allowed to circumvent these existing protections, it creates a distressing perception that the state is either unwilling or unable to protect the rights of marginalized communities.

However, The Equal Protection Clause, included in the Fourteenth Amendment of the United States Constitution, serves as a keystone in the protection of equal rights and privileges.

“The Equal Protection Clause holds that ‘no state shall make or enforce any laws ...[that] deny to any person within its jurisdiction the equal protection of the laws’” (Holzman). So, while states actively take measures to ensure equal protections for LGBTQ+ people, the decision to allow businesses to violate these laws oversteps the protections granted by the Fourteenth Amendment. Since the recognition of gay marriage, this constitutional provision has played a pivotal role in empowering states to pass legislation that protect LGBTQ+ people from discrimination, while at the same time acting as a barrier against states attempting to enact discriminatory laws. The Supreme Court of the United States has recognized that denying equal protections to LGBTQ+ individuals constitutes a violation of their constitutional rights, creating a legal framework for states to pass legislation that protects against such discrimination. Therefore, striking the nondiscrimination protections set by these states subverts both the rights of states to enact such protections and the right of LGBTQ+ people to be protected by them. Ultimately, it is a matter of whether the First Amendment takes precedence over the provisions set by the Fourteenth Amendment. Nonetheless, nondiscrimination protections have proven to be a fundamental principle in the rule of law and any exception would unravel its sovereignty.

Moreover, when businesses are allowed to discriminate against LGBTQ+ people, it creates a vast number of negative health and social outcomes for LGBTQ+ individuals. Allowing businesses to engage in such practices has effects that go beyond the simple denial of services. A same-sex couple who tried to reserve a venue for their wedding event spoke out after having their business denied because of their sexual orientation. “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 same options that heterosexual couples have” (Rooney and Durso). When same-sex couples are unable to enjoy the same services as heterosexual people,

the denial casts them as social outcasts; it excludes them from having equal access to public life. The social isolation experienced in the moment alienates LGBTQ+ people and precludes them from feeling a sense of belonging. In a society that recognizes the validity of same-sex marriage, people should not have to overcome obstacles just to celebrate their legal right to be who they are.

Additionally, the effects of being turned away by businesses creates long term stress and anxiety for the LGBTQ+ community. According to the *Center for American Progress*, a third of LGBTQ+ people who had experienced discrimination avoided public spaces and more than half made specific decisions about where to shop in order to avoid facing any potential discrimination (Medina and Mahowald). Being denied access to services just once, can instill fear of it occurring again and forces LGBTQ+ individuals to change the way they navigate their everyday lives. A lesbian couple who was turned away when they tried to buy a cake for their wedding⁷ expresses the deep impact the experience has had on them thus far: “When this all started, for the first year and a half or two years, I would just sit around and cry about it all the time. Just sulk. We couldn’t talk to anybody about it” (Rooney and Durso). It is evident that the effects of discrimination have a lasting impact on the lives of vulnerable groups like LGBTQ+ people. A single business entity should not have the power to isolate members of the public for a characteristic that is considered protected under state and federal law.

On the other hand, those who favor the outcome of *Creative LLC v. Elenis* argue that their constitutional rights under the First Amendment permit them to refuse business that conflicts with their personal and religious values. The plaintiff in the case shares her sentiment following the ruling and explains, “The court “affirmed today that Colorado can’t force me or anyone to say something we don’t believe” (VanSickle and Liptak). Like many other

controversial political issues, religious beliefs continuously emerge as a basis for not needing to comply with simple laws and regulations. Because the First Amendment protects the free exercise of religion, it is difficult to try and assert that a particular belief is wrong and discriminatory. However, the question, “Where do we draw the boundary between religious exemption and blatant discrimination?” In some religions, women are viewed as second class to men, so this belief could very well be used as a justification to discriminate against women in public accommodations (Myhre). Ironically, Justice Ketanji Brown Jackson mentions, “the immediate, symbolic effect of the decision is to mark gays and lesbians for second-class status” (Mitsanas). When a particular group of people are not able to enjoy the same privileges as everyone else, in this case creative services, there is no doubt that they are deemed inferior and incapable of equal treatment. While religious freedom is a fundamental right, it is necessary to establish a balance between religious beliefs and constitutional rights, including the right to equal protection.

In addition, Justice Gorsuch writes his dissenting favorable opinion on the case, “the government could not force people who speak for pay on a given topic to accept commissions on that topic in cases where they disagree with the underlying message” (VanSickle and Liptak). Though people should be able to express their thoughts and ideas without influence from the government, their decision to be a business owner and provide creative services to the public is completely optional. It is the individual's responsibility to understand that equal treatment must be given to everyone regardless of their characteristics as outlined by nondiscrimination protections. If religious or personal values challenge that requirement, the government takes no fault in the individual choosing a line of business that does not particularly suit them.

Overall, religion, free speech, and constitutional rights will somehow find a way to clash with one another. It is important to reassure individuals that rights under the First Amendment will always protect their ability to think and say what they wish. The push for enforcing nondiscrimination protections in no way demands that a person agree or support gay rights and same-sex marriage. The ultimate goal of such protections is to ensure that all people, including those holding religious values, are safeguarded from the harms of discrimination. Discrimination, intentional or unintentional, has historically been a result of systematic oppression. Over the years, there has been notable and substantial progress by the United States to move away from policies that exacerbate the mistreatment of LGBTQ+ people. The landmark case of *Obergefell v. Hodges*, which legalized gay marriage, has been the most significant and has paved the way for advancing equality. It is imperative that the Supreme Court of the United States maintain consistency in its rulings and restore the public's trust in its judicial review.

As of today, it is clear that the Civil Rights Act of 1964 is not sufficient in protecting LGBTQ+ people from discrimination in public accommodations. Though the Court has established that sex includes sexual orientation and gender identity from its *Bostock v. Clayton County* ruling, inconsistencies in the Court's decision-making calls for a new Act. The Equality Act is a bill that would essentially amend the Civil Rights Act. This Act would include nondiscrimination protections on the basis of sexual orientation and gender identity in public spaces and services, housing, and employment. Currently, only 22 states provide nondiscrimination protections to LGBTQ+ people for housing and public accommodations ("Human Rights Campaign"). The passing of the Equality Act would immediately grant protections to LGBTQ+ individuals in all states. A legislative change such as this would prohibit businesses from denying services to same-sex couples and anyone who identifies as LGBTQ+.

To conclude, it is critical to recognize that even though the First Amendment protects the right to free speech, it should not be used as a mere justification for businesses to deny services to LGBTQ+ people. Allowing such discrimination not only encourages a culture of prejudice and exclusion but also undermines the progress made in establishing nondiscrimination protections. By denying services based on sexual orientation, businesses perpetuate harmful stereotypes and contribute to negative health outcomes for LGBTQ+ people. It is important to foster an inclusive society that values diversity and respects the rights and dignity of all individuals. Upholding nondiscrimination protections ensures equal access to public accommodations and promotes a sense of belonging for LGBTQ+ people. We must continue striving for equality so that everyone can be recognized and respected for their right to be who they are. It is time to stand together as a nation and ensure equal protections for all people. Discrimination will never be acceptable and any means to excuse it must be eradicated.

Works Cited

- “The Equality Act.” *Human Rights Campaign*, 22 June 2023, www.hrc.org/resources/equality.
- Gorsuch, Neil. “17-1618 *Bostock v. Clayton County* (06/15/2020).” *Home - Supreme Court of the United States*, www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf.
- Holzman, Ellie. “The U.S. Supreme Court Can Protect the LGBTQ+ Community, but Will It?” *Law & Public Policy Program*, 1 May 2023, www2.law.temple.edu/lppp/the-u-s-supreme-court-can-protect-the-lgbtq-community-but-will-it/.
- Keita, Gwendolyn. “Discussing Discrimination.” *American Psychological Association*, American Psychological Association, Mar. 2016, www.apa.org/topics/racism-bias-discrimination/keita.
- Knauer, Nancy J. “The Equality Gap and Federalism.” *American University Law Review*, vol. 70, no. 1, 2020, pp. 1-73. ProQuest, <https://montgomerycollege.idm.oclc.org/login?url=https://www.proquest.com/scholarly-journals/lgbtq-equality-gap-federalism/docview/2478112897/se-2>.
- McGovern, Ashe, et al. “Nondiscrimination Protections for LGBTQ Communities.” *Center for American Progress*, 8 Dec. 2016, www.americanprogress.org/article/nondiscrimination-protections-for-lgbtq-communities/.
- Medina, Caroline, and Lindsay Mahowald. “Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022.” *Center for American Progress*, 12 Jan. 2023, www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/.
- Mitsanas, Michael. “Sotomayor Says Supreme Court Ruling Condemns LGBTQ People to ‘Second-Class Status.’” *NBCNews.Com*, NBCUniversal News Group, 30 June 2023,

www.nbcnews.com/politics/supreme-court/sotomayor-says-supreme-court-ruling-condemns-lgbtq-people-second-class-rcna92023.

Myhre, Theo. “Three-Minute Legal Talks: The 303 Creative Case Explained.” *UW School of Law*, 24 July 2023, www.law.uw.edu/news-events/news/2023/303-creative-case.

Olson, Meghan. “Human Rights Campaign Celebrates Anniversary of Bostock v. Clayton; Calls for Passage of Nondiscrimination Protections for LGBTQ+ People.” *Human Rights Campaign*, 2022, www.hrc.org/press-releases/human-rights-campaign-celebrates-anniversary-of-bostock-v-clayton-calls-for-passage-of-nondiscrimination-protections-for-lgbtq-people.

Rooney, Caitlin, and Laura Durso. “The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities.” *Center for American Progress*, 29 Nov. 2017, www.americanprogress.org/article/harms-refusing-service-lgbtq-people-marginalized-communities/.

Sobel, Laurie, et al. “Explaining Litigation Challenging the ACA’s Preventive Services Requirements: Braidwood Management Inc. v. Becerra.” *KFF*, 15 May 2023, www.kff.org/womens-health-policy/issue-brief/explaining-litigation-challenging-the-acas-preventive-services-requirements-braidwood-management-inc-v-becerra/.

“State Maps.” *Human Rights Campaign*, 6 June 2023, www.hrc.org/resources/state-maps.

VanSickle, Abbie, and Adam Liptak. “Gay Rights vs. Free Speech: Supreme Court Backs Web Designer Opposed to Same-Sex Marriage.” *The New York Times*, The New York Times, 1 July 2023, www.nytimes.com/live/2023/06/30/us/gay-rights-free-speech-supreme-court.

Yurcaba, Jo. "A 'Troubling Rise' in Business Owners Refusing Gay Couples, Advocates Aay."

NBCNews.Com, NBCUniversal News Group, 21 Apr. 2021, www.nbcnews.com/nbc-out/out-news/troubling-rise-business-owners-refusing-gay-couples-advocates-say-rcna735.