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Civil Rights Department Files Appellate Brief in Defense of California's Efforts to Enforce LGBTQ+ Civil Rights Protections

Takes action to enforce the civil rights of Bakersfield lesbian couple unlawfully prevented from buying a wedding cake

SACRAMENTO – The California Civil Rights Department (CRD), through its counsel with the Office of the Attorney General, today announced filing an appellate brief in defense of California's efforts to enforce civil rights protections against LGBTQ+ discrimination in goods and services offered by businesses across the state. In the underlying lawsuit, CRD sought to protect the civil rights of a Bakersfield lesbian couple who, because of their sexual orientation, were unlawfully prevented from buying a cake for their wedding. In the appellate brief filed in state court before the California Court of Appeal for the Fifth Appellate District in *Civil Rights Department v. Cathy's Creations, Inc.*, CRD urges the appellate court to reverse the trial court's erroneous decision, which held that the bakery's refusal to sell the cake was not intentional discrimination and protected as speech or expressive conduct under the First Amendment.

"In California, we refuse to stand down and let others roll back the clock on fundamental civil rights protections," **said CRD Acting Director Mary Wheat.** "Every couple deserves to celebrate and mark their special occasions without fear of discrimination. Refusal to provide equal access to goods and services is against the law. I encourage all Californians who believe their civil rights have been violated to reach out to our office and work with us in fighting for your rights."

Under the Unruh Civil Rights Act, businesses and other public accommodations are required to offer full and equal access to goods and services without distinction based on protected characteristics such as sexual orientation. However, in 2017, a lesbian couple from Bakersfield who were excited to celebrate their marriage with their loved ones were unlawfully denied service by a local bakery, Cathy's Creations, Inc. The business — also known as "Tastries" — refused to sell the cake to the couple based on the bakery's unlawful policy that limited the sale of wedding cakes to only celebrate opposite-sex marriages. As a result of the policy and denial, Tastries violated the Unruh Civil Rights Act. The bakery's refusal to sell the couple a cake marred an event that should have been exciting and celebratory. The couple was shocked and humiliated. As demonstrated in the underlying lawsuit, they felt rejected as a result of the denial of service, which occurred at the bakery in front of their family and close friends.

Just weeks after the incident, the couple filed a complaint with CRD, alleging that Tastries unlawfully refused to provide them full and equal service on the basis of sexual orientation. After investigating the complaint, CRD found cause to believe that Tastries had violated the law and filed suit against the bakery in 2018 before the Kern County Superior Court. However, the trial court — ignoring the clear evidence of intentional discrimination and holding that Tastries’ referral to another business was the equivalent of providing full and equal service — ruled in favor of the bakery in late 2022. The court also erroneously ruled that the cake was protected under the First Amendment as speech or expressive conduct. This occurred despite the fact that it was a plain, predesigned cake used interchangeably by the bakery for a variety of celebrations, from birthday parties to baby showers. Following the decision, CRD filed a notice of appeal in early 2023, recognizing that, if left in place, the trial court’s misinterpretation of the Unruh Civil Rights Act could directly undermine enforcement of California’s antidiscrimination laws.

CRD’s appellate brief makes it clear that:

- Tastries violated the Unruh Civil Rights Act by refusing to sell a wedding cake to the couple because of their sexual orientation.
- Providing a referral to a separate business establishment is not equivalent to providing full and equal service as required under California law.
- Because the predesigned, unadorned cake was not inherently expressive, it was not entitled to First Amendment protection traditionally given to speech or other expressive conduct.

If you or someone you know has been impacted by discrimination by a business, CRD may be able to assist you through its complaint process. General information about CRD’s complaint process and how to file a complaint is available [here](#). Additional information regarding rights under the Unruh Civil Rights Act is available [here](#).

A copy of the brief is available [here](#). A copy of the lawsuit filed by CRD in 2018 is available [here](#). CRD is represented in the appeal by the Office of the Attorney General.

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CRD is the state agency charged with enforcing California’s civil rights laws. Formerly known as the California Department of Fair Employment and Housing (DFEH), the mission of CRD is to protect the people of California from unlawful discrimination in employment, housing, public accommodations, and state-fund programs and activities, and from hate violence and human trafficking. For more information, visit calcivilrights.ca.gov.

