

Legal and Ethical Boundaries of Company Refusing Service Considering Individual's Public Statements

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Abstract. As the impact of public discourse on the relationship between individuals and corporations becomes increasingly pronounced, this paper examines the legal and ethical issues surrounding when a company may refuse service based on an individual's public statements. The field of study has its deficiencies, particularly in the lack of clear guidelines at the intersection of freedom of speech and corporate rights. This paper aims to clarify the boundaries of rights between companies and individuals by analyzing specific legal cases, such as 303 Creative LLC v. Elenis and Masterpiece Cakeshop v. Colorado Civil Rights Commission and discusses the potential damages that may arise from refusing service. The study finds that companies can refuse service in specific circumstances without violating the law, especially when service provision may harm the company or its clients. This conclusion emphasizes the importance of respecting freedom of speech and protecting corporate rights. The significance of this research lies in providing legal guidance for companies dealing with service refusals based on public statements and offering a reference for future legislative and judicial practices, contributing to a deeper understanding and respect for freedom of speech and corporate rights.

Keywords: Service Refusal; Freedom of Speech; Legal Case Analysis; Corporate Rights and Responsibilities.

1. Introduction

A company has a separate legal identity. According to Company laws, an incorporated company has a personality that is separate and distinct from its members and where the company has share capital from its shareholders.^[1] If shareholders or directors of a company seek to refuse to do business with an individual, they must tread carefully to ensure they are not violating laws such as the Civil Rights Act of 1964, the Americans with Disabilities Act, or similar federal or state laws.

When a company refuses service due to a person's public statements, two main issues arise - what are the company's and the customer's rights, respectively, and what are the damages on both sides if rejection occurs?

Therefore, this essay will aim to resolve both issues as clearly as possible with the support of numerous past cases and laws. The first part attempts to analyze the rights of both the company and its customers, particularly the doctrine of discrimination; the second part looks into the damage and legal outcomes for both sides.

2. Discrimination Concerns for Companies and Individuals

2.1. 303Creative LLC v. Elenis

In this case, discrimination was defined in the context of whether Ms. Smith, a store owner, could refuse service because of her religious convictions. After consideration of whether compelling Smith to provide service under the Colorado Anti-Discrimination Act violates her First Amendment rights, the court favors Ms. Smith to bring up debates, including boundaries of both sides' rights discussed under this branch. As Justice Sotomayor stated - "the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class."^[2]

In this case, the court viewed the issue on the grounds of free speech when both the free exercise claim and the free speech claim were cited by Smith, allowing this issue to be considered in the background of all companies rather than another conflict between religion and public accommodation

laws. It opens new doors. With the basis of free speech, companies are separated based on whether they serve “expressive conduct”. As each website design combined Ms Smith's work and the couple's unique stories, the court defined this joint effort as “pure speech”. Though this line remains ambiguous and shiftable, it is an improvement to hesitating where to pinpoint that delicate balance between religion and public accommodation requirements.

Depicting this line remains arduous because the definition of “expressive conduct” requires clarification. In the numerous past cases below, the court has pondered the conditions it takes to be considered “expressive conduct” – whether it was “intended to be communicative” and “in context, would reasonably be understood by the viewer to be communicative”.^[3] Through the deliberations following, the discrimination boundary also clears up.

2.2. Boy Scouts of America (BSA) v. Dale and Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston (GLIB)

James Dale, an assistant scoutmaster, was expelled from BSA because he was an avowed homosexual and gay rights activist. The Supreme Court held that forcing BSA to accept Dale violated its First Amendment right of expressive association.

As an organization inflicting its values on the country's young boys, BSA advocates public viewpoints such as its Scout Law. The scoutmaster position meant Dale was appointed to instruct young members and “teach them with the Boy Scout's values—both expressly and by sample.”^[4] However, in a newspaper, Dale expressed his advocacy of homosexual teenagers' need for gay role models. Thus, in his daily interaction with scout members, he passed on a message that BSA did not approve of.

Would BSA not reject a member who preaches his religion in front of scout members daily or a member influencing young minds with virtues opposite to the Scout Law? It would. Would the organization allow someone who was heterosexual but sought to appraise homosexual relationships in daily activities through conversations and actions to remain a scoutmaster? It wouldn't. Therefore, it was not who Dale was that caused the rejection; it was how he would pass on his ideas as a gay activist through BSA activities. Hence, BSA has the right as a group with its value system to revoke Dale's membership because his presence “affects in a significant way the group's ability to advocate public or private viewpoints”.^[5]

Similarly, in the case of Hurley, the Supreme Court held that forcing the parade organizers to emit GLIB members violated the First Amendment. The parade authorized by the city of Boston “extends to symbolic acts” while “GLIB's participation in the parade was equally expressive”.^[6] Therefore, like the case of Dale, GLIB “understandably seeks to communicate its ideas as part of the existing parade”^[7] and communicate its message by holding up a banner with its name written across. As a result, the rejection simply refuses to include this precise, clear message among diverse voices of the parade.

These two cases clarify a boundary of discrimination—discrimination against a particular group means treating them differently due to who they are, not refusing to include others' messages in one's own.

2.3. Masterpiece Cakeshop v. Colorado Civil Rights Commission

This case is unique since the Supreme Court granted the request of the cake shop owner because it held that the Commission failed to comply with the Free Exercise Clause's requirement of religious neutrality. However, it also helps to define the line between discrimination and defending one's rights by linking the other three cases - Jack v. Gateaux, Ltd., Charge No. P20140071X (Mar. 24, 2015); Jack v. Le Bakery Sensual, Inc., Charge No. P20140070X (Mar. 24, 2015); Jack v. Azucar Bakery, Charge No. P20140069X (Mar. 24, 2015) - concerning bakers refusing service.

Masterpiece Cakeshop is owned and operated by the Christian baker Jack Phillips, who refused to sell a wedding cake to a same-sex couple. Phillips considers himself an artist and displays a picture that depicts him as an artist in his shop. Each cake he bakes is designed, sketched, and delivered by

himself. To him, a wedding cake implies a message – “a wedding has concurred, a marriage has begun, and the couple should be celebrated”^[8] – exhibiting his artistic talents and expressive meaning. Similarly, in the other three cases, the bakers declined to make wedding cakes when the customer, Jack, requested a specific message.

All four bakers stated that they would offer other products for the homosexual couple instead of the requested wedding cake. Phillips, the baker of Masterpiece The bakery, specifically stated that he would be willing to sell “birthday cakes, shower cakes, [and] cookies and brownies”^[9], and one bakery said it would be willing to make cakes in the shape of Bibles but not with the message required. It clearly shows that the refusal to bake such wedding cakes was not a result of who demanded it but what message the customer^[10] required the baker to blend in with his creation.

The record shows that after turning away Craig and Mullins, Mr Phillips also refused the same request from Craig's mother. It is consistent with Mr Phillips's claim that he “will not design and create wedding cakes for a same-sex wedding regardless of the sexual orientation of the customer”. Hence, there was no discrimination because the rejected customers were treated similarly.

Discrimination must not be confused with a person's right to choose what to say in their speech, protected under the First Amendment Clause. In these four cases, the bakers refused not because of their customers but because of who they believed themselves to be.

2.4. 303 Creative Case: Denial of Gay Marriage Services Dispute

Dissents of the case 303Creative LLC. Elenis include the concern of the “serious stigma” that would result if “purveyors of goods and services who object to gay marriages^[11] for moral and religious reasons” were “allowed to put up signs saying ‘no goods or services will be sold if they will be used for gay marriages. “Therefore, some fear that allowing this case to be a first will erode the promise of civil rights laws in potentially dramatic and devastating ways”^[12] However, this is an unfair assumption because though Ms Smith chose to refuse to make same-sex wedding websites, she shows no direct evidence of the wish to hurt such couples.

Since the main issue with the discrimination of a certain group is the possible physical and psychological damage, such statements are usually found offensive. As a person who wishes to refuse service due to her own religious beliefs, Smith should not want to harm such couples by framing her refusal as “no goods or services will be sold” to them.

Public accommodation laws have also developed in past years to include more vulnerable groups based on sexual orientation and gender identity^[13]. Similarly, the balance between free speech through “expressive conduct” and the protection of specific groups can be gradually narrowed down through multiple cases.

3. Discussion

As discussed above, both sides are affected-companies face reputational damage or praise linked with their economic profit based on their decision to offer service while refusing to provide service might lead to consequences for the customer.

3.1. Damage to the company

Reputational Damage. In a world where the Internet is continuously joining people together globally, 77% of businesses use social media to reach customers, and 90% of users follow at least one brand on social media.^[14] One study stated: “Falsehood diffuses significantly farther, faster, deeper, and more broadly than the truth, in all categories of information.^[15]” The fragile trust between companies and consumers faces graver challenges as stories of Domino's Japan apologizing for its nose - picking employee^[16] and Manner Coffee's conflict between its baristas and clients^[17] spread in minutes. Likewise, refusing to provide service for a customer due to that person's public statements, though legally, might trigger libel and slander. Economic Loss. The company might experience pecuniary damages like monetary loss and non-pecuniary damages, including negative reputation,

loss of brand value and long-term loss of profits. Directors and shareholders of the company would have to consider the possible damages in store before making a well-informed rejection.

3.2. Damage to the customer

Human rights. As a person spreading personal statements to the public, the customer has the right to free speech offline and online. The First Amendment protects speech from various perspectives, such as speech that society may consider offensive or objectionable, political speech and advocacy, and anonymous speech.^[18] Mental damage. There are risks of incriminating statements, bullying, and damage to reputation if the rejection made by the company leads to heated debates. Accordingly, customers should ensure their statements are legal and made public.

4. Conclusions

If public statements are legal, companies should be permitted to refuse to offer business when adhering to the customer's needs requires the company or its important members to sacrifice their legal rights – most frequently their right to free speech. Suppose the company functions legally, showing that it does not wish to discriminate and that providing service to that customer will harm the company and its clients. In that case, denying service to a specific customer should be allowed. However, with the possible harm put forward previously in the essay and the latent risk of being involved in a lawsuit, the company should deliberately consider its options before making a formal rejection.

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