



For Immediate Release

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BOLI Interim Order: Sweet Cakes discriminated against same-sex couple in bakery civil rights case
Hearing will focus on damages for unlawful discrimination based on sexual orientation

Portland, OR—A Gresham bakery unlawfully discriminated against a same-sex couple by denying them full and equal access to a place of public accommodations, a BOLI Interim Order has found.

The ruling comes after both the agency’s Administrative Prosecution Unit and the respondents, Aaron and Melissa Klein, sought summary judgment in the dispute.

The Interim Order finds that the undisputed material facts support charges of unlawful discrimination under the Oregon Equality Act. An administrative hearing scheduled for March will focus on damages for the same-sex couple.

Under Oregon law, Oregonians may not be denied service based on sexual orientation or gender identity. The law provides an exemption for religious organizations and schools, but does not allow private businesses to discriminate based on sexual orientation, just as they cannot legally deny service based on race, sex, age, disability or religion. The bakery is not a religious institution under law.

The Kleins argued against a connection between the same-sex couple’s sexual orientation and respondents’ alleged discriminatory action. The BOLI Interim Order rejects the argument:

Respondents’ attempt to divorce their refusal to provide a cake for Complainants’ same-sex wedding from Complainants’ sexual orientation is neither novel nor supported by case law. As the Agency argues in support of its cross-motion, “[t]here is simply no reason to distinguish between services for a wedding ceremony between two persons of the same sex and the sexual orientation of that couple. The conduct, a marriage ceremony, is inextricably linked to a person’s sexual orientation.”

Respondents also contended that a prior sale of a wedding cake to one of the complainants for her mother’s wedding proves their lack of animus towards complainants’ sexual orientation. The ruling fails to find the argument persuasive:

Respondents’ first argument fails for the reason that there is no evidence in the record that A. Klein, the person who refused to make a cake for Complainants while acting on Sweetcakes’ behalf, had any knowledge of Complainants’ sexual orientation in November 2010 when Cryer purchased a cake for her mother’s wedding. Even if A. Klein was aware of Cryer’s sexual orientation in November 2010, not discriminating on one occasion does not inevitably lead to the conclusion that A. Klein did not discriminate on a subsequent occasion.

The agency's Administrative Prosecution Unit also brought charges that the Kleins unlawfully communicated a future intention to discriminate based on sexual orientation on September 2, 2013 and February 13, 2014 while appearing on television and radio interviews with Tony Perkins and the Christian Broadcasting Network (CBN). However, the BOLI Interim Order rules in favor of the respondents and rejects the agency's argument that Aaron Klein's statements represent a prospective communication in violation of ORS 659A.409.

Public accommodations complaints under the Equality Act are rare. In every year since the law's passage, public accommodations complaints based on sexual orientation and gender identity have represented less than one percent of all discrimination complaints received by the agency.

BOLI protects all Oregonians from unlawful discrimination, investigating allegations of civil rights violations in workplaces, career schools, housing and public accommodations.

Copies of the Interim Order can be found on the agency's website here. For more information about BOLI's efforts to protect workplaces and support Oregon employers, visit <http://www.oregon.gov/BOLI>.

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