Religious Liberty, Rural Identity, and Same-Sex Marriage

By LUKE A. BOSO

IN NOVEMBER OF 2016, DONALD TRUMP STUNNED THE WORLD by winning the U.S. presidential election. Post-election analysis reveals that Trump rode a populist wave fueled by economic and cultural anxieties in America’s rural working-class. Exit polls showed that sixty-two percent of rural voters went for Trump, while only thirty-five percent of urban voters did so.¹

What made Donald Trump so appealing to rural voters? And what role do LGBTQ rights play in the populist, conservative moment that has seized Congress and the Presidency? Social science research suggests that many people who live in rural areas share a strong collective culture rooted in place. I suggest in a forthcoming Article, Rural Resentment and LGBTQ Equality,² that this culture is organized around three core tenets: community solidarity, individual self-reliance, and compliance with religiously informed gender and sexual norms. Heterosexuality and biologically congruent gender expression are interwoven into all three tenets.

When the Supreme Court in 2015’s *Obergefell v. Hodges³* decision held that same-sex marriage bans violate the U.S. Constitution, an already troubled relationship between rural America and the LGBTQ rights movement was further complicated. After *Obergefell*, rural communities were suddenly required by law to accept public manifestations of gay, lesbian, and bisexual identities in the form of state-sanctioned same-sex marriages. *Obergefell* granted gay individuals the perceived “special right”

to be publicly different in rural communities that demand sameness.\textsuperscript{4} Obergefell encouraged gay individuals to both ask and tell in defiance of community solidarity values that counsel silent obedience to the religiously informed norms of heterosexuality and gender-conformity.

Judicial opinions like Obergefell, and progressive state and federal legislation protecting LGBTQ people from discrimination, are seen as serious threats to rural dwellers because they directly conflict with the core tenets of rural culture and identity.\textsuperscript{5} Many rural Americans have long been resentful of urban and “coastal elites” due to the widespread and strongly held belief that these outsiders devalue and disrespect small-town values and people.\textsuperscript{6} Pro-LGBTQ laws are just the latest symbolic example of a changing America in which rural inhabitants see their conservative way of life as under attack in mainstream media and culture. In decades past, rural Americans shared opposition to homosexuality and gender nonconformity with the larger American public, but rural Americans now feel victimized by perceived urban elites who have largely accepted queer difference and view anti-LGBTQ attitudes as shameful and bigoted.\textsuperscript{7} Thus, while the Supreme Court in Obergefell ended the legal debate over marriage, it did not resolve the cultural divide. Instead, it may have hardened existing small-town opposition and stoked resentment.

For many rural Americans, then, opposing LGBTQ rights is an increasingly important mechanism to preserve a distinctively rural way of life, assert identities rooted in rural place, and fight back against perceived victimization by urban elites. Much of what has happened in rural and other conservative places since Obergefell is a re-entrenchment of antigay sentiment, expressed through proposed and enacted legislation and in legal arguments in defense of existing laws that seemingly run afoul of Obergefell’s mandate.\textsuperscript{8} These governmental actions send a message of

\textsuperscript{4} Mary L. Gray, Out in the Country: Youth, Media, and Queer Visibility in Rural America 38 (2009) (explaining that rural communities “organize around an appreciation for solidarity expressed through blending in” and sameness).


\textsuperscript{7} Arlie Russell Hochschild, Strangers in Their Own Land: Anger and Mourning on the American Right 165 (2016) (describing some rural Americans’ despair that their sense of what is “good” is no longer widely shared).

\textsuperscript{8} See Carolyn M. Proctor, See just how well, or poorly, our states stack in LGBTQ protections, WASH. BUS. J. (June 8, 2018, 5:00 AM)
LGBTQ inferiority, reinforcing and solidifying heterosexuality’s status as superior to homosexuality or bisexuality. They also send a punitive message about the perils of seeking “special rights” based on different and otherized identities tied to sexuality or gender identity. In this way, local and state anti-LGBTQ actions can serve as vessels for outward manifestations of rural identity and expressions of rural citizens’ deeply held feelings of victimization.

Today, conservative activists at the national level have tapped into aspects of rural identity and resentment to channel antigay and anti-trans activism into broad arguments about religious freedom. The same-sex marriage victory for gay and bisexual people propelled the victimhood narrative on the right, with conservatives now increasingly fighting back against accusations that they are bigoted for opposing marriage equality. The litigation surrounding Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission serves as a nationalized symbol of the rural-urban divide undergirding much of the anti-LGBTQ activism today.

On July 19, 2012, Charlie Craig and David Mullins visited Masterpiece Cakeshop in suburban Colorado and asked the owner, Jack Phillips, to design and create a cake for their upcoming wedding. Phillips refused, citing his religious opposition to same-sex marriage. Craig and Mullins filed a discrimination charge with the Colorado Civil Rights Division, alleging sexual-orientation discrimination in violation of Colorado’s Anti-Discrimination Act. Specifically, Colorado law today makes it “a discriminatory practice and unlawful for a person . . . to refuse, withhold from, or deny to an individual or a group, because of . . . sexual orientation . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation . . . .”

The Colorado Civil Rights Commission affirmed and adopted an


12. *Id.*

13. *Id.* at 277.

administrative law judge’s decision for the same-sex couple,\textsuperscript{15} which the Colorado Court of Appeals in turn affirmed.\textsuperscript{16} The U.S. Supreme Court granted Phillips’s Petition for Writ of Certiorari. The Court ultimately ruled for Phillips based on the unique facts of the case.

The Court focused on what happened during the Colorado Civil Rights Commission’s formal public hearings on the matter, finding evidence of hostility to Phillip’s religious beliefs.\textsuperscript{17} The Court bristled at commissioners’ apparent endorsement of the idea that “religious beliefs cannot legitimately be carried into the public sphere or commercial domain” because such a view implies “that religious beliefs and persons are less than fully welcome in Colorado’s business community.”\textsuperscript{18} More damning, however, were comments by one commissioner in particular, who said: “Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust, . . . we can list hundreds of situations where freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to—to use their religion to hurt others.”\textsuperscript{19}

Through a pro-LGBTQ rights lens, the commissioner’s comments about how religion has historically been used to harm others might seem relatively innocuous and even obvious. From Anita Bryant’s 1977 religious crusade to overturn a pro-gay antidiscrimination ordinance in Dade County, Florida,\textsuperscript{20} to ubiquitous chants of “Adam and Eve, not Adam and Steve” at anti-LGBTQ rallies,\textsuperscript{21} queer people deeply understand the ways in which religion can be used to harm them. Kennedy did not view these comments through a pro-LGBTQ rights lens, however. Instead, he sympathized with an apparent Christian victim, characterizing this comment as “disparage[ing]” of Phillips’s religious beliefs.\textsuperscript{22}

\textit{Masterpiece Cakeshop} is not explicitly about place, but place is quietly present. The tension between LGBTQ rights and religious freedom


\textsuperscript{17} \textit{Id.} at 1729–31.

\textsuperscript{18} \textit{Id.} at 1729.

\textsuperscript{19} \textit{Id.}


\textsuperscript{22} \textit{Masterpiece Cakeshop, Ltd.}, 138 S. Ct. at 1729.
represents the latest iteration of a longstanding culture war that is heavily fought on geographic lines. Because rural identity’s core tenets are connected in various ways to Christianity, and because most of rural America is politically conservative, rural identity and resentment serve as useful pieces of armor for conservative soldiers in the culture war. Federal and state antidiscrimination laws—i.e., legislation stemming primarily from progressive urban centers—that prohibit individual florists and wedding planners, for example, from discriminating against same-sex couples are powerful examples of how outsiders force rural communities and religious dissenters to tolerate and even promote public displays of same-sex difference that contradict their values and signal disrespect for their way of life.

We should strive to understand and, to the extent possible, respect rural culture and identity. The failure to do so only increases rural feelings of victimization that lead to civil rights backlash more broadly. Understanding and respect, however, do not mean that rural identity and resentment should thwart others’ claims to be free from discrimination. Some of the conflict between rural and LGBTQ identities is fundamentally intractable. For example, it is unlikely that progressives and gay rights activists can change the rural identity tenet anchoring the belief that homosexuality is sinful. For people living in small towns, same-sex marriage is akin to the state-sponsored sanction of sin. Similarly, laws that require individuals to house, employ, and serve openly gay and transgender people will perhaps always make many small-town people feel uncomfortable or complicit in sin. At this juncture between rural and LGBTQ identities, gay and trans rights should triumph. On balance, the law should protect the tangible housing and employment needs, and public accommodations access, of queer people over the feelings and beliefs that help to construct rural identity.