

Oh, Denver! Denying Chick-fil-A Crosses Constitutional Lines

by

Todd Young

Young is chief operating officer of Southeastern Legal Foundation, a constitutional public interest law firm founded in 1976.

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Denver, Colorado's city attorney said he was caught off-guard by the radical proposal to table – and perhaps deny – Chick-fil-A's concession agreement for the Denver International Airport. Really? Which part surprised him – the radical proposal or the loud public backlash?

New City Council members have stalled the application for two weeks, citing “corporate profits used to fund and fuel discrimination.” The “discrimination” in question is comments by Chick-fil-A president and COO Dan Cathy in support of traditional marriage.

Comments, not actions. Not employment choices based on sexual orientation. Not discrimination.

In fact, there has never been a successful sexual orientation discrimination lawsuit against Chick-fil-A. Why? Because Chick-fil-A does not discriminate, either against its employees or against its patrons.

Setting aside the faith-based views of many of Chick-fil-A's corporate leaders (which, by the way, are entirely protected under the First Amendment), let's take a look at legal principles that are meant to control how a government can decide to give benefits, hire, or grant contracts:

- Government must use the same standards for all – and must not be arbitrary or capricious.
- Government must not enforce unconstitutional mandates or quotas on contractors.
- In order to make exceptions against applicants and bidders, the burden is on the government entity to prove that there is *actual, measurable, and ongoing* discrimination. The burden is not on Chick-fil-A to prove itself.

So says the U.S. Supreme Court. So say common decency, fairness, and business best practices. Perhaps, in light of the facts that Chick-fil-A willingly agreed to a non-discrimination policy set up by Denver and that no discrimination is proven, the social engineers on the Denver City Council would be willing to hire, provide scholarships, and pump hundreds of thousands of tax dollars generated by a successful Chick-fil-A franchise into their local economy? Not going to happen.

To the Denver City Council activists - boycott if you like; make public statements if you wish. But take punitive action with the strong arm of government power at your own legal peril.