

Free Speech & Religious Liberty Take A Hit

By Rod Dreher

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The Supreme Court has declined to take the New Mexico photographer appeal. ^[1] Excerpt:

The Supreme Court has refused to hear an appeal from Christian photographers who were fined and admonished by the New Mexico Supreme Court for declining to work a same-sex ceremony, in what could be a blow to religious business owners.

The high court decision not to take up the appeal means the New Mexico ruling against them stands. That ruling is only binding in New Mexico, but could set a precedent that can be cited in subsequent cases.

In this case, Elane Photography, owned by Jon and Elaine Huguenin of New Mexico, was brought to court for refusing to photograph a same-sex couple's commitment ceremony in 2006.

To be clear, the Elane petition before the Supreme Court was not based on a religious liberty claim, but a free speech claim: namely, the right not to have one's creative expression compelled. The Huguenins claimed that photographing a same-sex wedding would force them to express ideas with which they disagreed. A New Mexico court ruled that this is the price they must pay for doing business with the public. Now, the US Supreme Court has decided to let the lower court ruling stand.

Jorden Lorence, one of the attorneys defending the Huguenins, says ^[2] the Court's refusal to hear the case does not a definitive ruling make:

This issue likely will return for a definite ruling from the Supreme Court in the future. It is important to note that the Supreme Court did not "uphold" the repressive decision of the New Mexico Supreme Court but merely decided not to hear the case. We don't know why, but this is not an affirmance of the lower court opinion. The high court's decision today sets no legal precedent. There are other cases now in the pipeline ^[3] and probably more to follow that will likely reach the Supreme Court. We had strong amicus support ^[4] in this case from Professor Eugene Volokh of UCLA and from the Cato Institute, which means the important First Amendment issues in this case will likely come before the Supreme Court again.

Today's actions by the Supreme Court may unfortunately embolden some to expand their efforts to punish and humiliate publicly those who believe marriage is defined only as one man and one woman. The zealous followers of this ascendant orthodoxy supporting same-sex marriage are

falling into the same error that many have stumbled into before them—when you gain power somewhere, punish the “heretics” and hound them to the outskirts of society.

Though the Elane case was about free speech, it has obvious — and ominous — implications for religious liberty. Even pro-SSM law professors like Eugene Volokh understood that. America got a little bit less free today.

“How is same-sex marriage going to affect you?” SSM supporters are accustomed to asking, assuming that the answer is, “Not at all.” Well, now we see that if you are a Christian wedding photographer who cannot as a matter of conscience photograph a gay wedding, you cannot practice your vocation in New Mexico. As we’re seeing over and over again, that is not true, and never was true. The Law of Merited Impossibility — *Nothing bad will happen to you gay marriage opponents, and when it does, you will deserve it* — is vindicated daily.