

Supreme Court Turns Down Elane Photography Case

By Jordan Lorence

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Sadly, the U.S. Supreme Court declined today to hear the Elane Photography case, which concerned a New Mexico photographer who declined to shoot a same-sex commitment ceremony because of her beliefs defining marriage as one man and one woman. But it is far from the end of the line for the central issues involved in this case.

One of the women in the ceremony, Vanessa Willock, filed a complaint, and the New Mexico Human Rights Commission found Elane Photography guilty of “sexual orientation discrimination.” Elane Photography, represented by attorneys from Alliance Defending Freedom, argued that the First Amendment’s compelled speech doctrine protected the photographer from being forced to create expression she did not agree with. The New Mexico Supreme Court rejected this argument and basically concluded that business owners and professionals surrender their First Amendment rights when they enter the marketplace. Ominously, and with an Orwellian twist, Justice Richard Bosson wrote in a concurring opinion against Elane Photography that “the sense of respect we owe others, whether or not we believe as they do . . . it is the price of citizenship.”

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 affirmation of the lower court opinion. The high court’s decision today sets no legal precedent. There are other cases now in the pipeline and probably more to follow that will likely reach the Supreme Court. We had strong amicus support 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. As a First Amendment attorney, I am concerned that this dark time of viewpoint suppression will get darker before it gets better. Our Founding Fathers gave us the First Amendment to protect people’s freedom of expression and freedom of conscience from these emotional spasms of government coercion. All Americans ought to see this growing threat to our liberty and our First Amendment traditions and speak against it. That is the true “price of citizenship.”

