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Supreme Court won't hear appeal of New Mexico gay-bias case

By David G. Savage

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WASHINGTON -- In a victory for gay rights, the Supreme Court on Monday turned down an appeal from a New Mexico photographer who claimed a free-speech right to refuse to shoot a wedding album for a same-sex couple.

The photographer was charged with violating the state's anti-discrimination law, which requires businesses to serve customers and clients without regard to their race, religion or sexual orientation.

The case of Elane Photography had drawn wide attention because it posed a religious-freedom challenge to state anti-discrimination laws. It was credited with spurring legislative campaigns in Arizona and Mississippi to strengthen the religious-freedom rights of business owners.

Elaine Huguenin, the photographer, said she took photos of "traditional" weddings but that it would violate her religious beliefs to shoot photos of a wedding of two women.

The Supreme Court's refusal to hear the appeal is not a ruling, but it is significant that the appeal did not attract the four votes needed to grant a hearing.

Last month, the court heard arguments in a somewhat related issue over whether family-owned corporations have a religious-liberty right to refuse to pay for the full range of contraceptives required under the federal healthcare law.

However, the appeal in the Elane Photography case focused only on the 1st Amendment and the freedom of speech. Lawyers for the Alliance Defending Freedom said the New Mexico anti-discrimination law would force the photographer to "create expression" in violation of her beliefs. Critics called the law a form of "compelled speech."

The appeal argued that a state anti-bias law, when applied broadly, would "require individuals who create expression for a living -- like marketers, advertisers, publicists and website designers -- to speak in conflict with their consciences."

UCLA law professor Eugene Volokh and the Cato Institute's Ilya Shapiro had filed a separate brief urging the court to hear the case. They said the 1st Amendment should protect writers, singers, actors or artists whose work involves expression. But they said this protection was

limited in scope and should not extend to “denials of service by caterers, hotels, limousine service operators and the like.”

Ruling against the photographer, the New Mexico Supreme Court refused “to draw the line between ‘creative’ or ‘expressive’ professionals and all others.” For example, its judges said, a “flower shop is not intuitively ‘expressive’, but florists use artistic skills and training to design and construct floral displays.” And the same is true of bakers and wedding cakes, they said.

“Courts cannot be in the business of deciding which businesses are sufficiently artistic to warrant exemptions from anti-discrimination laws,” the state court concluded.

On Monday, the court issued a one-line order saying it would not hear the case of *Elane Photography vs. Willock*.