

THE WEEK

Why photographers shouldn't have to work at same-sex weddings

Photographers are artists. They shouldn't be in the same category as bakers and bartenders.

By Matt K. Lewis

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What *is* art? And just *who* is an artist?

I know those sound like highfalutin' questions. But they've become critical to the legal debate over gay marriage and religious liberty.

The Supreme Court just turned down an appeal from a New Mexico photographer named Elaine Huguenin, who ran afoul of the state's anti-discrimination laws by declining to photograph a lesbian wedding. Huguenin's situation, many would argue, is quite different than declining to bake a cake for this same wedding. One obvious difference is that a photographer — unlike a baker — must physically attend an event or ceremony.

But that's not really the argument being raised here. Instead, the question is whether a photographer is by definition *more of an artist* than a baker, and thus ought to be freed from photographing the wedding on freedom of expression grounds.

Some background from the *Los Angeles Times*:

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. [*Los Angeles Times*]

I can appreciate the court's reluctance to wade into the business of defining who is (and isn't) an artist. (Next thing you know, they'll be issuing licenses.) But we're left with this unhappy dilemma: If everyone works in a creative field, then *nobody* works in a creative field...

We are all bakers now.

But really: Shouldn't artists (like photographers) have the right to pursue (or not pursue) projects based on whatever criteria they choose — be they principled, arbitrary, or even misguided? Shouldn't artists, of all people, have the right to be wrong?

Will the government be our new assignment editors? What if someone wants me to cover a gay wedding for *The Week* — must I now oblige? Is politely declining tantamount to law-breaking discrimination?

This may sound alarmist, but if a photographer is a baker, then maybe a writer is a photographer. And if a photographer doesn't qualify as an artist — someone whose work reflects their personality, beliefs, *soul* — then who does? Or maybe it depends on what kind of photographer you are?

Does *Piss Christ* (a taxpayer-funded 1987 photo of a crucifix in a glass of urine) qualify as free expression and "art" (as progressives told us when they cared about preserving free expression), while pictures of your son's graduation merely constitute bourgeois commerce?

These are esoteric questions. But these questions have been thrust upon us. And anyone who cares about free expression ought to be interested in what sort of precedent(s) we are now setting.

What's on trial here is whether or not creative people have the freedom of expression to pursue projects that comport with their values or even interest them. Now, if you believe that we are all just churning out widgets, then preserving this right isn't terribly important. But if you believe that the work we produce is inexorably linked to our purpose — to who we fundamentally are as people — then this is a pretty big deal.

I'm reminded of Joan Didion's classic essay about taking her daughter to a Georgia O'Keeffe exhibit, and having her daughter be quite moved by the art and, by extension, the artist:

My daughter was making, that day in Chicago, an entirely unconscious but quite basic assumption about people and the work they do. She was assuming that the glory she saw in the work reflected a glory in its maker, that the painting was the painter as the poem is the poet, that every choice one made alone — every word not chosen or rejected, every brush stroke laid or not laid down — betrayed one's character. *Style is character.* [Georgia O'Keeffe]

The painting is the painter. The photograph is the photographer. *Style is character.*

That should be true everywhere — but especially in America. We risk lumping artists in with everyone else at our own peril.