

Winnowing Down Religious Liberty

By [John Fund](#)

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In its wisdom, the New Mexico supreme court ruled Thursday that wedding photographers can't refuse to shoot gay ceremonies.

The case arose from a 2006 incident in which photographer Elaine Huguenin politely declined Vanessa Willock's request to photograph a same-sex commitment ceremony. Willock then filed a claim with the New Mexico Human Rights Commission, charging that Elane Photography is a "public accommodation," similar to a hotel or restaurant, that denied her its services because of her sexual orientation. The commission ordered Elane Photography to pay \$6,600 in attorney fees.

The court rejected Huguenin and her husband's arguments that they are happy to photograph gay customers but that their Christian beliefs prevented them from doing so in a setting that would endorse same-sex marriage. The court also rejected the Huguenins' free-speech argument, saying that the New Mexico Human Rights Amendment does not compel speech: "They may, for example, post a disclaimer on their website or in their studio advertising that they oppose same-sex marriage but that they comply with applicable anti-discrimination laws."

In a concurring opinion, Justice Richard Bosson acknowledged the restrictions on liberty the decision imposed, but said it was for the greater good. The Huguenins, he wrote,

now are compelled by law to compromise the very religious beliefs that inspire their lives. Though the rule of law requires it, the result is sobering. It will no doubt leave a tangible mark on the Huguenins and others of similar views.

The Huguenins are free to think, to say, to believe, as they wish; they may pray to the God of their choice and follow those commandments in their personal lives wherever they lead. The Constitution protects the Huguenins in that respect and much more. But there is a price, one that we all have to pay somewhere in our civic life.

In the smaller, more focused world of the marketplace, of commerce, of public accommodation, the Huguenins have to channel their conduct, not their beliefs, so as to leave space for other Americans who believe something different. That compromise is part of the glue that holds us together as a nation, the tolerance that lubricates the varied moving parts of us as a people. That sense of respect we owe others, whether or not we believe as they do, illuminates this country, setting it apart from the discord that afflicts much of the rest of the world. In short, I would say to the Huguenins, with the utmost respect: it is the price of citizenship.

Alliance Defending Freedom senior counsel Jordan Lorence, who was the lawyer for Elane Photography, said the decision was tyrannical: “Government-coerced

expression is a feature of dictatorships that has no place in a free country.” To their credit, the Cato Institute and noted law professor Eugene Volokh, strong supporters of gay marriage, filed an amicus brief supporting the free-speech rights of Elane Photography.

In writing about the case last year, columnist George Will noted, “In jurisdictions such as the District of Columbia and Seattle, which ban discrimination on the basis of political affiliation or ideology, would a photographer, even a Jewish photographer, be compelled to record a Nazi Party ceremony?”

The U.S. Supreme Court may ultimately have a say in the matter. In a famous 1977 case, *Wooley v. Maynard*, it ruled that New Hampshire could not constitutionally require citizens to display the state motto “Live Free or Die” on their car license plates if the it offended their moral convictions — we’ll see how that could apply here.