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Supreme Court declines case of photographer snubbing gay ceremony

The Supreme Court refusal lets stand a series of court rulings in New Mexico finding that the photographer violated a state law that bars discrimination based on sexual orientation.

By Warren Richey

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The high court's refusal to hear the case came without comment from the justices. It lets stand a series of court rulings in New Mexico finding that the photographer violated a state law that bars discrimination based on sexual orientation.

Groups supporting gay rights praised the court action as an important victory.

"Selling commercial wedding photography services, like selling a wedding cake or a flower arrangement, does not mean that a business owner endorses a customer's marriage," Joshua Block of the American Civil Liberties Union's Lesbian Gay Bisexual and Transgender Project said in a statement.

"The business is simply providing a commercial service," he said. "Everybody has the right to express their views on whatever subject they wish, and that includes business owners. But every business has to play by the same rules to protect customers from discrimination in the marketplace."

Lawyers with the conservative public-interest law group Alliance Defending Freedom, which represented the photographer, expressed disappointment that the court would not hear the case.

"The First Amendment protects our freedom to speak or not speak on any issue without fear of punishment," ADF lawyer Jordan Lorence said in a statement.

"We had hoped the US Supreme Court would use this case to affirm this basic constitutional principle; however, the court will likely have several more opportunities to do just that in other cases of ours that are working their way through the court system," he said.

At issue in the case was whether a business that sells goods and services to the general public is entitled to refuse to offer services to a lesbian couple because the photographer has religious objections to same-sex marriage.

The case arose as a result of a decision by photographer Elaine Huguenin of Elane Photography in Albuquerque to turn down a request that she photograph a commitment ceremony between two women.

Ms. Huguenin told the prospective client that while much of her business involves photographing weddings, she was personally opposed to same-sex marriage and that photographing the commitment ceremony would violate her religious beliefs.

The prospective client, Vanessa Willock, was offended and filed a discrimination complaint with the New Mexico Human Rights Commission seeking enforcement of the state's antidiscrimination law.

In a decision last summer, the [New Mexico Supreme Court](#) ruled 5 to 0 against the photographer and upholding the New Mexico Human Rights Act.

The photographer had argued that the antidiscrimination law would unconstitutionally compel her to create photographs and engage in artistic expression that would promote same-sex marriage despite her sincerely held religious opposition to the practice.

The First Amendment prohibits the government from forcing a speaker to publicly profess government-favored ideas with which the speaker disagrees, her lawyers argued.

The New Mexico high court rejected that argument. "Elane Photography's choice to offer its services to the public is a business decision, not a decision about its freedom of speech," the court said.

The justices added: "A holding that the First Amendment mandates an exception to public accommodations laws for commercial photographers would license commercial photographers to freely discriminate against any protected class on the basis that the photographer was only exercising his or her right not to express a viewpoint with which he or she disagrees. Such a holding would undermine all of the protections provided by the antidiscrimination laws."

New Mexico has a law that bars discrimination against individuals because of their religious beliefs and creates an exemption for such beliefs, but the New Mexico high court ruled that that law did not apply in the photographer's case.

In urging the US Supreme Court to overturn the New Mexico court, lawyers for the photographer had argued that the New Mexico decision forces those engaged in creative expression to present a government-mandated message.

"The decision below permitted a particularly egregious form of compelled speech," Mr. Lorence of ADF said in his brief to the court on behalf of Elane Photography.

"It allows the State to compel speech conveying messages that the speaker considers objectionable and, if dissension exists, to punish conscientious objectors," Mr. Lorence wrote. "It thus permits state public-accommodation laws to reach well beyond *status-based* discrimination

and compel speakers to express politically correct *messages* with no regard for their conscientious disagreement.”

He said the state court holding “threatens to compel speech not only by photographers, but also by all professional creators of expression, regardless of the nature of their convictions.”

Similar disputes have arisen involving a florist and a bakery refusing to provide services to same-sex couples because of religious objections to gay marriage.

The New Mexico court brushed aside the business owners’ concerns. “Courts cannot be in the business of deciding which businesses are sufficiently artistic to warrant exemptions from antidiscrimination laws,” the court said.

Ms. Willock’s lawyers had encouraged the US Supreme Court to bypass the case. They said the New Mexico high court was correct in all respects.

“This Court has consistently held that states may regulate commercial conduct through neutral laws that make no reference to expression,” said [Tobias Wolff](#), a University of Pennsylvania law professor in his brief on behalf of Willock. “The New Mexico Supreme Court faithfully applied those precedents.”

The brief also urged the US Supreme Court to reject claims by the photographer that her religious beliefs should be considered as part of the legal analysis of the case. Professor Wolff said the state high court had determined that the photographer had waived that argument.

Alabama and seven other states filed a friend-of-the-court brief encouraging the US Supreme Court to take up the case.

States have the power to enact public accommodation laws, and those laws generally do not violate the free speech protections of the First Amendment, the brief said. But New Mexico has “crossed the constitutional line here,” wrote Alabama Attorney General Luther Strange.

“The government cannot constitutionally compel [the photographer] to create and express a message on one side of a contentious cultural and political issue,” he said.

Mr. Strange added: “There is now an animated debate between those who view the ‘very definition’ of marriage as being between a man and a woman and those who believe such a definition is an ‘unjust exclusion.’ ”

“The States are free to take sides in that debate, and most have done so,” he said. “But the States are not free to compel their citizens to create or communicate a message in support of one side or the other.”

Another friend-of-the-court brief filed by the libertarian [Cato Institute](#) and two constitutional scholars said the New Mexico court ignored a crucial distinction between expressive and nonexpressive behavior for purposes of First Amendment protection.

“Restrictions on expression trigger First Amendment scrutiny; restrictions on nonexpressive conduct do not. Precisely the same line can be drawn – and with no greater difficulty – when it comes to compulsions,” wrote [Ilya Shapiro](#) of the Cato Institute.

Mr. Shapiro said: “A writer must have the First Amendment right to choose which speech he creates, notwithstanding any state law to the contrary. The same principle applies to photographers.”

That doesn’t mean everyone gets an exemption from a public accommodation law, he said.

“Though photographers, writers, singers, actors, painters, and others who create First Amendment-protected speech must have the right to decide which commissions to take and which to reject, this right does not necessarily apply to others who do not engage in protected speech,” Shapiro wrote.

“This Court can rule in favor of Elane Photography on First Amendment grounds without blocking the enforcement of antidiscrimination law against denials of service by caterers, hotels, limousine service operators, and the like.”

The case was *Elane Photography v. Vanessa Willock* (13-585).