

# ISSUE BRIEF

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## New Mexico Photography Business Seeks Supreme Court Review

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Elaine Huguenin is a photographer in New Mexico who declined to photograph a same-sex commitment ceremony because creating images of that event would have violated her religious beliefs about marriage. A discrimination complaint was filed against Elane Photography, which is the photography business that Elaine Huguenin co-owns with her husband, Jonathan.

On August 22, 2013, the New Mexico Supreme Court ruled against Elane Photography. Elane Photography has now asked the U.S. Supreme Court to review its case.<sup>1</sup>

The case illustrates the broader and growing conflict between nondiscrimination laws and religious freedom on issues such as sex, marriage, and family.

**The Huguenins and Elane Photography.** Elane Photography, LLC, is a small photography business located in Albuquerque, New Mexico.

Husband and wife Jonathan and Elaine Huguenin co-own the business. (Elaine Huguenin's first name and the name of her photography business, Elane Photography, are spelled differently.)

Elaine Huguenin is "an artist with a degree in photography."<sup>2</sup> Elaine creates photographs and picture books that are sold by Elane Photography.<sup>3</sup>

Elane Photography describes Elaine's style of wedding and event photography as "photojournalistic, meaning that she conveys stories and messages through her images and books."<sup>4</sup>

**The Huguenins' Beliefs About Marriage.** Elaine and Jonathan Huguenin are Christians.<sup>5</sup> According to Elane Photography, "The Huguenins will not create images that tell stories or convey messages contrary to their religious beliefs. For this reason, they have declined requests for nude maternity pictures and photographs portraying violence."<sup>6</sup>

Elane Photography explains that the Huguenins have a "sincere religious belief that marriage is the union of a man and a woman."<sup>7</sup> According to Elane Photography, the Huguenins "believe that if they were to communicate a contrary message about marriage—by, for example, telling the story of a polygamous wedding ceremony—they would be disobeying God."<sup>8</sup>

**The Huguenins Decline to Photograph a Same-Sex Commitment Ceremony.** In 2006, Vanessa Willock inquired whether Elane Photography would be willing to photograph her same-sex commitment ceremony.<sup>9</sup> (The law has since changed, but at the time same-sex individuals were not permitted to marry in New Mexico.<sup>10</sup>)

According to Elane Photography, the Huguenins declined the request because "they did not want to create images expressing messages about marriage that conflict with their religious beliefs."<sup>11</sup> Elane Photography has explained that it "does not refuse customers because of their sexual orientation"<sup>12</sup> and the Huguenins will "gladly serve gays and lesbians—by, for example, providing them with portrait photography—whenever doing so would not require

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them to create expression conveying messages that conflict with their religious beliefs.”<sup>13</sup>

Willock filed an administrative complaint alleging that Elane Photography had violated the state public accommodations statute by discriminating based on sexual orientation. The complaint resulted in proceedings before the New Mexico Human Rights Commission, which ruled against Elane Photography.<sup>14</sup>

According to Elane Photography, after Willock filed the complaint, she and her partner conducted their same-sex commitment ceremony.<sup>15</sup> Elane Photography states that Willock “promptly found another photographer to tell the story of her ceremony” and paid that photographer “less than the cost of” Elane Photography’s “basic package.”<sup>16</sup>

Meanwhile, for nearly seven years, the Huguenins have been fighting for the freedom to operate their small business without violating their beliefs about marriage. On August 22, 2013, following the commission proceeding and subsequent appeals in two state courts, the New Mexico Supreme Court ruled against Elane Photography.<sup>17</sup> On November 8, 2013, Elane Photography asked the U.S. Supreme Court to review its case.

**Legal Issues.** Fundamentally, the Huguenins are seeking the freedom to operate their photography business without violating their religious beliefs about marriage as between one man and one woman.

In asking the Supreme Court to review the case, Elane Photography frames the legal issue as one involving freedom of speech protected by the First Amendment of the U.S. Constitution. Specifically, Elane Photography argues that government forcing Elaine Huguenin “to create expressive images and picture-books conveying messages that conflict with her religious beliefs” violates the freedom of speech guaranteed by the First Amendment.<sup>18</sup>

In practical terms, a favorable Supreme Court ruling on Elane Photography’s free speech claim would allow the Huguenins to operate their photography business without violating their religious beliefs about marriage.

**Growing Conflicts Between Nondiscrimination Policies and Religious Freedom.** On March 22, 2013, the U.S. Commission on Civil Rights conducted a briefing on reconciling nondiscrimination

principles with civil liberties.<sup>19</sup> One expert explained in his written statement, “The sweeping application of non-discrimination principles poses an increasingly severe threat to civil liberties, especially to our first liberty of religious freedom.”<sup>20</sup>

The Huguenins’ legal battle illustrates the growing problem addressed by the U.S. Commission on Civil Rights briefing. Nondiscrimination laws burden religious freedom when they force conscientious objectors to participate in, facilitate, or take some action affirming a message or conduct that violates their religious belief about issues such as sex, marriage, and family. Many conscientious objectors who gladly serve all customers might object to participating in, facilitating, or affirming situations involving same-sex marriage or other forms of same-sex unions. Many of those conscientious objectors might also object to participating in, facilitating, or affirming situations involving unmarried sexual relations between two people of the opposite sex.

In situations like the Elane Photography case, same-sex couples have the freedom to engage in same-sex relationships and obtain whatever recognition, support, and benefits are available from the local, state, and/or federal government.

The question in situations like this is whether conscientious objectors should have the freedom to conduct their lives according to their own beliefs, just as individuals in same-sex relationships do.

**Conclusion.** The Elane Photography case involves a conscientious refusal to photograph a same-sex commitment ceremony, not a same-sex wedding. However, the New Mexico Supreme Court has since redefined marriage in that state to include same-sex unions, and the case illustrates the potential for such conflicts in jurisdictions with same-sex marriage. Redefining marriage will likely increase the number of such conflicts.<sup>21</sup>

Citizens who believe that marriage is between one man and one woman and that sexual relations are properly reserved for marriage should have the freedom to live according to their own beliefs, just as individuals in same-sex relationships do.

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## Endnotes

1. Petition for Writ of Certiorari, *Elane Photography, LLC v. Willock* (S. Ct., Nov. 8, 2013) (No. 13-585), <http://www.adfmedia.org/files/ElanePhotoCertPetition.pdf> (accessed December 18, 2013).
2. *Ibid.*, p. 4.
3. *Ibid.*
4. *Ibid.*
5. Brief in Chief of Petitioner Elane Photography, LLC, *Elane Photography, LLC v. Willock*, 309 P.3d 53 (N.M. 2013), p. 5.
6. Petition for Writ of Certiorari, p. 6 (internal citations omitted).
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*, pp. 6-7.
10. On December 19, 2013, the New Mexico Supreme Court redefined marriage in New Mexico to include same-sex marriage. News release, "NM Supreme Court redefines marriage," Alliance Defending Freedom, December 19, 2013, <http://www.adfmedia.org/News/PRDetail/?CID=72237> (accessed December 31, 2013).
11. Petition for Writ of Certiorari, pp. 5-7.
12. Brief in Chief of Petitioner, p. 6.
13. Petition for Writ of Certiorari, p. 7.
14. For a description of the proceedings, see Brief in Chief of Petitioner, pp. 8-9, and Petition for Writ of Certiorari, pp. 8-11.
15. Petition for Writ of Certiorari, pp. 7-8.
16. *Ibid.*, p. 7.
17. *Elane Photography, LLC v. Willock*.
18. Petition for Writ of Certiorari, p. i.
19. Thomas M. Messner, "Reconciling Non-Discrimination Principles with Civil Liberties," public comment submitted to the U.S. Commission on Civil Rights, April 21, 2013, <http://www.heritage.org/research/testimony/2013/06/reconciling-non-discrimination-principles-with-civil-liberties>.
20. Edward Whelan, "Non-Discrimination Principles Versus Civil Liberties," testimony before the U.S. Commission on Civil Rights, March 1, 2013, <http://www.eppc.org/publication/non-discrimination-principles-versus-civil-liberties/> (accessed November 20, 2013).
21. Thomas M. Messner, "Same-Sex Marriage and Threats to Religious Freedom: How Nondiscrimination Laws Factor In," Heritage Foundation *Backgrounder* No. 2589, July 29, 2011, <http://www.heritage.org/research/reports/2011/07/same-sex-marriage-and-threats-to-religious-freedom-how-nondiscrimination-laws-factor-in>.