



## ***U.S. SUPREME COURT SNAPSHOT***

### ***Elane Photography v. Willock***

#### **Case Summary**

Alliance Defending Freedom attorneys represent Elane Photography and its owners Jonathan and Elaine Huguenin. In 2006, Elaine received an e-mail from Vanessa Willock asking Elaine to photograph a “commitment ceremony” between Willock and her same-sex partner. Willock asked if Elaine would be “open to helping us *celebrate our day....*” Elaine politely declined to use her artistic talents to express a celebratory message at odds with her deep convictions. Elaine had previously declined requests from others for things such as nude maternity photos. Willock easily found a lower-priced photographer and was satisfied with the photographs. Nevertheless, Willock, a licensed attorney who has served in various paid “diversity” positions, filed a complaint with the New Mexico Human Rights Commission. After a one-day administrative trial in 2008, the commission ruled against the Huguenins and ordered them to pay \$6,637.94 in attorneys’ fees. The case made its way through the state court system, with the New Mexico Supreme Court ultimately affirming the commission’s coercive decision. In an ominous concurring opinion, one justice wrote that the Huguenins “now are compelled by law to compromise the very religious beliefs that inspire their lives,” adding “**it is the price of citizenship.**”

#### **Case Status**

Alliance Defending Freedom appealed in November 2013 to the U.S. Supreme Court and is awaiting a decision on whether the court will hear the case.

#### **What Alliance Defending Freedom IS arguing**

*“At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression.” – U.S. Supreme Court (2013)*

Alliance Defending Freedom is presenting only one claim to the U.S. Supreme Court—that the punishment of Elane Photography violates the constitutionally protected freedom “not to speak,” known as the **compelled speech doctrine**. *The government must not be empowered to either censor peaceful speech or force citizens into speaking against their will.* The [question presented](#) to the Supreme Court reads as follows: “Whether applying a state public-accommodations statute to require a photographer to create expressive images and picture-books conveying messages that conflict with her religious beliefs violates the First Amendment’s ban on compelled speech.”

The commitment ceremony of the two women was filled with expression: the liturgy, the sermon and prayers, the music, the vows, etc. Photography communicates stories and messages through its images. Wedding photography is part of the celebration of the ceremony. Vanessa Willock affirms this, having asked Elaine Huguenin to “celebrate” the event. Wedding photographers have to use the best lighting, choose the right angles, and pose the couple—including instructing them on how to kiss, where to caress, etc.—all for the purpose of communicating through art something of beauty about the momentous event. Elaine politely declined because she cannot use her artistic expression to celebrate events and communicate ideas about marriage with which she disagrees.

Elane Photography has asked the Supreme Court to reverse the ruling of the New Mexico Supreme Court and rule that the application of New Mexico's public accommodations law in this context violates the First Amendment's protections against government compelled speech.

### **What Alliance Defending Freedom IS NOT arguing**

This case has nothing to do with *the people* asking Elaine to create art on their behalf. It is a matter of *the message* she was being asked to communicate and the event she was being asked to participate in and, indeed, "*celebrate*."

Elane Photography is not raising any religious liberty issues with the Supreme Court, only compelled speech. Elane Photography argued in the state courts that the New Mexico Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause of the First Amendment protect her freedom of conscience. However, the U.S. Supreme Court has no jurisdiction to hear a case about the interpretation of a state statute, like the New Mexico RFRA. Elane Photography has also elected not to pursue a free exercise claim. The federal Religious Freedom Restoration Act does not apply to this case because no federal laws or federal governmental agencies are involved.

Therefore, the case brings only the compelled speech issue to the Supreme Court. Jon and Elaine Huguenin do base their beliefs about the definition of marriage on religion, but the Supreme Court has ruled that *the Free Speech Clause protects every American, including people of faith, from being forced to express ideas with which they disagree*.

### **Sample of Authorities** ([complete list](#), pp. iv-xi)

[West Virginia Board of Education v. Barnette](#) (1943): The U.S. Supreme Court ruled that a public school violated the First Amendment's prohibition of compelled speech when school officials punished students who declined to say the Pledge of Allegiance and salute the American flag in class because of their Jehovah's Witnesses religious beliefs.

[Wootley v. Maynard](#) (1977): The U.S. Supreme Court ruled that the state "may not constitutionally require an individual to participate in the dissemination of an ideological message" and that it is inadmissible for the state to require "an individual...to be an instrument for advocating public adherence to an ideological point of view he finds unacceptable...."

### **Analogies**

- Should a pro-same-sex marriage PR agent be forced to publicize sermons on traditional marriage?
- Should a Democratic speech writer be forced to write speeches for Republicans?
- Should animal rights videographers be forced to make videos promoting Santeria animal sacrifice?
- Should a pro-life photographer be forced to shoot an event celebrating abortion?

### **Bottom line**

A Supreme Court decision in [Elane Photography v. Willock](#) will either uphold precedents affirming freedom from government-coerced speech, or it will expand state power to force Americans into communicating ideas and participating in events against their will.