

Christian Photogs Have New Argument to Pitch Supreme Court in Gay Wedding Case

When Vanessa Willock wanted an Albuquerque photographer to shoot her same-sex commitment ceremony in 2006, she contacted Elane Photography. The response came as a shock: Co-owner Elaine Huguenin said she only worked on “traditional weddings.”

“Are you saying that your company does not offer your photography services to same-sex couples?” Willock asked by e-mail.

“Yes, you are correct in saying we do not photograph same-sex weddings,” Huguenin responded.

Now 7 1/2 years after that e-mail exchange, the Supreme Court is considering whether to referee the dispute.

The photography case is viewed through the lens of same-sex marriage, but it also pits two constitutional rights against each other: freedom of speech and equal protection.

Willock and her partner, Misti Collinsworth, had no trouble finding another photographer for their September 2007 ceremony. Still, Willock filed a complaint against Elane Photography with the New Mexico Human Rights Commission, charging that the snub violated the state’s anti-discrimination law. Twenty other states have similar laws.

The commission and state courts agreed, ruling that the photo studio cannot discriminate on the basis of sexual orientation.

“They may ... post a disclaimer on their website or in their studio advertising that they oppose same-sex marriage,” the state Supreme Court wrote, “but that they comply with

applicable anti-discrimination laws.”

In asking the nation’s highest court to hear the case, Huguenin and her husband, Jonathan, dropped their religious freedom claim and are focusing solely on free speech – in this case, the freedom not to photograph same-sex ceremonies.

That sets the case apart from legislative efforts in some states to carve religious exemptions to anti-discrimination statutes. The Huguenins’ lawyers and supporters don’t contend that businesses such as restaurants and hotels can refuse to serve gays and lesbians. A measure that could have had that effect was vetoed in Arizona last month by Gov. Jan Brewer.

Their argument is that professionals whose work is by nature expressive – such as writers, advertisers and website designers – should not have to apply their artistic talents to subjects on which they disagree.

“Of particular relevance here is the Huguenins’ sincere religious belief that marriage is the union of a man and a woman,” their petition says. “They 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.”

Similar objections to gay marriage have been raised by bakeries in Colorado and Oregon, a florist in Washington state and an event location in New Jersey. Still, Jordan Lorence of Alliance Defending Freedom, which is representing the Huguenins, said, “These are not going to be unleashing the floodgates of discrimination.”

Willock’s attorney, University of Pennsylvania law professor Tobias Barrington Wolff, argues that even businesses with “an expressive dimension” must abide by regulations on commercial conduct.

“All are protected from laws that target the expressive

content of their goods and services, but none has a constitutional right to play by a different set of rules in the public marketplace,” he argues in his reply brief to the court.

The Supreme Court could refuse to hear the Huguenins’ case because there is no disagreement on the issue among federal appeals or state supreme courts.

Supporters of the photo studio cite past U.S. Supreme Court decisions – one that allowed St. Patrick’s Day parade organizers in Boston to exclude a gay rights group, and another that blocked New Hampshire from requiring residents to display its “Live Free or Die” motto on their license plates.

James Gottry, a lawyer for 18 wedding photographers supporting the Huguenins, says they object to compelled speech – what he calls “the right to insist that all businesses provide all services to all people, regardless of whether those services are expressive.”

Eight states that support the photo studio are urging the court to take the case and give guidance to state legislators across the country “who are considering proposals to enact conscience-based exceptions to public-accommodations and same-sex marriage laws.”

“New Mexico really is out on a limb by itself with respect to how it has applied its anti-discrimination law in this particular case,” says Andrew Brasher, Alabama’s solicitor general. “It would help everyone if we knew what the baseline rules are.”