



Written by [R. Cort Kirkwood](#) on June 6, 2012

## New Mexico Court: Christian Business Owners Have No Rights

Organized homosexuality has prevailed again, this time with the help of a court in New Mexico. It has told a Christian photographer that she trespassed state law when she refused to photograph two lesbians at their “commitment ceremony.”

Judge [Timothy Garcia](#) of the state’s court of appeals upheld a ruling by New Mexico’s Civil Rights Commission that fined the owners of Elane Photography nearly \$7,000 for its refusal to accept business from the two women.



Garcia’s ruling essentially says that “gay rights” trump the religious rights of every employer and business in the state.

### The Case

The trouble began for Elaine and John Huguenin, owners of Elane’s Photography, in 2008 when Vanessa Willock inquired about hiring Mrs. Huguenin to photograph her “commitment ceremony” to her lesbian partner. New Mexico does not allow homosexual marriage.

As the court [described it](#), Huguenin was civil in her answer: “Elane Photography quickly responded, thanking Willock for her interest but explaining that Elane Photography photographs ‘traditional weddings,’ ” the court wrote.

Unsure what Elane Photography meant by “traditional weddings,” Willock sent a second email asking Elane Photography to clarify whether it “does not offer [its] photography services to same-sex couples.” Elane Photography responded affirmatively, stating, “[y]es, you are correct in saying we do not photograph same-sex weddings,” and again thanked Willock for her interest in Elane Photography.

Of course, Willock knew exactly what Mrs. Huguenin meant by “traditional weddings,” so the angry woman then, apparently, importuned her lesbian partner to set the photographer up for the discrimination claim.

According to the court, “Partner, without disclosing her same-sex relationship with Willock, sent an email to Elane Photography the next day.”

The email mentioned that Partner was getting married but did not specify whether the marriage was same-sex or “traditional.” Partner also asked Elane Photography whether it would be willing to travel for a wedding. Elane Photography responded that it would be willing to travel and included pricing information. Elane Photography also offered to meet with Partner to discuss options. When Elane Photography did not hear back from Partner, it sent a follow-up email to determine if Partner had any questions about the offered services.

You know what happened next.



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The lesbian partners accused the Huguenins of “discrimination,” a violation of the state’s human rights law. They hurried down to the New Mexico Human Rights Commission with their brief. As expected, that august body of solons [decided that](#) the Huguenins did indeed run afoul of state law, fining the couple \$6,637.94.

The Huguenins, to their credit, [appealed with](#) the help of the [Alliance Defense Fund](#), which defends Christians from the insanity of the radical left; in this case, two lesbians who believe their right to be photographed trumps the right of the photographers to refuse business that conflicts with their religious beliefs.

The Huguenins lost in district court, which led to the appeal they lost last week.

### **Decision from the Friends of Lesbians**

The court of appeals settled the matter on three grounds: that the photography business is a public accommodation that is not permitted to discriminate against a “protected class;” that the business discriminated against the pair because they were lesbians, and that the right to free expression and to practice their religion has no bearing on their photography business.

The case, as the court ruling shows, is a conflict between the state’s human rights law and the state’s protection of freedom of religion and expression. On a larger level, it is a front in the war against Christians.

The state’s leftist [human rights amendment forbids](#) “any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services ... to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation[,] or physical or mental handicap.”

Article II of the [state constitution says](#), “[e]very man shall be free to worship God according to the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.”

The court ruled that the lesbians were correct in arguing that the photography shop is a “public accommodation” because, as New Mexico law defines it, a photographer “provides or offers its services ... to the public, but does not include a[n] ... establishment that is by its nature and use distinctly private.”

After describing case law that created a highly expansive definition of “public accommodation,” the court wrote “that Elane Photography argues that these expanded definitions of public accommodations fail to take into account or distinguish the unique artistic nature of certain services, such as those offered by Elane Photography.”

However, Elane Photography avoids addressing the critical factor that a photography business does offer its goods or services to the general public as part of modern commercial activity. In response, Willock specifically emphasizes the numerous jurisdictions that have adopted a broad definition of “public accommodation” and have included businesses “providing services to the general public,” and have not recognized a special exception for nonessential, artistic or discretionary businesses.

Thus, the [court ruled](#), Elane’s photography is indeed a “public accommodation,” rather like a pay toilet. The court also ruled that the Huguenins discriminated against Willock because she finds romance with



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members of the same sex. The Huguenins argued that they did not discriminate against the women because they are lesbians, noting that they would have been happy to have Willock sit for a portrait. The court didn't buy that argument, either, stating:

Elane Photography claims there is no prima facie case of discrimination because it did not decline photography services to Willock because of her sexual orientation. Rather, Elane Photography "declined [Willock's] request because [Elane Photography] company policy and its owners' sincerely held religious and moral beliefs prohibit photographing images that convey the message that marriage can be defined other than the union of one man and one woman." Thus, Elane Photography argues that its refusal to photograph Willock in one context was not based on her sexual orientation because it would have photographed Willock in a variety of other contexts. "If, instead, for example, Willock had asked Elane Photography to take portrait photos, the[n Elane Photography] would have photographed her." Similarly, Elane Photography would photograph opposite-sex weddings between persons of any sexual orientation. Elane Photography simply could not photograph Willock in the "requested context of a same-sex commitment ceremony because of the message conveyed by that event and thus by their photography." This argument, however, attempts to justify impermissible discrimination by distinguishing Willock's participating in a same-sex commitment ceremony from her status as a member of a protected class and is without merit.

The Huguenins argued that forcing them to photograph lesbians would be like forcing a black photographer to photograph a Ku Klux Klan ceremony. The court rejected that obviously sensible argument by noting that Klansmen are not a "protected class."

Thus, the [court wrote](#), Willock had "met her burden" of proving the photographer discriminated wrongfully against a lesbian.

The court then had to decide whether the state's human rights law trespasses Huguenins' right to free expression under the New Mexico and U.S. Constitutions.

The court ruled that a commercial photographer isn't expressing anything, but merely taking a photographs. "By taking photographs, Elane Photography does not express its own message," the [court wrote](#).

Rather, Elane Photography serves as a conduit for its clients to memorialize their personal ceremony. Willock merely asked Elane Photography to take photographs, not to disseminate any message of acceptance or tolerance on behalf of the gay community.

While state law forces the Huguenins to do business with lesbians, [the court ruled](#), it does not force them "to endorse any message or modify its own speech in any way. Rather, the NMHRA requires Elane Photography merely to offer its photography services without discrimination against any member of a protected class. As such, the NMHRA is a neutral regulation of commercial conduct and does not infringe upon freedom of speech or compel unwanted expression, and we affirm the district court."

Likewise, the court ruled against the Huguenins' claim that the lower court's ruling trespassed their religious rights, writing that New Mexico's human rights law does not conflict with the state's protection of unimpeded religious worship. The human rights law, the court wrote, "only mandates that Elane Photography not use its personal religious beliefs to circumvent laws of general applicability that proscribe discrimination in commerce."

This does not deny Elane Photography the right to express its religious opinion. The owners are



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free to express their religious beliefs and tell Willock or anyone else what they think about same-sex relationships and same-sex ceremonies. However ... Elane Photography may not discriminate in its commercial activities against protected classes as the basis for expressing its religious opinion.

[According to](#) World Net Daily, the Huguenins will appeal to the state's supreme court.

*Photo: New Mexico's Court of Appeals*



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