

The *Bob Updegrove* Case

Case Name: *Updegrove v. Herring*

Case Action: Filed in federal court on September 28, 2020.

Significance: Whether artists are free to choose the messages they promote.

Background:

Bob Updegrove is a Virginia-based photographer and the owner of a photography studio, Bob Updegrove Photography. As part of his business, Bob creates unique art to promote messages consistent with his convictions, including his convictions about marriage. But he does not create photographs that contradict his beliefs, such as photographs that celebrate weddings between anyone other than one man and one woman. Virginia, however, recently passed a new law, the so-called Virginia Values Act, that forces Bob to create photographs celebrating same-sex weddings or stop his wedding business altogether. The law also forbids Bob from publicly explaining on his business' own website his religious reasons for only creating artwork consistent with his beliefs about marriage. And the law threatens Bob with court orders forcing him to create artwork contrary to his faith, damages, attorneys' fees, fines up to \$50,000 initially and \$100,000 per additional violation. All together, these penalties could easily bankrupt Bob. To avoid this result, Bob chose to challenge the law to ensure he could continue to operate his business consistent with his faith.



Key Points

- Bob serves all people, he just doesn't promote all messages.
- Bob's photography is broader than just weddings— he also captures photographs for churches, schools, businesses, conferences, families, and special events.
- Artists shouldn't be censored, fined, or forced out of business simply for disagreeing with the government's preferred views.

Key Facts

- The government must protect photographers' freedom to choose which messages to express.
- The Constitution and the Supreme Court have made clear—as recently as two years ago in *Masterpiece Cakeshop*—that the government cannot treat some people worse than others based on religion. It's clear that's what is happening here.
- Americans have the right to challenge unjust laws.

This is like punishing...

- ...an LGBT filmmaker for not creating a film against same-sex marriage for a church.
- ...a Muslim print shop owner for not designing a Jewish synagogue's flyer criticizing Islam.
- ...a pro-choice graphic designer for not creating art for a pro-life organization.
- ...a Democratic speech writer for not creating campaign speeches for Republican politicians.

The Bottom Line: Artists should be free to choose the messages they promote.