

Court Denial of Kim Davis' Religious Freedom Sets Up Supreme Court Issue

U.S. District Court Judge David Bunning denied the motion for summary judgment filed by former Rowan County, Kentucky Clerk Kim Davis and granted the motion for summary judgment of the plaintiffs in the cases of *Ermold v. Davis* and *Yates v. Davis*. Liberty Counsel represents Davis and will continue to argue that she is not liable for damages because she was entitled to a religious accommodation (which Gov. Mat Bevin and the legislature granted).

In 2016, Bunning dismissed all three 2015 marriage license lawsuits against her. In 2017, Bunning ruled that neither Kim Davis nor Rowan County were liable for attorney's fees over the marriage license issue that began in 2015. In 2019, the 6th Circuit Court of Appeals issued two opinions in reversing and remanding the cases for further consideration. The cases of *Ermold v. Davis*, *Yates v. Davis* and *Miller v. Davis* center on whether the plaintiffs are entitled to attorney fees and/or damages, and, if so, whether the Commonwealth, Rowan County or Davis is liable for payment.

In the *Miller* appeal, the 6th Circuit ruled that the Commonwealth of Kentucky is liable for attorney's fees, not the county nor Kim Davis. In the *Ermold* appeal, the court agrees with lower court Judge Bunning—that Davis in her official capacity has sovereign immunity because she acted for the state (not the county). However, the court ruled that Davis has no qualified immunity as an individual. The court noted that the case is at a very “early” stage and that no discovery has been conducted on this issue.

When Bevin took office in December 2015, he immediately issued

an executive order accommodating all Kentucky clerks who refused to issue marriage licenses that conflict with their religious beliefs. Then in 2016, the Kentucky General Assembly unanimously passed legislation that provided accommodation for clerks who object to issuing marriage licenses for same-sex ceremonies.

In fact, 1) Kentucky has a history of accommodating clerks who chose to opt out of issuing hunting and fishing licenses; 2) Beshear accommodated the religious and conscientious objection of his attorney general who requested to opt out of defending the marriage law; 3) Bevin accommodated Kim Davis and other clerks the first week he took office; and 4) the Kentucky General Assembly unanimously passed a law accommodating all clerks with religious objections by permitting them to opt out of issuing such licenses. Therefore, Beshear's refusal to accommodate Davis violated her First Amendment free exercise rights.

When Davis petitioned the Supreme Court for review in 2020, the high court denied review in which the only issue raised was sovereign immunity. However, Justices Thomas and Alito appeared to invite future challenges to the 2015 *Obergefell* marriage case. Thomas, joined by Alito, wrote that "[t]his petition implicates important questions about the scope of our decision in *Obergefell*, but it does not cleanly present them."

In granting summary judgment for the plaintiffs, Bunning ruled that Davis violated "clearly established" law when she ceased issuing all marriage licenses. The case will now proceed to trial on the issue of damages, if any. Davis argues that a finding of liability would violate the First Amendment Free Exercise of Religion.

This case now clearly presents the free exercise defense and thus could return to the Supreme Court.

Liberty Counsel founder and Chairman Mat Staver said, "Kim

Davis is entitled to protection to an accommodation based on her sincere religious belief. This case raises serious First Amendment free exercise of religion claims and has a high potential of reaching the Supreme Court.” {eo}

This article originally appeared at .

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