

Kim Davis Vies for Religious Freedom in Appeals Court

Liberty Counsel filed its opening brief in the appeal to the Sixth Circuit Court of Appeals on behalf of former Rowan County, Kentucky, Clerk Kim Davis. Davis was denied the motion for summary judgment by U.S. District Court Judge David Bunning in the cases of *Ermold v. Davis* and *Yates v. Davis*. Liberty Counsel argues that Davis is not liable for damages because she was entitled to a religious accommodation (which Gov. Matt Bevin and the legislature unanimously granted) from issuing marriage licenses that conflict with her religious beliefs.

Davis is a professing Christian who possesses a sincerely held religious belief and conviction, based on the Bible, which she believes to be the Word of God, that “marriage” is exclusively a union between one man and one woman. According to her beliefs, there is no union other than one man and one woman that is or can be called “marriage.”

As a result, when the two same-sex couple plaintiffs insisted that Davis sign their “marriage” license, Davis could neither authorize nor approve the “marriage” according to her conscience and sincerely held religious beliefs. Having received no accommodation from Gov. Steve Beshear or the legislature, on June 27, 2015, Davis discontinued issuing all marriage licenses because of her sincere religious beliefs. However, she never stopped any person from obtaining a marriage license from any other county clerk or official.

In granting summary judgment for the plaintiffs, Judge Bunning ruled that Davis violated “clearly established” law when she ceased issuing all marriage licenses. Davis argues that a finding of liability would violate the First Amendment Free Exercise of Religion Clause. In addition, Davis is entitled to

qualified immunity from the plaintiffs' claims because the accommodation of Davis' free exercise rights did not violate the plaintiffs' constitutional right to marry. Therefore, Gov. Beshear's refusal to accommodate Kim Davis violated her First Amendment free exercise rights.

When Gov. Matt 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 April 2016, the Kentucky General Assembly unanimously passed legislation that provided accommodation for clerks who object to issuing marriage licenses that conflict with their religious beliefs.

Former Gov. Steve Beshear previously granted a religious and conscience accommodation to his Attorney General who refused to defend the marriage law. But when Kim Davis requested an accommodation, he refused. Davis wanted to opt out of issuing marriage licenses or have her name and title removed from the certificate. After the lawsuit, the plaintiffs returned to Rowan County, where a clerk removed Davis' name and issued a license. Beshear retroactively approved the license, stating it was valid. If he had granted the same accommodation when Davis requested it, there would have been no lawsuit.

In Kentucky, applicants can go to any authorized location to obtain a marriage license. In fact, one of the plaintiffs in this case traveled two hours to work each day, yet he refused to travel an additional five minutes from his residence to the nearest adjacent county to obtain the license. That does not present a burden to obtain a license. He clearly only wanted to obtain his license from the Rowan County office with Davis' signature on it.

Kentucky law already permitted clerks to opt out of issuing hunting and fishing licenses. A few months after Beshear refused to provide reasonable accommodation, Gov. Matt Bevin did, and this accommodation was codified by the Kentucky

General Assembly.

Liberty Counsel Founder and Chairman Mat Staver said, “The First Amendment required then Gov. Steve Beshear to accommodate the sincere religious beliefs of Kim Davis. She is not liable for damages because she was entitled to a religious accommodation based on her sincerely held religious beliefs about marriage.” {eo}

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