

Stage is Set for Supreme Court to Overturn Same-Sex Marriage

A former county clerk in Kentucky who was at the eye of the storm in 2015 after the U.S. Supreme Court legalized gay marriage is asking the court to hear an appeal in a case in which she is seeking have the decision reversed.

Shortly after the Obergefell v. Hodges decision in 2015, Kim Davis refused to issue a marriage license to a gay couple, reflecting her belief that gay marriage violated her religious principles. She eventually served five days in jail for contempt after refusing to abide by a court order to issue the license.

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She was ultimately sued and ordered to pay \$50,000, a verdict she has fought in the courts, most recently losing her appeal in the U.S. Court of Appeals for the 6th Circuit, according to scotusblog.

On Nov. 7, the court is scheduled to consider Davis's request to have the court hear her appeal. Scotusblog noted that, "As a general practice, the court does not grant review without considering a case at at least two consecutive conferences; this is the first conference in which Davis' challenge will be considered. If the justices deny review, however, that announcement could come as soon as Monday, Nov. 10."

As part of her appeal of the decision against her, Davis wants Obergefell reversed, saying the so-called right to same-sex marriage "had no basis in the Constitution" and left her "with a choice between her religious beliefs and her job."

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“If ever there was a case of exceptional importance, the first individual in the Republic’s history who was jailed for following her religious convictions regarding the historic definition of marriage, this should be it,” she wrote.

The couple who sued Davis opposes having the court consider her case.

“Whether the court will grant review boils down to whether there are four votes to take up the question,” [scotusblog](#) wrote

“Moreover, even if there are four justices who might be inclined to do so, they won’t want to grant review unless they are confident that there is a fifth vote to overturn *Obergefell*,” the blog post continued.

Of the current court members, Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito were on the court in 2015 and opposed the ruling. Justices Sonia Sotomayor and Elena Kagan are the only two members of the majority still on the court.

In 2020, the court rejected a similar appeal from Davis to hear her case.

Thomas and Alito slammed the 2015 decision, saying it “enables courts and governments to brand religious adherents who believe that marriage is between one man and one woman as bigots, making their religious liberty concerns that much easier to dismiss,” according to NPR.

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“Davis may have been one of the first victims of this court’s cavalier treatment of religion in its Obergefell decision,” Thomas and Alito wrote. They did not argue in favor of the appeal at the time.

However, they did say the case “provides a stark reminder” that the decision to support “a novel constitutional right over the religious liberty interests explicitly protected in the First Amendment, and by doing so undemocratically, the court has created a problem that only it can fix.”

“Until then, Obergefell will continue to have ruinous consequences for religious liberty,” they wrote.

Justice Amy Coney Barrett has indicated she does not approve of the Obergefell decision, NPR reported.

The case is Davis v. Ermold.

This article originally appeared on The Western Journal, and is reposted with permission.