

Why Kim Davis is being sued to pay gay, straight couples' legal fees

Kim Davis, a Kentucky county clerk who refused to issue marriage licenses because of her religious beliefs, is being asked by those couples to pay the legal fees for the court proceedings that followed.

By David Iaconangelo, Staff | NOVEMBER 4, 2016

For Kim Davis and the couples who sued her, the loftier battles over individual freedom have been settled, at least temporarily. Now someone just has to pick up the check.

Ms. Davis, a Kentucky county clerk, first made national headlines in August 2015 for refusing to issue marriage licenses to gay couples based on her religious objections to gay marriage. US District Judge David Bunning eventually ruled her beliefs should have no impact on her official role as a government notary and ordered her to immediately start issuing the paperwork. But Davis continued to turn away gay couples, and eventually heterosexual couples, to express her opposition to the Supreme Court ruling that legalized gay marriage.



Kim Davis addresses the media just before the doors are opened to the Rowan County Clerk's Office in Morehead, Kentucky, Sept. 14, 2015. (Chris Tilley/Reuters)

The plaintiffs, who were refused marriage licenses in the original case, are seeking legal fees from Ms. Davis, asking Judge Bunning for an order to recoup some \$233,058 in costs.

The decision may hinge on which of the two sides could be said to have "won" the original dispute: Davis, who spent five days in jail on contempt of court charges, or the four couples (two same-sex, two heterosexual couples), who saw their case dismissed in August after the Kentucky legislature passed a law on the matter.

"Courts recognize that when successful civil rights plaintiffs obtain a direct benefit from a court-ordered victory, such as in this case, they can be entitled to their legal expenses to deter future civil rights violations by government officials," William Sharp, a legal director of the Kentucky ACLU who is representing one of the couples, told The Lexington Herald-Leader in a prepared statement.

Davis, represented by lawyers from the religious advocacy group Liberty Counsel, argues that the couples couldn't be said to have won the case, since the legislature resolved the conflict.

The latest litigation moves the case into grayer terrain than the initial conflict, which for many embodied a classic kind of moral conflict between differing notions of freedom. Scholars say the aftershocks are already being felt.

M. Christian Green, a senior fellow at Emory University's Center for the Study of Law and Religion, who has been working on a multivolume treatise on religious organizations and law, tells The Christian Science Monitor that "the whole area of individual conscience claims" has been growing in recent years – both for organizations claiming exemptions on religious grounds as well as for individuals, especially public employees.

"We realized that in addition to these corporate claims – 'We're a religious business and have religious freedom rights' – there was a renewal of individual conscience claims coming out," she says. "That's what Kim Davis was really doing.... How are we going to adjudicate everyone's conscience, if they're public employees?"

The outpouring responds mainly to two Supreme Court decisions: the so-called Hobby Lobby decision in 2014 exempting corporations from the obligation to pay for contraceptives if they claim religious grounds, and the 2015 ruling that legalized gay marriage. In coming months, the court will decide whether to take up another case that sits at the intersection of religious freedom and LGBT rights: that of a Colorado florist, baker, and T-shirt designer who were sued by gay couples for refusing them services on the grounds of religious opposition.

In 2015 as the case played out, Davis had remained steadfast in denying two gay couples and two heterosexual couples a license, invoking "God's authority" even as the Supreme Court refused to hear her appeal, turning her into an unlikely religious hero for the conservative Christian right.

"So far, four couples, including [David] Ermold and [David] Moore, have sued her," reported the Monitor at the time. "They claim that as an elected official, she must uphold her duties regardless of personal faith. In a ruling last month, which Davis appealed, US District Judge David Bunning wrote that the clerk 'has arguably [violated the First Amendment] by openly adopting a policy that promotes her own religious convictions at the expense of others.' "

The Kentucky legislation that ultimately led to the resolution of the case created a single marriage license for both heterosexual and gay couples, and allowed the deputy clerk to take the place of the county clerk in signing off on licenses, meaning that Davis would not have to personally endorse them. She later removed her name from licenses she had already granted.

Republican state senator Stephen West, who sponsored the bill, told the Courier-Journal in February that it addressed Davis's concerns, calling it "a reasonable accommodation to our clerks who do not wish to sign a license because of sincerely held religious beliefs."