

Supreme Court poised to revisit and potentially overturn marriage equality

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Nearly a decade after her 2015 refusal to issue marriage licenses to same-sex couples, former Rowan County, Kentucky clerk Kim Davis has filed a petition for a writ of certiorari with the U.S. Supreme Court. The petition seeks to overturn a lower court ruling requiring her to pay \$360,000 in damages and attorney's fees and, more broadly, calls for the Court to overturn *Obergefell v. Hodges*.

In *Obergefell* (June 26, 2015), the Supreme Court held that the fundamental right to marry applies to same-sex couples under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. This decision invalidated state bans on same-sex marriage and established marriage equality nationwide. Following that ruling, Davis, then county clerk, refused to issue marriage licenses to same-sex couples and was briefly jailed for defying a court order to comply with the high court ruling.

Davis contends that the First Amendment's Free Exercise Clause should shield her from personal liability for denying marriage licenses based on her religious beliefs, particularly since the lawsuit for damages was filed against her in her individual capacity.

The Free Exercise Clause protects the right of Americans to practice or abstain from religious acts according to sincerely held theistic or non-theistic beliefs, as reinforced by the Religious Freedom Restoration Act (RFRA). RFRA requires that any government action substantially burdening religious exercise must meet a compelling interest using the least restrictive means.

The Establishment Clause, by contrast, bars the government from creating, endorsing, or coercing adherence to any religion, functioning as a safeguard against theocracy and applying to states via the Fourteenth Amendment. It ensures institutional separation between church and state and shields religious minorities from government pressure.

Together, the two clauses were conceived to maintain

governmental neutrality: the Establishment Clause prevents official support for religion, while the Free Exercise Clause protects individual practice. This permits accommodations that relieve burdens on religious exercise without improperly promoting religion.

Davis's petition couches her demand in the language of "religious liberty," claiming that the First Amendment shields her from the obligation to follow laws that conflict with her personal religious beliefs. But Davis was acting as a public official and explicitly invoking "God's authority" to deny a state service, which directly implicates the Establishment Clause. Her actions were an attempt to impose her religious views using the machinery of the state.

This is not merely an exercise of personal faith; it is an assertion of religious authority within a government office, which directly violates the principle of governmental neutrality.

Far more significant than Davis's personal grievances is her request that the Court declare that *Obergefell* was "wrongly decided." If granted, it would open the floodgates for state governments to deny marriage licenses to same-sex couples. At least nine Republican-controlled states have already passed "trigger laws" designed to go into immediate effect upon *Obergefell's* reversal, banning same-sex marriage within their borders.

The immediate implications would be substantial. Roughly 700,000 same-sex couples are currently married in the United States. Overnight, couples in large swaths of the country could see their marriages rendered void or unrecognized by their home states.

This would jeopardize a vast range of federal and state-based rights tied to marital status—including inheritance, joint adoption, parental rights, hospital visitation, tax benefits, and crucially, immigration status for binational couples. Many could face the forced separation of families, eviction from spousal health insurance plans,

and the loss of legal protections in child custody disputes.

More fundamentally, a ruling in Davis's favor, although unlikely according to most legal experts, would compromise the secular foundation of the state in favor of religious supremacy.

The attack on *Obergefell* is part of the same reactionary drive that culminated in the Supreme Court's 2022 *Dobbs v. Jackson* decision overturning *Roe v. Wade*. In that case, fundamental rights were stripped away by an unelected body acting as the political instrument of a capitalist oligarchy that increasingly dispenses with even the limited democratic protections of the past. As for anti-abortion "trigger laws," they went into effect upon the overturning of *Roe v. Wade*.

Like *Roe*, *Obergefell* rests on the Fourteenth Amendment's guarantees of equal protection and due process. Those same principles were the basis of *Loving v. Virginia* (1967), which struck down state bans on interracial marriage. Justice Clarence Thomas has already signaled in concurring opinions that he regards *Obergefell*—and by extension *Loving*—as wrongly decided, laying the groundwork for a frontal assault on both.

This is not merely a "social" or "cultural" issue. The assault on the rights of LGBTQ+ people is inseparable from a broader attack on the working class as a whole. The ruling class targets the most vulnerable layers first, testing methods of repression, creating legal precedents for the restriction of rights, and whipping up reactionary constituencies to divide workers along lines of sexuality, race, gender, and nationality.

The WSWS warned in 2015 that the Davis case was used by reactionary forces as a way to drum up support from the Religious Right and that it was part of an attack on other fundamental rights. Reactionaries misuse the language of democratic rights as a way to restrict the rights of others, leading directly to the extreme Orwellian phrases echoed by today's fascistic Trump regime.

Freedoms and rights fought for during the First American Revolution in 1776 and the Second American Revolution during the Civil War are all under attack. Now, as social inequality becomes increasingly incompatible with democratic rule, the same capitalist state that now threatens to eliminate marriage equality is simultaneously assaulting other basic rights.

Freedom of speech is under direct attack, with bipartisan repression of student protests against the US-backed genocide in Gaza. Freedom of assembly is under attack with the bloodthirsty fascist spearheading Trump's

anti-immigrant campaign, Tom Homan, declaring that any citizen caught up in immigrant raids should understand that as a consequence of assembling with immigrants.

The Fourteenth Amendment is under extreme threat by Trump declaring that children born on American soil should not be afforded birthright citizenship. Rights held by people accused in the legal system are being broken down as immigrants are taken directly from the courtroom to the detention center with no way to challenge their kidnapping.

Religious obscurantism, deliberately cultivated by figures like Trump, is wielded as a political weapon to disorient and divide workers—despite the fact that these same forces are steeped in corruption and scandals, including their connections to Jeffrey Epstein's vast network of sexual abuse.

The Democrats have proven entirely unwilling to mount any serious defense of these rights. Under Biden, *Dobbs* was handed down without any meaningful resistance. The administration had months between the leaked opinion and the official ruling to mobilize public opposition or push legislation to codify abortion rights—yet did nothing.

Their only legislative response to the threat against *Obergefell* was the Respect for Marriage Act, a toothless measure that does not prevent states from banning same-sex marriage but merely requires them to recognize marriages performed elsewhere.

The defense of democratic rights—including the right of same-sex couples to marry—cannot be entrusted to the capitalist parties, both of which represent the interests of the financial oligarchy. Even when such rights are won, as in *Obergefell*, they remain precarious so long as the political system is controlled by the same class that tramples on them whenever it deems necessary.

The attack on marriage equality, like the attack on abortion rights, demonstrates that there is no constituency for the defense of democratic rights within the ruling class. Their preservation and expansion depend on the independent political mobilization of the working class in a struggle for socialism, against the capitalist system that breeds inequality, repression, and reaction.



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