



Written by [Bob Adelman](#) on January 29, 2024

Former County Clerk Seeks to Overturn Verdict Ordering Her to Pay Damages for “Hurt Feelings”

Liberty Counsel, the public-interest law firm that has been defending former Kentucky County Clerk Kim Davis for eight long years, [renewed its motion on Thursday](#) for the court to toss a prior jury’s award of \$50,000 each to the plaintiffs in a case against her. The motion held that there was no basis for such an award, and that the judge in the case was so biased that he wouldn’t allow anyone to be on the jury hearing the case who had any religious convictions on the matter.



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After the June 2015 Supreme Court ruling in *Obergefell v. Hodges* regarding same-sex “marriage,” the state of Kentucky acquiesced to the high court’s grievously flawed decision (as did every other state in the union) and ordered all county clerks to issue marriage licenses to same-sex couples.

Kim Davis, Rowan County clerk, felt her faith held her to a higher standard and refused to issue any marriage licenses with her name on them.

In September 2015, two same-sex couples sued Davis for damages for hurt feelings. In the first, *Yates v. Davis*, the jury found that no damages were justified. However, in the second, *Ermold v. Davis*, the jury awarded the plaintiffs \$50,000 each.

As Liberty Counsel explained:

The *Ermold v. Davis* case, along with a second case in *Yates v. Davis*, both involve a same-sex couple who sued Davis in 2015 following the Supreme Court’s *Obergefell v. Hodges* decision regarding “same-sex marriage.”

During the trial, two juries heard the same evidence and the same arguments in both cases.

The jury in the *Yates* case awarded zero damages because the evidence did not support the awarding of any damages. The plaintiffs in that case originally asked for \$300,000 in damages.

But, hearing the same evidence, the jury in *Ermold* (having been carefully sorted out by the judge on the basis of any religious convictions over the matter) awarded the two men \$50,000 each. In December, the judge expanded the financial damage award to include legal fees and expenses, bringing the total to nearly \$360,000.

Liberty Counsel wants the judge to toss the verdict. In its press release, the law firm explained:



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However, without any evidentiary support, the *Ermold* jury reached a verdict of \$50,000 for each plaintiff.

The evidence presented at trial simply does not support that verdict because there were no lost wages, and they presented no supporting testimony regarding emotional injury.

In short, one cannot claim damages for hurt feelings without providing evidentiary proof that there were real measurable damages caused by the actions of the county clerk.

From the motion:

Plaintiffs plainly bore the burden to present the jury with competent evidence.

Plaintiffs claimed \$50,000 each in damages. Yet, Plaintiffs presented the jury with nothing more than their own brief and conclusory testimony.

Plaintiffs presented no witnesses, provided no experts, relied on no medical, mental health, or economic professionals, and squandered the opportunity to present any documentary evidence of damages.

Instead, what Plaintiffs presented to the jury was only their own brief testimony that their individual feelings were hurt, that they felt humiliated, and—despite admitting they had no idea how to calculate damages—that \$50,000 was the arbitrary number they came up with for damages.

That is not how the burden of proof works, and this case should not have been given to the jury.

One of the plaintiffs, David Moore, was pressed by attorneys with Liberty Counsel to explain just how he came up with the figure of \$50,000 in damages. He responded:

I don't know what the value is. That's up to the jury to decide. It's up to other people to decide what the value is. I don't know.

Maybe it has no value. I don't know.

When Liberty Counsel announced in early January that it would file a new motion, it affirmed that the judge should never have let the case go to the jury for another reason:

The *Ermold* case should never have gone to the jury.

Judge [David] Bunning ... improperly allowed questions concerning whether any potential juror had religious or moral objections to "same-sex marriage."

The judge overruled Liberty Counsel's objection, and that permitted the plaintiffs to exclude all jurors that have religious beliefs and those who had objections to "same-sex marriage."

That question essentially excluded jurors based on religion, which is unlawful under current legal precedent and federal law.

Liberty Counsel is expecting the present motion to be denied, giving the firm the opportunity to appeal.



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If that appeal is denied, then the firm is prepared to appeal the case to the Supreme Court. In fact, if truth be known, attorneys for Liberty Counsel are hoping that the high court will take the case on appeal and, in the process, revisit the underlying faulty decision rendered in June 2015 in *Obergefell v. Hodges*. Said Liberty Counsel's founder and chairman, Mat Staver:

There is no evidence to support the verdict.

Today, because of Kim Davis, every clerk in Kentucky now has the freedom to serve as an elected official without compromising their religious convictions and conscience.

This case has the potential to extend the same religious freedom protections beyond Kentucky and to overturn *Obergefell v. Hodges*, which was wrongly decided and should be overturned.

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