

No. 25-125

In the Supreme Court of the United States

KIM DAVIS, PETITIONER

v.

DAVID ERMOLD, ET AL., RESPONDENTS

*On Petition for Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit*

**SUPPLEMENTAL BRIEF
FOR THE PETITIONER**

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Petitioner submits this supplemental brief under Rule 15.8 to address a significant development that emphasizes the importance of the questions presented and the need for this Court’s review.

1. On October 24, 2025, the Supreme Court of Texas unanimously adopted a proposed amendment to the Texas Code of Judicial Conduct providing that it is not a violation of the judicial canons “for a judge to publicly refrain from performing a wedding ceremony based upon a sincerely held religious belief.” Order Adopting Comment to Canon 4 of the Tex. Code of Jud. Conduct, Misc. Docket No. 25-9082 (Tex. Oct. 24, 2025).

The adopted amendment appears to respond to the Fifth Circuit’s certification to the Supreme Court of Texas the question of whether the State’s judicial canon requiring state judges to conduct their extra-judicial activities in a manner that did not call into

question their impartiality prohibited judges from publicly refusing to perform same-sex weddings for moral or religious reasons while continuing to perform opposite-sex weddings. See *Umphress v. Hall*, 133 F.4th 455 (5th Cir. 2025).

This development—occurring just two weeks before this Court’s scheduled conference on this petition—is a concrete example of a State attempting to reconcile this Court’s decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015), with the First Amendment’s religious-liberty protections for public officials. And it highlights that the tension between the two remains active, unsettled, and consequential.

2. The Texas Supreme Court’s unanimous order reflects the judgment of a State’s highest court that public officials may decline to engage in certain state action because of their sincerely held religious beliefs without compromising their impartiality—and without being subject to discipline.

That approach differs sharply from the decision below, which held that a public official sued under 42 U.S.C. §1983 for refusing to carry out a religiously objectionable state action actions may not invoke the First Amendment as a defense. Pet. App. 10a–14a.

Under that reasoning, First Amendment protections for officials who seek to refrain from personally facilitating same-sex marriages are categorically unavailable. The Texas approach, by contrast, presumes that public officials do not forfeit their religious-exercise protections by virtue of their authority and ability to engage in state action.

3. These divergent approaches demonstrate ongoing disagreement about the interaction between *Obergefell* and the First Amendment. Without this

Court's review, the First Amendment's protections for public officials with sincerely held religious beliefs will continue to vary by jurisdiction. This case provides a suitable vehicle to establish the clear guidance that lower courts and government officials currently lack.

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For the foregoing reasons, and for those previously stated, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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NOVEMBER 2025