



Written by [Brian Farmer](#) on December 21, 2016

Published in the December 21, 2015 issue of [the New American](#) magazine. Vol. 31, No. 24

## A Right to Refuse Marriage Licenses

As the county clerk for Rowan County, Kentucky, Kim Davis made the national news by defying a federal court order that she must issue marriage licenses to homosexuals, following the U.S. Supreme Court's decision in *Obergefell v. Hodges*. Regarding that case, on June 26, 2015, the Supreme Court ruled that the right to marry is guaranteed to same-sex couples by the 14th Amendment, specifically, the "due process" and "equal protection" clauses of Section 1.



AP Images

But when one studies the history of the 14th Amendment, including the debates in Congress during its creation, one discovers that its purpose was to grant citizenship to the newly freed slaves, so that they could enjoy the same rights as everyone else. It had nothing to do with same-sex "marriage." How could it? Throughout human history, marriage has always been understood to mean the union of a man and a woman, because that is the only way to bring children into the world. The Bible says in Genesis 1 that God created male and female, that in marriage they are to "be one flesh," and that they are to "be fruitful and multiply." Obviously, this could never be true of any homosexual relationship, which makes "same-sex marriage" the ultimate oxymoron.

When Kim Davis began refusing to issue marriage licenses, both to same-sex and to opposite-sex couples, four couples represented by the American Civil Liberties Union filed a lawsuit against Davis (*Miller v. Davis*). The U.S. District Court for the Eastern District of Kentucky ordered Davis to start issuing marriage licenses, including to same-sex couples. Her lawyers filed an application with the Supreme Court, in order to have the lower court's order put on hold while she pursued an appeal, but the application was denied. Davis continued to defy the court order and refused to issue marriage licenses, claiming that she was acting "under God's authority."

Despite what some might think, Davis was not out of line in stating that. Let us start with the fact that the Declaration of Independence declares that our rights come from God, when it states that all men "are endowed by their Creator with certain unalienable Rights." In other words, our rights do not come from the State. Do homosexuals have a God-given, unalienable right to marry? Given all of the warnings in the Bible about homosexuality, it should be intuitively obvious that they do not.

Davis was acting under the principle that the authority that an individual possesses in civil government is delegated authority, that this authority is delegated by God, and that such an individual must act in conformity with God's laws. Matthew Trewhella expounds on this principle in his book *The Doctrine of the Lesser Magistrates: A Proper Resistance to Tyranny and a Repudiation of Unlimited Obedience to Civil Government* (see the book review on page 31). Trewhella summarizes by stating:

The lesser magistrate doctrine reminds the higher authority that their authority is limited. No one who holds authority in civil government rules with autonomy. The authority they



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possess is delegated to them by God. Hence, all those in positions of authority stand accountable to God, and are to govern according to his rule.

A tyrant is defined as one who contravenes or impugns the law of God; assaults the person, property, or liberty of the citizens; or violates the Constitution.

And that brings us to the 10th Amendment of the Constitution, which states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Nowhere in the Constitution is the power granted to any branch of the federal government to change the institution of marriage.

Davis was eventually jailed for contempt of court, then released after five days. When she returned to work, she stated that she would not interfere with her deputies, who had begun issuing marriage licenses as directed by the court order.

It is worth noting that, when *Lawrence v. Texas* overturned anti-sodomy laws a decade ago, those who warned that the definition of marriage would be next to come under attack were dismissed as lunatics. But look at where we are today. If a Supreme Court decision can arbitrarily turn the institution of marriage on its head and declare that two men can marry, then why not three men, or four women, or one man and two women, etc.? There is now no compelling reason to forbid it, because it could be argued that to forbid it discriminates against those who want to have such an arrangement and deprives them of their 14th Amendment rights. Can I now marry my brother? Why not? There is a compelling reason why I cannot marry my sister, as inbreeding leads to a much higher risk of birth defects. But that doesn’t apply to my brother.

The Supreme Court’s ruling amounts to an absurdity, and it is disconcerting to see that it now has a godless majority.



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