



Written by [Steve Byas](#) on September 10, 2015

County Clerk Kim Davis Vows to “Keep on Pressing”

Rowan County, Kentucky, clerk Kim Davis (shown) was greeted by thousands of cheering supporters waving white crosses and singing “Amazing Grace” and “God Bless America” after her release from jail on Tuesday by U.S. District Judge David Bunning. The judge lifted his own contempt of court order against Davis, but warned he would send her back to jail should she interfere with the issuance of marriage licenses by her deputies.



As the famous song played from the Rocky III movie, *Eye of the Tiger*, Davis raised her arms, then wiped away tears as she told the throng, “I love you all so much. I just want to give God the glory. His people have rallied and you are strong people. We serve a living God who knows exactly where each and every one of us is. Just keep on pressing. Don’t let down. Because He is here and He’s worthy.”

Following the Supreme Court’s 5-4 ruling that the 14th Amendment required the states to recognize “marriages” between same-sex couples on an equal basis with heterosexual couples, Davis stopped issuing all marriage licenses. This led two homosexual and two heterosexual couples to sue her, and Judge Bunning then ordered Davis to issue the licenses.

Davis contends that same-sex marriage is a sin, and that it would also be a sin for her to issue a marriage license to a same-sex couple because the licenses are issued under her authority. “God’s moral law conflicts with my job duties,” she told Judge Bunning.

She made national news last Thursday for refusing to issue those licenses, and was subsequently jailed for contempt of court.

Mat Staver of Liberty Counsel, the Christian law firm representing Kim Davis, released a statement expressing pleasure at the judge’s decision to release Davis from jail. But he noted that she “can never recover the past ... days of her life spent in an isolated jail cell, where she was incarcerated like a common criminal because of her conscience and religious convictions.”

Not only has Davis endured incarceration for her stance on the same-sex marriage licenses, but opponents have called her a hypocrite, pointing out that she is on her fourth marriage, and also had two children outside of marriage. Not surprisingly, however, these critics have neglected to mention that all those actions occurred before her Christian conversion four years ago.

During her time in jail, five of her deputy clerks complied with the order and issued the licenses. A sixth deputy, Kim Davis’s son, Nathan, did not join with the other deputies in issuing the marriage licenses. Staver has contended that the licenses issued by her deputies are invalid, since they were issued without her authority as the elected clerk.

Former Arkansas Governor Mike Huckabee, and Senator Ted Cruz of Texas, both Republican presidential candidates, visited Davis in jail. Huckabee appeared with her at the rally following her release, offering to go to jail “in her place.” He added that Davis “has shown more courage than any politician I know. She not only said something, she was willing to put her life at risk.”



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Senator Cruz, however, was unable to join Huckabee on the stage in addressing the rally supporting Davis. According to the *New York Times*, when Cruz left the detention center, several journalists motioned for him to come forward, but an aide to Huckabee blocked his path. The *Times* reported that Cruz was “incredulous.” That left Huckabee alone to share the spotlight with Davis.

The refusal by Davis to issue marriage licenses to comply with the ruling of a federal judge has raised several legal and constitutional questions. Judge Bunning brushed aside her appeal to conscience. “Her good faith belief is simply not a viable defense,” he insisted. “I myself have genuinely held religious beliefs. But I took an oath. Mrs. Davis took an oath. Oaths mean things.”

Appearing on Fox News, criminal defense lawyer John Lauro agreed with Bunning’s position, asserting that a public official does not get to “pick and choose” which laws to obey.

Of course, Lauro did not apply this reasoning to decisions by President Obama to likewise “pick and choose” which laws to enforce. For example, the Defense of Marriage Act (DOMA) was passed by Congress in 1996 by an overwhelming margin, and signed by a Democratic president, Bill Clinton. Yet, Obama and his Justice Department opted to not carry out that law. He has also very publicly refused to enforce the nation’s immigration laws. Additionally, Obama has basically amended his own health care law by executive fiat.

Obama took an oath on January 20, 2009, and repeated it on January 20, 2013, when he said, “I, Barack Hussein Obama, do solemnly swear, that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

It is as much an obligation of the president of the United States as of a county clerk in Kentucky to make sure the laws are faithfully executed. Yet, despite his oath of office, Obama has repeatedly refused to follow the law or the Constitution. If ordered by a federal judge to follow the law in either of these cases, or the innumerable other times he has thumbed his nose at the Constitution, could Obama be jailed for contempt of court for refusal to do so?

In the case of Kim Davis, the oath that she took was to follow the law, and the constitutions of the state of Kentucky and of the United States. In 2004, 75 percent of the voters in Kentucky gave approval to adding a provision to the state’s constitution, making it unconstitutional for the state to recognize or perform a same-sex marriage. “Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky” is the wording of the state constitution of Kentucky, which clearly means that Davis was following her oath of office.

James Madison wrote that the powers of the government of the United States under the Constitution are “few and defined,” leaving most governmental decisions, including marriage laws, to the several states. The Constitution of the United States is explicit in who gets to make the law in the United States. Article I, Section 1 of the Constitution is unequivocal: “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.”

Giving all legislative powers to Congress (the legislative branch) would therefore leave no legislative power to either the president (the executive branch) or the courts (the judicial branch). Yet, Supreme Court decisions are regularly referred to as “the law of the land.” Thomas Jefferson expressed concern about the overreach of the federal judiciary in 1819, warning that to give “to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action



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but for the Legislature and Executive also in their spheres” makes “the Judiciary a despotic branch.” In effect, Jefferson warned, it would constitute “an oligarchy.”

When opponents of Kim Davis charge her with refusing to follow the law, or when Judge Bunning asserts that she “took an oath” to uphold the law, and has failed to do so by refusing to issue marriage licenses to same-sex couples, we must challenge that erroneous view. The oath that Davis took was to follow *the constitutions of the state of Kentucky and of the United States*. Her oath was not to follow blindly the opinions of five black-robed justices of the Supreme Court.

The five members of the Supreme Court decreed that it was unconstitutional for any state to refuse to issue a marriage license to a couple of the same sex. They claim to base this lawless decision on a twisted interpretation of the 14th Amendment; however, it is a ludicrous defiance of logic to believe that the Congress which originally enacted the 14th Amendment (and the states which ratified it) intended to take marriage laws out of the hands of the states, and create a national “right” to same-sex marriage.

When Congress passed the odious Sedition Act in 1798, in direct violation of the First Amendment’s protections of free speech and free press, Jefferson and Madison developed the doctrine of nullification. Under this formula, if the federal government failed to follow the Constitution, it was the right and the duty of state governments to nullify unconstitutional laws.

Kim Davis is following her oath of office in refusing to bend to the whim of a federal judge.

The larger question is, why is the sheriff of Rowan County not fulfilling his oath of office and standing by Davis? Why are the legislators and the governor of Kentucky not joining Davis in opposition to these lawless actions of the federal courts? For that matter, why do we not have governors in other states standing up in support of what Davis is doing? Why is Congress doing nothing to push back against this lawless Supreme Court?

Augustine of Hippo, the famous fifth century theologian and philosopher, declared, “An unjust law is no law at all.”

Certainly a so-called law that places a county clerk in jail to enforce a lawless decision of five members of the Supreme Court can qualify as “an unjust law.”

Photo of Kim Davis: AP Images

Steve Byas is a professor of history and government at Hillsdale Free Will Baptist College in Moore, Oklahoma. His new book, History’s Greatest Libels, challenges what he considers unfair attacks upon many individuals in history.



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