



Written by [Selwyn Duke](#) on August 14, 2015

Grassroots Nullification: Ky. Clerk Says “No” to Homosexual “Marriage” Licenses

The media don’t have much to say about “sanctuary cities,” which defy constitutional federal immigration law. But when the matter is a moral-sanctuary locality or bureaucracy that defies the unconstitutional *Obergefell* faux-marriage ruling, it’s a different story.

And such is the story in Morehead, Kentucky, where a county clerk has responded to the Supreme Court’s constitutional trespass by refusing to issue marriage licenses — to anyone. As the *New York Times* [reports](#):



Kim Davis, the clerk in Rowan County, who says her Christian faith bars her from authorizing [same-sex marriages](#), has refused to issue any licenses, either to same-sex or heterosexual couples after the historic ruling in June in the [case of *Obergefell v. Hodges*](#). She has ignored a direct order from Gov. Steven L. Beshear that she do so.

On Wednesday, Judge David L. Bunning of United States District Court for Eastern Kentucky, ruling in a case brought by the [American Civil Liberties Union](#) on behalf of four couples — two same-sex and two heterosexual — ordered Ms. Davis to resume issuing licenses. But lawyers for Ms. Davis immediately appealed and sought a stay; Thursday morning, Ms. Davis did not show up at work.

Davis isn’t alone in her opposition. In the wake of *Obergefell*, 60 Kentucky clerks signed a petition to Governor Beshear stating that they had religious objections to issuing faux-marriage licenses, although most complied with his directive for fear of job loss. And as the *Times* also tells us, “In Alabama, probate judges in 13 of 67 counties are, like Ms. Davis, declining to issue marriage licenses to anyone. One, Judge Nick Williams of Washington County, has urged the state justices to issue a ‘landmark ruling’ to defy the Supreme Court. And State Senator Greg Albritton is calling for the state to get out of the marriage license business.” In the latter it joins Mississippi, which also may remove itself from the marriage-license business.

Of course, many stand against Davis, too; this includes some in Rowan County (whose seat, Morehead, is a college town with liberal elements). As the Associated Press [reports](#) in a clear attempt at emotional manipulation:

David Ermold broke down and cried in the county’s judge-executive’s office after he was denied a license to marry David Moore, his partner of 17 years.

“I will say that people are cruel, they are cruel, these people are cruel,” Ermold said. “This is how gay people are treated in this country. This is what it’s like. This is how it feels.”

The county judge executive’s secretary, Lois L. Hawkins, started to cry with him. She declined to comment, except to say it broke her heart and there was nothing she could do to help them.



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One could wonder if those refusing to approve plural marriages are thought “cruel” and if tears are shed over the way polygamists are “treated in this country,” or if this is just another case of a politically favored group expecting, and receiving, preferential treatment.

Unfortunately, even many of those siding with Davis on marriage’s definitional aspect disagree with her on its legal one. This is due to a fundamental misunderstanding about American law. For example, joining a number of other [capitulating state executives](#) after *Obergefell*, Ohio governor John Kasich stated at the time that “our nation’s highest court has spoken and we must respect its decision.” But, question: Does a decision that doesn’t respect the Constitution deserve respect itself?

The idea here is that we’re a nation of laws, not men, so we must follow the law. But what is the law? If we’re simply going to abide by whatever judges rule — no matter how detached from legal reality — are we following the law or just lawyers? And once we’re following lawyers we are a nation of men, not laws.

Most have been conditioned to accept judges as final arbiters of law’s meaning; after all, judges settle things, don’t they? This standard would be fine were judges infallible oracles of wisdom, but the reality is, as Thomas Jefferson said, that they have “with others the same passions for party, for power, and the privilege of their corps.” History attests to this, with the Supreme Court demonstrating time and again not intellectual consistency but continual contradiction; just consider the dichotomy between the *Plessy v. Ferguson* and *Brown v. Board of Education* decisions.

This subordination of laws to men, of Constitution to judges, is brought into stark focus when considering that the latter’s ultimate-arbiter power was not granted to them by the Constitution — but by judges themselves: It was unilaterally declared in the 1803 *Marbury v. Madison* decision. In other words, deference to it can be an example of accepting circular reasoning: How do I know the judges have their trumps-all power?

The judges told me so.

While homosexual activists celebrated after *Obergefell* and some group celebrates after every decision, ultimate-decider status for judges is nothing to celebrate. This warning was issued by none other than Thomas Jefferson, who [said](#) in 1819 that if it ever became accepted that courts have the final say on law’s meaning and that their determinations must constrain all three branches of government, our Constitution will have become a “felo de se” (a suicide pact) and our Supreme Court an “oligarchy.” And now it has reached the point where, as Antonin Scalia wrote in his scathing *Obergefell* dissent, we “allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine” and thus “violate a principle even more fundamental than no taxation without representation: no social transformation without representation.” The oligarchy reigns.

Yet there is a solution: nullification. This is simply when states declare that since a given federal action is unconstitutional, they will not abide by it. This may seem radical to many, but it’s nothing new. What do you think is happening with “sanctuary cities” and their refusal to enforce federal immigration laws or with localities that thumb their noses at federal drug laws? Nullification.

Also note that nullification is, as Jefferson [instructed](#), the “rightful remedy” for any and all unconstitutional federal dictates. And this brings us to the real story here. It’s not that an intrepid county clerk here and there is defying lawless black-robed lawyers, but that governors and legislators refuse to lead the charge. They’re all too afraid of losing their jobs, losing their campaigns, losing their luxury, and losing respect. If only they were so afraid of losing their Republic.



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