

Gov. removes Kim Davis's name from Kentucky marriage licenses

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(The Christian Science Monitor) The newly elected Kentucky governor, Matt Bevin, did what his predecessor could not or would not do. He used an executive order—one of five he issued Tuesday—to remove the name of the county clerk from marriage licenses, thereby protecting Kim Davis, who belongs to an Apostolic Christian tradition, from appearing to sanction same-sex marriage while continuing work in her elected post.

The former governor, Steve Beshear, had told Davis to do her job or resign, deferring to the state legislature when the county clerk requested relief and eventually went to jail over the issue. The Sixth U.S. Circuit Court of Appeals had denied her request for a stay on a judge's order to issue the marriage licenses to same-sex couples.

Davis's lawyer Mat Staver called Governor Bevin's move "a wonderful Christmas gift," allowing Davis to celebrate the holiday without worrying about the conflict between her job and her religious beliefs. The appearance of her name on the marriage licenses had been an issue for Davis and the reason an initial compromise—she permitted her clerks to make marriage licenses without interfering—failed.

University of Minnesota law professor Brian Bix called the Supreme Court's decision to legalize same-sex marriage "fairly unprecedented." It has ushered in a difficult transition for legislators and state governors to stitch in the proper accommodations for some without denying others the rights the U.S. Supreme Court has granted them.

"People are allowed to have whatever moral principles they like, but if you sign up to do a job you have to do the job," Bix said. "If the Kentucky clerk's office wants to excuse someone from giving out these sorts of licenses, that might be possible, as long as another competent clerk can step in. But accommodations ... cannot be done in a way that forecloses citizens coming to get their legal entitlements."

The question of religious accommodation is not a new one and extends beyond the question of same-sex marriage. For example, a federal court in Washington State ruled last August that pharmacists who object to 'morning-after' birth control pills don't have to fill such prescriptions, but someone else has to be on hand to give out the drugs. Perhaps the most high-profile decision in recent memory was the Supreme Court's Hobby Lobby decision in 2014. In that case, the justices ruled five-four that family-owned corporations could not be compelled to purchase insurance coverage that included contraception for their employees under the Affordable Care Act.

Kentucky is not the only state taken by surprise with the June Supreme Court ruling, but some states with overturned bans on same-sex marriage have done a better job balancing the accommodations than others. Texas attorney general Ken Paxton wasted no time after the Supreme Court decision in telling county clerks they could refuse to sign marriage licenses for religious reasons if they chose, but he added that unless they came up with an alternative they would be in legal trouble.

The key problem in Davis' case was how she took away others' ability to receive a same-sex marriage license because of her own beliefs, which the judge to whom she appealed said meant she actually violated the First Amendment.

"Davis has arguably [violated the First Amendment] by openly adopting a policy that promotes her own religious convictions at the expense of others," U.S. district judge David Bunning wrote in August.

Although its impact on Davis's case is still unclear, the Kentucky governor's action may offer a third way by maintaining rule of law for all while providing a way out for those whose religious convictions hinder their participation in same-sex marriage licenses.

This report contains material from Reuters.