Judicial Tyranny in Kentucky

by Phyllis Schlafly *September 9, 2015*

When the Supreme Court ruled by the narrowest possible margin that Kentucky's definition of marriage is unconstitutional, the Court's decision was qualified by its assurance that religious freedom would not be jeopardized. "The First Amendment ensures that religious organizations and persons are given proper protection," the Court solemnly intoned on June 26.

In the Appalachian hills of eastern Kentucky, one brave woman is testing whether Justice Anthony Kennedy really meant it when he wrote those words. But the local federal judge for eastern Kentucky, David Bunning, has wrongly sent Kim Davis to jail for her beliefs, without respecting or accommodating her sincere Christian beliefs.

Local officials are required to support the laws of the United States, but no federal law requires every county official to issue marriage licenses, which are available in many other offices throughout Kentucky. Even Judge Bunning admitted that "plaintiffs have one feasible avenue for obtaining their marriage licenses" by traveling to another county, so the Supreme Court's marriage ruling was not violated by the clerk's decision to suspend all licenses while she seeks accommodation under the Kentucky Religious Freedom Restoration Act.

Judge David Bunning previously came to national attention when he required the students and staff of the public schools in neighboring Boyd County to attend mandatory diversity training, "a significant portion of which would be devoted to issues of sexual orientation and gender harassment." Bunning, who also ruled against a law banning partial-birth abortion, was nominated for his lifetime job at the age of only 34, and was confirmed because his father was a Senator, despite having inadequate legal experience and an "unqualified" rating from the American Bar Association.

As an elected public official, Kim Davis should not have been sent to jail by an unelected federal judge who can cite no federal law that she ever violated. Her imprisonment is the result of a judicial supremacy unrestrained by the checks and balances that apply to all other branches of government.

Described by Alexander Hamilton in 1788 as the "least dangerous" branch, federal courts are so out-of-control today that he would barely recognize them. A federal court has imprisoned a county official to force her to change the way she does her job, without any federal statute to justify such an order.

It is not "rule of law" to imprison someone based on judge-made law; it is "rule by judges." Kim Davis is not committing civil disobedience, because she has not violated any law. She was arrested, humiliated with a mug shot and imprisoned, merely for abiding by state law and the Bible.

As an elected Democratic official, Kim Davis should be defended by her own party leaders, but the Democratic candidate for governor of Kentucky, Jack Conway, declines to defend her. As Attorney General, Conway refused to defend his own state's constitution when it was challenged in the Supreme Court.

Republicans should look for guidance to the roots of our Party about 160 years ago, when it rose from obscurity by criticizing the judicial activism of the Dred Scott decision. Abraham Lincoln was a political loser until he started hammering the more popular Stephen Douglas about that ruling which extended a pro-slavery view nationwide.

Douglas, himself a skilled attorney and orator, tried to seek a middle ground between the pro-slavery federal court system and a populace that was increasingly fed up with the judicial supremacy. Douglas finally lost his credibility when he could not give coherent answers to questions posed by Lincoln in Freeport, Illinois, about what the full impact of the Dred Scott decision would be.

When one branch of government oversteps its power, the remedy under our Constitution is for the other branches of government to push back or refuse to comply, as multiple presidents and Congresses have done throughout American history. In his first inaugural address, Abraham Lincoln repudiated the Dred Scott decision as wrong and declared that it was not binding on the other branches of government or on anyone who was not a party to the case.

The Republican Party platform of 1860 flatly objected to how Democrats were imposing their agenda through use of "the Federal Courts [in matters] of a purely local interest." By standing up against the abuse of power by federal courts, Republicans quickly became the majority party.

When the Supreme Court ruled that all 50 states must license same-sex unions on the same terms as marriage, the court was implicitly declaring that Christianity and the Bible are wrong. If San Francisco can be a sanctuary city, let's allow Rowan County, Kentucky to be a "sanctuary county" where the Biblical view of marriage continues to be honored and respected.