

When "religious freedom" means the opposite

By [Steve Thorngate](#)

September 7, 2015

Civil marriage and religious marriage are theoretically different things, administered by different entities for different purposes. In practice they are deeply intertwined—which makes marriage a potent space for a church/state conflict.

Kim Davis's religious community has the right to define religious marriage for its own purposes. The county clerk of Rowan County, Kentucky, wants to impose that definition on the office she runs and the civil marriages it administers, and she claims her free exercise rights allow this. The rhetoric of religious freedom from government control is thus flipped to defend the religious control of government—[Dominionism](#) in Enlightenment clothing.

Not that conservative Christian concerns about religious freedom are on the whole trivial or misleading. People who provide public accommodations have free exercise rights, and when these clash with other people's rights not to be discriminated against, that's a genuine problem and a thorny one.

Nor is the problem with Davis's claim simply that, since she's a *government* employee, she is an official functionary and nothing more. [Utah came up with a creative way](#) to allow such individuals to opt out of certain functions without placing a burden on LGBTQ people. Maggie Gallagher [makes a good case for this approach](#). I'm not 100 percent convinced, but I can see the wisdom of it. Ross Douthat has said that all this talk of religious freedom is, for conservatives, about negotiating the terms of culture-war surrender. It's helpful for us liberals to acknowledge that it serves no great purpose to make those terms as harsh and uncompromising as possible.

But Davis isn't negotiating the terms of surrender. She's fighting to the bitter end and beyond, an anti-SSM dead-ender. In the name of free exercise, she would prevent *anyone* in the office she heads from issuing marriage licenses to same-sex couples. It isn't enough for her religious beliefs to function as the highest law she personally follows; they have to be the highest law her office administers, too. That's

what makes this a whole other thing.

After all, insisting that a government office answer to the law rather than to a given official's religious beliefs isn't de-prioritizing religious freedom in favor of something else. It *is* religious freedom. Freedom of religious exercise and freedom from religious establishment don't exist in isolation from each other. They're two sides of the same coin. Free exercise for all depends on the lack of establishment favoring some.

Now, this argument isn't likely to mean much to those who appeal to religious freedom primarily as a rhetorical strategy for asserting religious supremacy. Many social conservatives, to their credit, have not followed Davis to the wall on this. But others have, because her position exists within a tradition of such assertions—and within the more recent trend of pressing religious-freedom language into that tradition's service. She represents the logical conclusion: an act of faith-based conscientious objection to government...that uses the government itself as its instrument.

Some social conservatives will continue in their serious negotiations of culture-war surrender; others will probably persist in invoking "religious freedom" when they mean something closer to its opposite. One of these conversations is important for American democracy. So is distinguishing between the two.