

Gov. Sam Brownback issues executive order on religious liberty in wake of same-sex marriage ruling



"We have a duty to govern and to govern in accordance with the Constitution as it has been determined by the Supreme Court decision," Brownback said in a statement. | **Orlin Wagner** - File photo

BY BRYAN LOWRY
Eagle Topeka bureau

Gov. Sam Brownback issued an executive order Tuesday prohibiting state government from taking "discriminatory action" against clergy members or religious organization that deny services to couples based on religious beliefs.

The order, which comes in the wake of last month's landmark U.S. Supreme Court ruling, will among other things protect religious organizations that contract with the state to provide adoption services from placing children with gay couples if it conflicts with their religious beliefs.

"We have a duty to govern and to govern in accordance with the Constitution as it has been determined by the Supreme Court decision," Brownback said in a statement. "We also recognize that religious liberty is at the heart of who we are as Kansans and Americans, and should be protected."

The U.S. Supreme Court ruled in June that same-sex couples have a constitutional right to marriage. The governor's order came the same day that state workers' same-sex spouses became eligible to be added to their health plans.

Brownback said the order protects "Kansas clergy and religious organizations from being forced to participate in activities that violate their sincerely and deeply held beliefs."

The order explicitly protects religious organizations "that provides social services or charitable services," meaning that it extends beyond just the wedding ceremony.

Tom Witt, executive director of Equality Kansas, the state's leading gay rights organization, called the order a "dog whistle" and said that at first look it appears to "enable religious organizations that use taxpayer money to provide services to deny services to gay and lesbian couples."

Micah Kubic, executive director of the Kansas chapter of the ACLU, said in a statement that the order means "a homeless shelter that received a state contract or grant could refuse family housing to a gay couple with a child, or a foster care agency could refuse to place a child in their custody with the child's family member just because the family member was in a same-sex relationship – and the state could not require them to treat all families equally."

Executive orders carry the weight of law, but unlike pieces of signed legislation can be rescinded by subsequent administrations. The governor issued an executive order earlier in the year that eliminated a protection against discrimination for gay state workers, which had been established through executive order by Democratic Gov. Kathleen Sebelius.

Attorneys said it was difficult to know the full impact of the governor's order just yet.

Ron Nelson, a family law expert from Lenexa, said that the order would mean that religious organizations that contract with the state to provide adoption services could refuse to place a child with a gay couple.

"Any organization that contracts with the state that says their religious beliefs don't allow them to do something, then they don't have to do it," Nelson said.

Nelson compared this to the strategies used by southern states in the 1950s and 1960s to resist desegregation.

"This is the same technique that southern states tried to use to frustrate *Brown v. Board of Education*," Nelson said.

The state's Catholic Bishops released a statement Tuesday afternoon applauding the order. The statement explicitly highlighted the closure of Catholic adoption services in Massachusetts and Illinois in recent years

"In America, religious freedom has not just meant the right to hold a religious ceremony in a private setting, confined to the four walls of a church," the statement said. "In this country, religious freedom has meant the right to live one's faith in one's daily life, at home and at work, in private and in public... Kansans who believe that every child deserves a mother and a father should not be punished by the government for that belief."

Witt said it was no coincidence that the order came down the same day that same-sex spouses of state workers became eligible to be added to their spouses' health plans.

"The governor clearly has no respect for gay and lesbian Kansans and this is his way of saying that," Witt said. "Instead of welcoming us to first class citizenship along with everyone else in this state he sends out this executive order that basically says, too bad."

Terry Fox, a Wichita pastor who opposes same-sex marriage, said it was "very, very encouraging that on the day that some other news was breaking that Gov. Brownback is attempting to bring religious protection to some of the people of Kansas and certainly the conservative Christian people of Kansas."

Fox said that he had received word from the governor's office to expect the order. However, he said that he thinks more steps need to be taken.

Fox said that he met with 60 pastors in Wichita on Tuesday and that they plan to push for additional religious freedom protections.

"There is a great passion here that we need some religious freedom protection not just for churches but for Christian business owners," Fox said.

Mark Johnson, an attorney with the Dentons firm in Kansas City and the University of Kansas, said the term "religious organization" in the governor's order could potentially extend beyond churches and apply to businesses because of the Supreme Court's 2014 ruling that said businesses, such as Hobby Lobby, have a right to religious protections under the First Amendment.

The Kansas House passed a bill in 2014 that would have enabled both private and public workers to refuse to serve same-sex couples on religious grounds. The bill was scuttled by Kansas Senate leaders after it inspired international backlash.

This year Indiana passed similar legislation, sparking uproar and calls for boycotts, which it later amended.

Brownback hinted last week that his administration would push for additional religious freedom protections in the wake of the court's ruling on same-sex marriage.

Reach Bryan Lowry at 785-296-3006 or blowry@wichitaeagle.com. Follow him on Twitter: [@BryanLowry3](https://twitter.com/BryanLowry3).

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Shane Velazquez · Top Commenter

A pretty useless executive order. Clergy and religious organizations are already protected. They are not required to participate or accept same sex marriages.

They are already protected by the U.S. Constitution. They can discriminate all they want within their religious organizations.

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and you hoose to hate and force the lack of morals on all who have convictions.

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Here is the interesting part: (b) The State Government shall not take any discriminatory action against a religious organization, including those providing social services, wholly or partially on the basis that such organization declines or will decline to solemnize any marriage or to provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, celebration or recognition of any marriage, based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.

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Rick Sample it is that knee jerk hysteria that lacks tolerance and facts.

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Doug Ittner · Top Commenter · Wichita, Kansas

Does Brownback honestly think this ruling means straight people now have to marry people of the same gender? What a nutjob.

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Allen Edmonds · Top Commenter

I don't think he said that in his executive order.

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Doug Ittner · Top Commenter · Wichita, Kansas

Allen Edmonds I just don't understand his justification for such action. Christians aren't being persecuted because people can get married. Fundies suffer from a persecution complex, so who knows what goes on in their tiny minds.

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Claudia Peebler · Friends University

This is how he governs, by making useless, unnecessary proclamations. But, he is silent when it comes to protecting ordinary citizens from hurtful legislation, i.e. Teachers, the poor, children

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Allen Edmonds · Top Commenter

Funny. I say the same thing about b Hussein..

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Allen Edmonds The difference is, there is no basis in reality for your thoughts on Obama. We all know he is an Kenyan demon socialist out to destroy the US, because right wingers say so. Or something like that.

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Brandon Rice · Follow · Top Commenter

He needs to executively resign his butt from office. That's useful.

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James Sonian

You have to love the irony of protecting the rights of those who deny the legal rights of others. Apparently all the Kafka in the Kansas libraries was burned.

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Jonathan Foster Architecture · Principal Architect at NyArchitect.com

What a stupid AH...Clergy can marry whom they they please in their Constitutionally protected church...

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Tax-free church!

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Doug Ittner · Top Commenter · Wichita, Kansas

Larry Johnson Funny how the rest of us don't get protections from having to subsidize these churches with our tax dollars.

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Allen Edmonds · Top Commenter

Doug Ittner start going to church.

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Scott Morrival · Professor at University of Vermont

"We have a duty to govern and to govern in accordance with the Constitution..."

This is apparently quite a novel idea for Governor Brownback.

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Allen Edmonds · Top Commenter

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Linda Lindstrom Aten · Top Commenter · Oregon, Wisconsin

How stupid are the people there, nobody is asking clergy to do this. That is what the first amendment is all about. He is just trying to boost support for his sorry a \$\$.

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Bob Nelson · Top Commenter

"We have a duty to govern and to govern in accordance with the Constitution as it has been determined by the Supreme Court decision," Brownback said in a statement.

So when is he going to stop all this theater and begin doing so?

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Don Osenbaugh · Top Commenter · Municipal Consultant at Osenbaugh Consulting

SammieB...the hero of the Radical Right

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