

NO. 19-926

**IN THE SUPREME COURT OF THE UNITED
STATES**

KIM DAVIS,

Petitioner

v.

DAVID ERMOLD, DAVID MOORE,
WILL SMITH, JAMES YATES,

Respondents

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit**

**REPLY BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

Mathew D. Staver,
(Counsel of Record)
Horatio G. Mihet
Roger K. Gannam
Kristina J. Wenberg
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
court@LC.org

Counsel for Petitioner

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INTRODUCTION

Respondents’ Briefs¹ attempt to rewrite history, and further rewrite this Court’s decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), to justify the Sixth Circuit’s dual error in depriving Davis of qualified immunity—disregarding this Court’s precedents to impose a novel, strict liability standard for constitutional right to marry claims brought by same-sex couples after *Obergefell*, and elevating that new standard to the rank of “clearly established right.” While the Sixth Circuit truncated *Obergefell*’s holding to create a new constitutional liability (Pet. 30), Respondents purport to expand *Obergefell*’s holding, to make Davis’s religious beliefs the dispositive fact in imposing liability for the insubstantial burden on Respondents’ constitutional rights to marry resulting from Kentucky’s reasonable and lawful accommodation of Davis’s beliefs. But, the fact remains, this Court’s review is necessary, and Davis’s Petition should be granted, to preserve the standards for constitutional right-to-marry cases and the federal qualified immunity defense established by this Court and upheld for decades.

¹ Although the Sixth Circuit consolidated Respondents’ respective cases against Davis for opinion and judgment (App. B, 3a), Respondents filed two separate briefs in opposition to Davis’s petition for review of the Sixth Circuit’s opinion. Because Respondents’ briefs are substantively identical, and identically paginated, Davis refers to them collectively herein as “Respondents’ Briefs.”

ARGUMENT

I. OBERGEFELL DOES NOT DISPLACE ZABLOCKI BY RENDERING A STATE’S ACCOMMODATION OF ITS MARRIAGE OFFICIAL’S SINCERELY HELD RELIGIOUS BELIEFS AN AUTOMATIC VIOLATION OF THE FEDERAL CONSTITUTIONAL RIGHT TO MARRY ASSERTED BY A SAME-SEX COUPLE.

As shown in Davis’s Petition, this Court held in *Obergefell* that (1) states may not absolutely bar an individual from marrying a person of the same-sex, and (2) states that recognize marriage, or provide benefits related to marriage, must do so on the same terms and conditions for same-sex couples as for different-sex couples. 135 S. Ct. at 2604–05. (Pet. 14.) The Sixth Circuit oversimplified that holding, however, reducing it to the passage, “The Court now holds same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them.” (Pet. 30; App. B, 16a (quoting *Obergefell*, 135 S. Ct. at 2604–05).) Respondents now seek to avoid this Court’s review of the Sixth’s Circuit’s reduction error by altering *Obergefell* further to render a state’s accommodation of a marriage official’s sincerely held religious beliefs about marriage an automatic violation of the federal constitutional right to marry when asserted by a same-sex couple, even if the burden on the right is insubstantial.

According to Respondents, “*Obergefell* held that a state could not justify a statewide ban on

same-sex couples’ constitutional right to marry **based solely on personal opposition to same-sex marriage.**” (Resp’ts Brs. 23 (emphasis added).²) Contra Respondents’ revision, however, *Obergefell* simply held a state could not ban marriage for same-sex couples—nowhere does the *Obergefell* majority even hint that its holding depended on the personal reasons of any state’s officials in defining marriage to be the union of a man and a woman.

The *Obergefell* majority acknowledged the view that marriage “is by its nature a gender-differentiated union of man and woman. . . . long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world.” 135 S. Ct. at 2594. But the majority did not conclude this view had constitutional significance in “assessing whether the force and rationale of [the Court’s] cases apply to same-sex couples,” *id.* at 2599, or otherwise point to this view **as the reason** why disallowing marriage for same-sex couples was unconstitutional. Rather, the majority invoked various “principles and traditions” to “demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.” *Id.* The majority explained, “[m]any who deem same-sex

² See also Resp’ts Brs. 1 (“[A]fter *Obergefell*, it was clearly established that a state official cannot deprive citizens of their right to marry **based solely on personal disapproval of same-sex marriage.**” (emphasis added)), 16 (“*Obergefell* clearly established . . . the unconstitutionality of bans on marriage **based on opposition to same-sex marriage.**” (emphasis added)).

marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here.” 135 S. Ct. at 2602. What the majority then held unconstitutional was any policy that excludes same-sex couples from marriage—not because of the personal **beliefs** that may be reflected in such a policy, but because the **effect** of such a policy is to deny both the “liberty” of marriage and “the same **legal treatment** as opposite-sex couples.” *Id.* (emphasis added); *see also id.* at 2590 (“The challenged laws burden the liberty of same-sex couples, and they abridge central precepts of equality.”)

Thus, Respondents’ revision of *Obergefell* to make Davis’s temporary policy of not issuing marriage licenses uniformly to **any** couples automatically unconstitutional because of Davis’s personal beliefs about same-sex marriage should be rejected. Like the Sixth Circuit’s truncated version of *Obergefell*’s holding, Respondents’ version creates a special standard of review for a right-to-marry claim brought by a same-sex couple. Rather, consistent with *Obergefell*’s actual holding, this Court must consider Davis’s temporary policy in terms of its burden, if any, on the constitutional right to marry asserted by Respondents, and in terms of whether the policy treated same-sex couples the same as opposite-sex couples (it did). Davis’s policy easily survives this “direct and substantial burden” analysis mandated by *Zablocki v. Redhail*, 434 U.S. 374 (1978) (Pet. 11–27), and the Sixth Circuit’s departure from the *Zablocki* burden analysis—upheld in *Obergefell*—requires this

Court’s review and reversal. (*Cf.* App. B, 25a (Bush, J., concurring in part and in the judgment) (“I don’t believe that the Supreme Court would abolish tiers-of-scrutiny analysis for all marriage regulations without explicitly telling us it was doing so.”).)

Moreover, Respondents’ focus on Davis’s personal beliefs is especially inappropriate in the qualified immunity analysis, where an official’s subjective intent is irrelevant. *See Anderson v. Creighton*, 483 U.S. 635, 641 (1987); *Sanchez v. Swyden*, 139 F.3d 464, 467 (5th Cir. 1998) (“The subjective intent of the public official is irrelevant . . .”) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 815–17 (1982)). Furthermore, as shown in Davis’s Petition (and not disputed by Respondents³), Davis acted as a Kentucky official in temporarily discontinuing marriage licenses. (Pet. 13.) Thus, properly viewed, Davis, as a Kentucky official, decided for Kentucky not to issue licenses to any and all couples in Rowan County, for only a brief and temporary period while an accommodation to the marriage license forms could be worked out, and while licenses remained available throughout the state. (Pet. 24–25.) Davis’s purpose, acting as a Kentucky official, was to accommodate the religious beliefs of a Kentucky person (also Davis)—not to

³ Resp’ts’ Brs. 8 n.3 (“The Sixth Circuit affirmed the district court’s dismissal of Respondents’ official-capacity claims. That holding is not at issue here.” (citation omitted)).

adopt or endorse those beliefs.⁴ (Pet. 24–26.) Put differently, Kentucky accommodated the personal religious beliefs of a state official, resulting in the temporary closure of just one of 120 state marriage license outlets for all couples, and leaving marriage licenses available to Respondents and all other couples on equal terms throughout the state, including in the seven counties immediately surrounding Rowan County. (Pet. 24–27.) Such an accommodation by Kentucky is not automatically unconstitutional, and this Court’s review is required to correct the Sixth Circuit’s departure from this Court’s precedents to hold otherwise.

⁴ “Acts performed by the same person in two different capacities ‘are generally treated as the transactions of two different legal personages.’” *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 543 n.6 (1986) (quoting Fleming James, Jr. & Geoffrey C. Hazard, Jr., *Civil Procedure* § 11.6 (3d ed. 1985)). Respondents are quite content with the fiction treating Davis as two different legal personages for purposes of avoiding Davis’s immunity in her official capacity and holding her personally liable for damages. The Court likewise should not disregard Davis’s two different legal personages for purposes of analyzing her official provision of an accommodation for her individually held religious beliefs. The accommodation, not Davis’s beliefs, is the relevant act that either did or did not violate Respondents’ rights to marry (it did not).

II. RESPONDENTS TRY REWRITING THE HISTORY OF MARRIAGE LICENSE LITIGATION AGAINST DAVIS TO AVOID THIS COURT'S REVIEW OF THE SIXTH CIRCUIT'S ERRONEOUS DENIAL OF DAVIS'S QUALIFIED IMMUNITY.

Respondents' Briefs largely parrot the erroneous conclusions of the Sixth Circuit and the district court below, but they also try to rewrite the history of the litigation against Davis to avoid this Court's review of the Sixth Circuit's opinion.

A. There Was Never a Countywide Marriage Ban for Same-Sex Couples Following *Obergefell*.

To justify the Sixth Circuit's avoidance of this Court's binding tiered analysis of right-to-marry claims under *Zablocki*, Respondents attempt to rewrite Davis's temporary halt of marriage licenses as "effectively a ban, and thus properly analyzed under *Obergefell*" because it "eliminated the right in Rowan County." (Resp'ts' Brs. 16.) As shown in Davis's Petition, however, such a position disregards the obvious reality of Kentucky's geographically permissive marriage licensing statutes. (Pet. 6, n.1, 14–16; App. B, 24a (Bush, J., concurring in part and in the judgment) ("What they did not suffer was a prohibition on getting married.")) At all times Respondents could marry in Rowan County on a Kentucky marriage license obtained from any other county clerk's office. (Pet. 6, n.1, 14–16.) And at all

times Respondents' minimal burden of obtaining a license from a clerk other than Davis was equally imposed on all other couples, same- or different-sex. (Pet. 6, n.1, 14–16.) Thus, whatever burden Davis's accommodation put on Respondents' right to marry must be analyzed under *Zablocki*, not as a statewide ban held unconstitutional in *Obergefell*.⁵

B. Davis Was Neither Late nor Inconsistent in Raising Kentucky RFRA.

Respondents' Briefs rely on a misrepresentation of the record to support the notion that Kentucky RFRA played no part in what rights were "clearly established" or what conduct was reasonable for Davis when, acting for Kentucky, Davis elected not to issue marriage licenses to any couples to accommodate the religious beliefs about

⁵ Contrary to Respondents, Davis did not waive any argument that Kentucky's accommodation of her sincerely held religious beliefs satisfied constitutional scrutiny under *Zablocki*. (Resp'ts' Brs. 2, 9, 17, 18.) The district court below engaged Davis's argument that her accommodation did not violate Respondents' constitutional right to marry when properly analyzed under *Zablocki*, and based its denials of Davis's qualified immunity defense on both rational basis and strict scrutiny principles thereunder without finding any waiver. (App. C, 49a–55a; App. D, 79a–85a.) Davis appealed the district court's denials to the Sixth Circuit, where no waiver of Davis's *Zablocki* argument was found, and Davis has demonstrated to this Court satisfaction of *Zablocki* under both rational basis and strict scrutiny review. (Pet. 25.) Respondents' repeated assertion of waiver evokes the famous line, "The lady doth protest too much . . ." William Shakespeare, *Hamlet*, act 3, sc. 2.

marriage she sincerely held as an individual. But Kentucky RFRA was not a pretextual afterthought for Davis. Contrary to Respondents' assertion, Davis did not wait until after her release from incarceration for noncompliance with the district court's preliminary injunction in *Miller* before seeking an accommodation under Kentucky RFRA. (Resp'ts' Brs. 8 ("asking the district court, for the first time, [for] an accommodation under the KRFRA" (emphasis added)).) Rather, having been sued by the *Miller* plaintiffs only six days after this Court's *Obergefell* decision (App. C, 35a), **Davis invoked Kentucky RFRA at the earliest procedural moment possible**—in her opposition to the *Miller* plaintiffs' preliminary injunction motion. (App. J, 173a–175a (docket entry 29 showing Davis's attachment of Kentucky RFRA as exhibit).) Furthermore, only a month after being sued, Davis sued then-Governor Steve Beshear in a third party complaint and sought a preliminary injunction compelling Governor Beshear to provide accommodation under, *inter alia*, Kentucky RFRA. (App. J, 175a–176a; App. E, 99a.) The district court, however, refused to take up Davis's third party preliminary injunction motion against Governor Beshear when it entertained the *Miller* plaintiffs' preliminary injunction motion against Davis, and actually stayed consideration of Davis's motion. (App. J, 180a.) Davis appealed the district court's stay order because it effectively denied her preliminary injunction motion against the Governor, and she moved the district court for an injunction pending appeal. (App. J, 182a.) It was only when the district court denied the motion for injunction

pending appeal—after the court had jailed and released Davis—that it held Davis must go to state court to obtain an accommodation under Kentucky RFRA. (App. J., 188a–189a.) Thus, regardless of the district court’s willingness or ability to order an accommodation for Davis under Kentucky RFRA, it is wrong to disregard it as irrelevant to the “clearly established” analysis based on the false notion that Davis did not invoke it soon enough. **Davis invoked Kentucky RFRA at the earliest possible stage of the original *Miller* litigation, continually invoked the statute throughout that litigation, and maintained her reliance on Kentucky RFRA in her earliest responses to Respondents’ respective lawsuits against her.** (*Cf.* App. C, 61a; App. D, 91a.)

Nor has Davis, contrary to Respondents’ assertions, taken inconsistent litigation positions with respect to Kentucky RFRA. (Resp’ts’ Brs. 21–22.) In making this argument, Respondents assert that immediately following *Obergefell* and Governor Beshear’s mandate to issue his changed Kentucky marriage license form (Pet. 5–6), Davis simply should have changed the new statewide form to say whatever Davis wanted it to say, without any concern whatsoever as to the validity of such a changed form. *Cf.* Ky. Rev. Stat. § 402.100 (2015) (directing county clerks to issue Kentucky marriage licenses **on “the form proscribed by the Department for Libraries and Archives [KDLA]”** (emphasis added)); Ky. Rev. Stat. § 402.110 (2015) (requiring that “[t]he form of marriage license prescribed in KRS 402.100 **shall be uniform throughout this state**” (emphasis added)).

Thus, while it is true that Kentucky RFRA applied to Davis at that time, and operated to require Kentucky to provide Davis an accommodation from the marriage licensing statutes, it was not clear from any court or other precedent that Davis should have self-effected that accommodation in the first instance. (Pet. 24–25.)

As shown in the Petition and above, Davis did not make alterations of the marriage license form until after the district court (1) refused to consider her preliminary injunction motion against Governor Beshear to obtain an accommodation (*supra* p. 9; Pet. 8), (2) entered a preliminary injunction ordering her to issue marriage licenses (App. G, 121a), (3) jailed her for not issuing marriage licenses (Pet. 24, n.11), and then (4) released her **after approving the license alterations effected by her deputy clerks, which alterations were ratified by then-Governor Beshear** (Pet. 8, 24, n.11; App. J, 187a–188a). Davis’ initial, short, temporary suspension of issuing marriage licenses, followed by her post-incarceration, self-effected accommodation—which was immediately ratified by Kentucky’s highest official (Pet. 8)—was reasonable and consistent with both Respondents’ rights to marry without undue burden and Kentucky’s legitimate (and compelling) interests in religious accommodation under Kentucky RFRA. (Pet. 24–27.)

Finally, then-Governor Beshear’s ratification of Davis’s post-incarceration accommodation (Pet. 8), and Governor Bevin’s Executive Order 2015-048 expressly and unequivocally establishing that

Kentucky RFRA **required the state to accommodate the religious beliefs of county clerks** like Davis by removing county clerks' names and authority as necessary features of a Kentucky marriage license (App. H, 164a–167a), eviscerate Respondents' argument and the Sixth Circuit's conclusion that there is “no legal support” for Davis's Kentucky RFRA position. (Resp'ts' Brs. 19, 21; App. B, 20a.) Governor Beshear—who changed Kentucky's marriage license form to comply with *Obergefell*—first ratified Davis's self-accommodation, and then Governor Bevin extended it to all county clerks expressly on the authority of Kentucky RFRA. The principal of deference to lower federal courts' interpretations of state law is not in play here because the Sixth Circuit did not actually undertake to interpret Kentucky RFRA. *See, e.g., Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, 112 (1939) (“As the conclusion of the lower court on this point is not supported by a state decision, we analyze for ourselves the provisions of the sections.”); . Thus, the Court should look to the former Governors' interpretations that support Davis's position. *See Fox v. Standard Oil Co. of New Jersey*, 294 U.S. 87, 96–97 (1935) (“In such circumstances we are charged with a duty of independent judgment, but, in default of other tests, we lean to an agreement with the agents of the state.”) Moreover, even if the deference principle applied, it is not unlimited: “[W]e are hesitant to overrule decisions by federal courts skilled in the law of particular states **unless their conclusions are shown to be unreasonable.**” *Propper v. Clark*, 337 U.S. 472, 486–87 (1949) (emphasis added). This

Court owes no deference to a circuit court's unreasonable supposition of state law that is inconsistent with the interpretation adopted by the state's highest officials.

CONCLUSION

Davis concludes here as she did in her Petition: Constitutional right-to-marry cases and cases involving other fundamental rights present substantial questions of federal law. *See, e.g., Obergefell*, 135 S. Ct. at 2601 (noting the “Court’s cases and Nation’s traditions make clear that marriage is a keystone of our social order”). This Court’s Rule 10 expressly identifies, as one of the “compelling reasons” for it to consider review, a case where “a United States court of appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). Both the importance of the questions and the fullness of the conflicts explained above and in Davis’s Petition warrant this Court’s review. This Court should grant Davis’s petition and reverse the Sixth Circuit’s decision.

Dated this April 23, 2020.

Mathew D. Staver
(Counsel of Record)
Horatio G. Mihet
Roger K. Gannam
Kristina J. Wenberg
LIBERTY COUNSEL
P.O. Box 540774
Orlando, Florida 32854
(407) 875-1776
court@LC.org

Counsel for Petitioner

APPENDIX

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**APPENDIX J — EXCERPTS FROM
MILLER v. DAVIS
DISTRICT COURT DOCKET**

APPEAL,CLOSED

**U.S. District Court
Eastern District of Kentucky (Ashland)
CIVIL DOCKET FOR CASE #:
0:15-cv-00044-DLB**

Miller et al v. Davis et al
Assigned to: Judge David L. Bunning
Case in other court: 6CCA, 15-05880
6CCA, 15-05880
6CCA, 15-05961
6CCA, 15-05978
6CCA, 17-06385
6CCA, 17-06404

Cause: 42:1983 Civil Rights Act

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Appendix J

Date Filed	#	Docket Text
07/30/2015	<u>29</u>	<p>RESPONSE in Opposition re <u>2</u> MOTION for Preliminary Injunction by Shantel Burke, Jody Fernandez, Kevin Holloway, April Miller, Stephen Napier, Karen Ann Roberts, L. Aaron Skaggs, Barry W. Spartman filed by Kim Davis, Kim Davis.</p> <p>(Attachments: # <u>1</u> Exhibit A: July 13, 2015 Hearing Transcript, # <u>2</u> Exhibit B: July 20, 2015 Hearing Transcript, # <u>3</u> Exhibit C: Copies of Davis Exhibits 1 through 5 admitted at July 20, 2015, # <u>4</u> Exhibit D: Collection of Kentucky marriage law provisions from Chapter 402 of KRS, # <u>5</u> Exhibit E: Kentucky RFRA, # <u>6</u> Exhibit F: Governor Beshear Press Release dated June 26, 2015, # <u>7</u> Exhibit G: News Article re: issuance of marriage licenses in Boyd County dated July 9, 2015, # <u>8</u> Exhibit H: News Article re: issuance of marriage licenses in Kenton County dated June 29, 2015, # <u>9</u> Exhibit I: Governor Beshear Press Release dated July 9, 2015, # <u>10</u> Exhibit J: Governor Beshear Press Release</p>

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	<p>dated July 7, 2015, # <u>11</u> Exhibit K: Governor Beshear Public Statement on July 21, 2015, # <u>12</u> Exhibit L: Attorney General Conways Public Statement on March 4, 2014, # <u>13</u> Exhibit M: Governor Beshear Press Release dated March 4, 2014, # <u>14</u> Exhibit N: Kentucky LRC Reports on Kentucky RFRA, # <u>15</u> Exhibit O: News Article re: fees paid by Kentucky to defend Kentucky marriage law dated May 20, 2015, # 16 Exhibit P: News Article re: Governor Beshears appeal in Bourke v. Beshear dated March 4, 2014, # 17 Exhibit Q: News Article re: hiring of private law firm after Attorney General Conway refused to defend Kentucky marriage law dated April 18, 2014, # 18 Exhibit R: News Article re: July 20, 2015 hearing dated July 21, 2015, # 19 Exhibit S: News Article re: Kentucky legislature general session dated July 10, 2015, # 20 Exhibit T: Prefiled Kentucky House Bill for January 2016 general session to protect religious liberties, # 21 Exhibit U: Map of Kentucky</p>
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		counties)(Christman, Jonathan) (Entered: 07/30/2015)
08/04/2015	<u>34</u>	VERIFIED THIRD PARTY COMPLAINT (<i>corrected filing to include summonses</i>) against Steven L. Beshear, Wayne Onkst, filed by Kim Davis, Kim Davis. (Attachments: # <u>1</u> Exhibit A. Pre-Obergefell KDLA marriage license form (Def. Ex. 2), # <u>2</u> Exhibit B. 1/23/15 Letter to Senator Robertson from Kim Davis (Def. Ex. 1), # <u>3</u> Exhibit C. 6/26/15 Letter from Governor Beshear to County Clerks (Def. Ex. 4), # <u>4</u> Exhibit D. Post-Obergefell KDLA marriage license form (Def. Ex. 3), # <u>5</u> Exhibit E. 7/8/15 Letter from Kim Davis to Governor Beshear (Def. Ex. 5), # <u>6</u> Summons Governor Steven L. Beshear, # <u>7</u> Summons State Librarian and Commissioner Wayne Onkst)(Gannam, Roger) (Entered: 08/04/2015)

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08/07/2015	<u>39</u>	<p>MOTION for Preliminary Injunction by Kim Davis, Kim Davis(In her official capacity as Rowan County Clerk) (Attachments: # <u>1</u> Memorandum in Support of Defendant/Third-Party Plaintiff Kim Davis' Motion for Preliminary Injunction, # <u>2</u> Exhibit A: Verified Third-Party Complaint of Defendant Kim Davis, # <u>3</u> Exhibit B: July 13, 2015 Hearing Transcript, # <u>4</u> Exhibit C: July 20, 2015 Hearing Transcript, # <u>5</u> Exhibit D: Kentucky LRC Reports on Kentucky RFRA, # <u>6</u> Exhibit E: Prefiled Kentucky House Bill for January 2016 general session to protect religious liberties, # <u>7</u> Proposed Order Granting Defendant/Third-Party Plaintiff Kim Davis' Motion for Preliminary Injunction)(Christman, Jonathan) (Entered: 08/07/2015)</p>
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Appendix J

08/12/2015	<u>43</u>	<p>VACATED MEMORANDUM OPINION & ORDER: IT IS ORDERED that Plaintiffs' Motion for Preliminary Injunction DE <u>2</u> against Defendant Kim Davis, in her official capacity as Rowan County Clerk, is hereby granted. IT IS FURTHER ORDERED that Defendant Kim Davis, in her official capacity as Rowan County Clerk, is hereby preliminarily enjoined from applying her "no marriage licenses" policy to future marriage license requests submitted by Plaintiffs. Signed by Judge David L. Bunning on 8/12/15.(KSS)cc: COR Modified on 8/18/2016 to mark "Vacated" per Order DE181 (KSS). (Entered: 08/12/2015)</p>
08/12/2015	<u>44</u>	<p>NOTICE OF APPEAL as to <u>43</u> Memorandum Opinion & Order, Terminate Motions,,, by Kim Davis, Kim Davis(In her official capacity as Rowan County Clerk). Filing fee \$ 505, receipt number 0643-3282893. (Attachments: # <u>1</u> Exhibit A: August 12, 2015 Memorandum Opinion and Order)(Christman, Jonathan) (Entered: 08/12/2015)</p>

Appendix J

08/13/2015	<u>45</u>	MOTION to Stay re <u>43</u> Memorandum Opinion & Order, Terminate Motions,,, by Kim Davis, Kim Davis(In her official capacity as Rowan County Clerk) (Attachments: # <u>1</u> Memorandum in Support of Defendant/Third-Party Plaintiff Kim Davis' Motion to Stay the August 12, 2015 Injunction Order Pending Appeal, # <u>2</u> Proposed Order Granting Defendant/Third-Party Plaintiff Kim Davis' Motion to Stay the August 12, 2015 Injunction Order Pending Appeal)(Christman, Jonathan) (Entered: 08/13/2015) (KSS). (Entered: 08/13/2015)
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08/17/2015	<u>52</u>	ORDER: IT IS ORDERED denying <u>45</u> Motion to Stay; IT IS FURTHER ORDERED that this order denying Kim Davis Motion to Stay be TEMPORARILY STAYED pending review of dft Davis' motion to stay <u>45</u> by the Sixth Circuit Court of Appeals. Signed by Judge David L. Bunning on 8/17/15. (SMT)cc: COR (Entered: 08/17/2015)
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Appendix J

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08/19/2015	<u>55</u>	ORDER ; on 8/17/15 this court entered an order <u>52</u> denying dft Kim Davis' motion to stay the 8/12/15 order <u>43</u> granting pla a prel inj enjoining dft Davis from enforcing her "no marriage licenses" policy against pla; however, in deference to the 6CCA the court temporarily stayed its 8/12/15 order to give and appellate court an opportunity to review, on an expedited basis, the 8/17/15 order denying the motion to stay; upon review of FRAP 8(a)(2) governing stays of injunctions pending appeal the court finds it necessary to set an expiration date for temporary stay; IT IS ORDERED that the court's stay of its 8/17/15 order shall expire on 8/31/15; absent to the contrary by the 6CCA. Signed by Judge David L. Bunning on 8/19/15.(SMT)cc: COR (Entered: 08/19/2015)
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Appendix J

08/25/2015	<u>58</u>	ORDER: IT IS ORDERED that briefing on Defendant Kim Davis' Motion to Dismiss <u>32</u> and Motion for Preliminary Injunction <u>39</u> be, and is, hereby STAYED pending review of the Court's Memorandum Opinion and Order <u>43</u> by the United States Court of Appeals for the Sixth Circuit. A briefing schedule on the Motions will be set by subsequent order after the Sixth Circuit renders its decision. Signed by Judge David L. Bunning on 8/25/15.(KSS)cc: COR (Entered: 08/25/2015)
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08/31/2015	<u>66</u>	NOTICE OF APPEAL as to <u>58</u> Order, by Kim Davis, Kim Davis(In her official capacity as Rowan County Clerk). Filing fee \$ 505, receipt number 0643-3294835. (Attachments: # <u>1</u> Exhibit A: August 25, 2015 Order)(Christman, Jonathan) (Entered: 08/31/2015)
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09/01/2015	<u>69</u>	<p>MINUTE ENTRY ORDER FOR TELEPHONIC SCHEDULING CONFERENCE held on 9/1/2015 before Judge David L. Bunning. IT IS ORDERED that this matter be, and is, hereby set for a hearing on Plaintiff's Motion to Hold Defendant Kim Davis in Contempt of Court DE <u>67</u> on <u>Thursday, September 3, 2015 at 11:00 a.m. in Ashland, Kentucky.</u> Defendant Davis and each of her deputy clerks shall be present at the hearing. IT IS FURTHER ORDERED that if Defendant Davis wishes to file a response to Plaintiffs' Motion DE <u>67</u> , it shall be filed by close of business on September 2, 2015, and shall not exceed five (5) pages in length. (Court Reporter Lisa Wiesman.). Signed by Judge David L. Bunning on 9/1/15. (KSS)cc: COR (Entered: 09/01/2015)</p>
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09/02/2015	<u>70</u>	MOTION for Injunction Pending Appeal of This Court's August 25, 2015 Order by Kim Davis, Kim Davis(In her official capacity as Rowan County Clerk) (Attachments: # <u>1</u> Memorandum in Support of Motion for Injunction Pending Appeal of This Court's August 25, 2015 Order, # <u>2</u> Proposed Order Granting Motion for Injunction Pending Appeal of This Court's August 25, 2015 Order)(Christman, Jonathan) (Entered: 09/02/2015)
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09/03/2015	<u>74</u>	<p>VACATED ORDER: IT IS HEREBY ORDERED: Plaintiffs' Motion Pursuant to Rule 62(c) to Clarify the Preliminary Injunction Pending Appeal is hereby GRANTED. IT IS FURTHER ORDERED: The Court's August 12, 2015 preliminary injunction order, R <u>43</u> is hereby modified to state that Defendant Kim Davis, in her official capacity as Rowan County Clerk, is hereby preliminarily enjoined from applying her "no marriage licenses" policy to future marriage license requests submitted by Plaintiffs or by other individuals who are legally eligible to marry in Kentucky. Signed by Judge David L. Bunning on 9/3/15. (KSS)cc: COR Modified on 8/18/2016 to mark "Vacated" per Order DE181 (KSS). (Entered: 09/03/2015)</p>
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09/03/2015	<u>75</u>	<p>MINUTE ENTRY ORDER FOR Hearing on Motion before Judge David L. Bunning. This matter was called for a hearing on the Plaintiffs Motion to Hold Defendant Kim Davis in Contempt of Court (DE # 67) in Ashland, Kentucky, with parties present, by counsel, as noted above. Having heard arguments from counsel and testimony of witnesses, and the Court being otherwise sufficiently advised, IT IS ORDERED AS FOLLOWS: 1) There being no objection from the parties, Kentucky Senate President Robert Stivers Motion for Leave to File a Brief as Amicus Curiae in support of Defendants (DE # 73) is GRANTED. 2) By agreement of the parties, Third Party Defendants shall have until close of business on Tuesday, September 8, 2015 to respond to Defendant Davis Motion for Injunction Pending Appeal (Doc. # 70). Defendant Davis shall have until close of business on Thursday, September 10, 2015 to file her reply brief. The parties are advised that these</p>
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	<p>deadlines have been expedited. 3) The Court appoints MICHAEL R. CAMPBELL as counsel for Rowan County Deputy Clerk Nathaniel Davis. MICHAEL B. FOX is appointed as counsel for Rowan County Deputy Clerk Chrissy Plank. RICHARD A. HUGHES is appointed as counsel for Rowan County Deputy Clerk Brian Mason. SEBASTIAN JOY is appointed as counsel for Rowan County Deputy Clerk Kim Russell. ANDY MARKELONIS is appointed as counsel for Rowan County Deputy Clerk Melissa Thompson. JEREMY CLARK is appointed as counsel for Rowan County Chief Deputy Clerk Roberta Earley. 4) After hearing arguments from counsel and testimony from witnesses, the Court finds Defendant Davis in contempt of the Courts Order of August 12, 2015, for reasons stated on the record. Accordingly, Plaintiffs Motion to Hold Defendant Kim Davis in Contempt of Court (DE # 67) is GRANTED. Defendant Davis shall be remanded to the custody</p>
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		<p>of the United States Marshal pending compliance of the Courts Order of August 12, 2015, or until such time as the Court vacates the contempt Order. 5) Defendant Davis oral motion to stay enforcement of the Courts contempt order pending review of the Courts August 12, 2015 Order by the Sixth Circuit Court of Appeals is DENIED. Defendant Davis oral motion to certify the contempt order for appeal is DENIED. 6) Defendant Davis oral motion to suspend any sentence until the Kentucky Legislature convenes is DENIED. (Court Reporter Sandy Wilder.) (KSS)cc: COR (Entered: 09/04/2015)</p>
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09/08/2015	<u>82</u>	<p>NOTICE OF APPEAL as to <u>74</u> Order on Motion to Amend/Correct,, by Kim Davis, Kim Davis. Filing fee \$ 505, receipt number 0643-3299672. (Attachments: # <u>1</u> Exhibit A: September 3, 2015 Order (D.E. 74))(Christman, Jonathan) (Entered: 09/08/2015)</p>
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09/08/2015	<u>83</u>	NOTICE OF APPEAL as to <u>75</u> Order on Motion to Compel, Order on Motion for Leave to File, Contempt Hearing, Add and Terminate Attorneys, Set Motion and R&R Deadlines/Hearings, Terminate Motions by Kim Davis, Kim Davis. Filing fee \$ 505, receipt number 0643-3299683. (Attachments: # <u>1</u> Exhibit A: September 3, 2015 Order Granting Plaintiffs' Motion to Hold Defendant Kim Davis in Contempt of Court (D.E. 75))(Christman, Jonathan) (Entered: 09/08/2015)
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09/08/2015	<u>89</u>	ORDER: 1. Defendant Davis shall be released from the custody of the U.S. Marshal forthwith. Defendant Davis shall not interfere in any way, directly or indirectly, with the efforts of her deputy clerks to issue marriage licenses to all legally eligible couples. If Defendant Davis should interfere in any way with their issuance, that will be considered a violation of this Order and
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		<p>appropriate sanctions will be considered. 2. CJA counsel for the five (5) deputy clerks who indicated they would comply with the Court's Order shall file a Status Report every fourteen (14) days from the date of entry of this Order unless otherwise excused by the Court. Within those reports Counsel shall report on their clients' respective compliance with the Court's August 12, 2015 Order enjoining the Rowan County Clerk from enforcing her "no marriage licenses" policy, as well as its Order of September 3, 2015 requiring them to issue marriage licenses to all eligible couples in compliance with the Court's prior Order. Signed by Judge David L. Bunning on 9/8/15.(KSS)cc: COR, USMS (Entered: 09/08/2015)</p>
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09/11/2015	<u>103</u>	<p>ORDER: IT IS ORDERED that Davis' Motion for Injunctive Relief DE <u>70</u> be, and is, hereby DENIED. Davis retains the right to reassert her claim for</p>
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		injunctive relief on state law grounds in the appropriate state court. Signed by Judge David L. Bunning on 9/11/15. (KSS)cc: COR (Entered: 09/11/2015)
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09/18/2015	<u>113</u>	EMERGENCY MOTION to Stay re <u>74</u> Order on Motion to Amend/Correct,, by Kim Davis, Kim Davis <i>Pending Appeal</i> (Attachments: # <u>1</u> Memorandum in Support of Emergency Motion for Immediate Consideration and Motion to Stay September 3, 2015 Injunction Order Pending Appeal, # <u>2</u> Exhibit A: Kim Davis' Emergency Motion to Stay filed in Sixth Circuit on September 11, 2015, # <u>3</u> Exhibit B: Plaintiffs' response to Motion to Stay filed in the Sixth Circuit on September 15, 2015, # <u>4</u> Exhibit C: Third-Party Defendants' response to Motion to Stay filed in the Sixth Circuit on September 15, 2015, # <u>5</u> Exhibit D: Kim Davis' Reply Brief in support of Motion to Stay filed in the Sixth Circuit on September 16, 2015, # <u>6</u> Exhibit
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		E: Sixth Circuit Motions Panel Decision dated September 17, 2015, # <u>7</u> Proposed Order Granting Emergency Motion for Immediate Consideration and Motion to Stay September 3, 2015 Injunction Order Pending Appeal)(Christman, Jonathan) (Entered: 09/18/2015)
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09/23/2015	<u>121</u>	ORDER: IT IS ORDERED that Defendant Kim Davis' Emergency Motion to Stay the Court's Injunction Order of September 3, 2015 Pending Appeal DE <u>113</u> be, and is, hereby DENIED . Signed by Judge David L. Bunning on 9/23/15. (KSS)cc: COR (Entered: 09/23/2015)
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12/24/2015	<u>156</u>	NOTICE by Kim Davis, Kim Davis <i>of Supplemental Authority in Opposition to Third-Party Defendants' Motion to Dismiss Davis' Third-Party Complaint and Plaintiffs' Motion to Enforce</i>
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		<p><i>September 3 and September 8 Orders (Attachments: # <u>1</u> Exhibit A: Governor Bevin's Executive Order 2015-048 Relating to the Commonwealth's Marriage License Form (December 22, 2015))(Christman, Jonathan) (Entered: 12/24/2015)</i></p>
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07/13/2016	<u>179</u>	<p>INFORMATION COPY OF ORDER/JUDGMENT of USCA as to <u>44</u> Notice of Appeal, filed by Kim Davis, <u>82</u> Notice of Appeal filed by Kim Davis; the appeals are DISMISSED and REMAND this matter to the district court with instructions to vacate its August 12, 2015 preliminary injunction order and its September 3, 2015 order modifying that injunction. Mandate to issue. (Attachments: # <u>1</u> USCA Cover Letter)(KSS) (Entered: 07/13/2016)</p>
08/04/2016	<u>180</u>	<p>MANDATE of USCA: Pursuant to the court's disposition that was filed 7/13/2016 the mandate for this case hereby issues today</p>

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		as to <u>44</u> Notice of Appeal, <u>82</u> Notice of Appeal by Kim Davis (Attachments: # <u>1</u> 6CCA letter)(KSS) (Entered: 08/04/2016)
08/18/2016	<u>181</u>	ORDER: IT IS ORDERED that the Court's Order of August 12, 2015 DE <u>43</u> , granting Plaintiffs' Motion for Preliminary Injunction, and the Court's Order of September 3, 2015, modifying the injunction DE <u>74</u> be, and are, hereby VACATED . Signed by Judge David L. Bunning on 8/18/16.(KSS)cc: COR (Entered: 08/18/2016)
08/18/2016	<u>182</u>	ORDER: IT IS ORDERED as follows: (1) In <i>Miller v. Davis, et al</i> , 0:15-cv-44, Plaintiffs' Motion to Certify a Class DE <u>31</u> , Defendant Kim Davis' Motion to Dismiss DE <u>32</u> , Defendant Kim Davis' Motion for Preliminary Injunction DE <u>39</u> , Third-Party Defendant Steven Beshear's Motion to Dismiss DE <u>92</u> , and Third-Party Defendant Matt Bevin's Motion to Dismiss DE <u>157</u> be, and are, hereby DENIED AS MOOT ; (2) The stays imposed in <i>Ermold et al v.</i>

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		<p><i>Davis, et al</i>, 0:15-cv-46, and <i>Yates, et al v. Davis, et al</i>, 0:15-cv-62, be and are, hereby LIFTED; (3) In <i>Ermold, et al v. Davis, et al</i>, 0:15-cv-46, Defendant Kim Davis' Motion to Dismiss DE <u>11</u> and Plaintiffs' Motion to Set Briefing Schedule DE <u>14</u> be, and are, hereby DENIED AS MOOT; (4) The CJA Attorneys representing the Rowan County Deputy Clerks be, and are, hereby DISCHARGED from further service in this matter; and (5) The three above-captioned actions be, and are, hereby DISMISSED and STRICKEN from the Court's active docket. Signed by Judge David L. Bunning on 8/18/16.(KSS)cc: COR (Entered: 08/18/2016)</p>
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03/06/2017	<u>199</u>	<p>RECOMMENDED DISPOSITION AND ORDER: (1) IT IS ORDERED that the motion to strike R. <u>195</u> is DENIED; and (2) IT IS RECOMMENDED that the Plaintiffs' motions for fees R.</p>
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		<p><u>183</u> be DENIED. Specific objs to this R&R must be filed within fourteen (14) days from the date of service thereof or further appeal is waived. Signed by Magistrate Judge Edward B. Atkins on 3/6/17.(KSS)cc: COR (Entered: 03/06/2017)</p>
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07/21/2017	<u>206</u>	<p>MEMORANDUM OPINION & ORDER: (1) The R&R of the United States Magistrate Judge DE <u>199</u> is hereby REJECTED as the findings of fact and conclusions of law of the Court (2) Plaintiffs' Objections DE <u>201</u> are hereby SUSTAINED as set forth herein (3) Plaintiffs' Motion for Attorneys' Fees and Costs DE <u>183</u> is hereby GRANTED as follows: (a) Plaintiffs are awarded \$222,695.00 in attorneys' fees; and (b) Plaintiffs are awarded \$2,008.08 in costs; and (4) This matter is hereby STRICKEN from the Court's active docket. Signed by Judge David L. Bunning on 7/21/17.(KSS)cc: COR (Entered: 07/21/2017)</p>
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08/23/2019	<u>228</u>	INFORMATION COPY OF ORDER/JUDGMENT of USCA as to <u>226</u> Notice of Appeal, filed by Kim Davis – AFFIRM the district court's attorney's–fees award. (Attachments: # <u>1</u> Cover ltr)(JLS) (Entered: 08/23/2019)
08/23/2019	<u>229</u>	INFORMATION COPY OF JUDGMENT of USCA as to <u>226</u> Notice of Appeal, filed by Kim Davis Affirm the district court's attorney's–fees award. (JLS) (Entered: 08/23/2019)
08/23/2019	<u>230</u>	INFORMATION COPY OF ORDER of USCA as to <u>224</u> Notice of Appeal, filed by Matthew G. Bevin, Terry Manuel – AFFIRMED, mandate to issue. (Attachments: # <u>1</u> Cover ltr)(JLS) (Entered: 08/23/2019)
08/23/2019	<u>231</u>	INFORMATION COPY OF JUDGMENT of USCA as to <u>224</u> Notice of Appeal, filed by Matthew G. Bevin, Terry Manuel – AFFIRMED (JLS) (Entered: 08/23/2019)

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09/16/2019	<u>232</u>	MANDATE of USCA as to <u>224</u> Notice of Appeal, filed by Matthew G. Bevin, Terry Manuel Appeal AFFIRMED (Attachments: # <u>1</u> 6CCA cover letter)(JLS) (Entered: 09/16/2019)
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