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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION AT ASHLAND

APRIL MILLER, et al.,  
Plaintiffs,

VS.

KIM DAVIS, et al.,  
Defendants.

Docket No. 0:15-CV-44  
At Ashland, Kentucky  
Thursday, September 3, 2015  
10:59 a.m.

TRANSCRIPT OF HEARING ON MOTION BEFORE  
DAVID L. BUNNING  
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography,  
transcript produced by computer.

1 [IN OPEN COURT]

2 THE COURT: All right. Madam Clerk, if you  
3 would call the matter set for 11, please.

4 DEPUTY CLERK: Yes, Your Honor. Ashland  
5 Civil Action 15-44, April Miller, et al. versus Kim  
6 Davis, et al., this being called for a hearing on  
7 motion.

8 THE COURT: Okay. Why don't we go ahead and  
9 start with entries of appearance first, and then we'll  
10 proceed to address the matters pending. Counsel.

11 MR. SHARP: Your Honor, William Sharp on  
12 behalf of the plaintiffs.

13 MR. CANON: Judge, Dan Canon here for the  
14 plaintiffs.

15 MS. LANDENWICH: Laura Landenwich for the  
16 plaintiffs.

17 THE COURT: All right.

18 MR. GANNAM: Good morning, Your Honor. Roger  
19 Gannam, Liberty Counsel, for defendant, Kim Davis.

20 MR. CHRISTMAN: Good morning, Your Honor.  
21 Jon Christman, also for Ms Davis.

22 MR. DONAHUE: Good morning, Your Honor. A.  
23 C. Donahue on behalf of the defendant, Kim Davis.

24 MS. PARSONS: Claire --

25 THE COURT: Go ahead.

1 MS. PARSONS: Claire Parsons on behalf of  
2 defendant, Rowan County.

3 THE COURT: All right.

4 MR. WATKINS: Cecil Watkins on behalf of  
5 Rowan County.

6 MR. VANCE: Good morning, Your Honor. Gene  
7 Vance on behalf of the third-party defendants,  
8 Governor Beshear and Commissioner Onkst.

9 THE COURT: Okay. Now, we did have someone  
10 from the Kentucky Senate. Robert Stivers had made a  
11 motion for --

12 MR. FLEENOR: Yes, Your Honor.

13 THE COURT: Yes. I -- we didn't have enough  
14 seats. I apologize for you sitting in the back, but I  
15 just wanted to make sure that you were recognized.

16 MR. FLEENOR: David Fleenor representing  
17 Kentucky Senate President Robert Stivers.

18 THE COURT: Okay. Thank you. Well,  
19 Mr. Donahue, I'm glad you're wearing your bow tie.

20 MR. DONAHUE: Thank you, Your Honor.

21 THE COURT: I don't feel like I'm out of  
22 place now.

23 All right. Well, I want to just kind of set  
24 the tone for this hearing.

25 Before we get started with the contempt

1 hearing, this is a civil contempt hearing pursuant to  
2 18 U.S. Code, Section 401, I feel like a couple of  
3 brief comments are necessary, given the large volume  
4 of folks that are here this morning.

5           As you know, this case has seemed to generate  
6 a lot of interest both locally and nationally, and has  
7 kind of galvanized a number of organized interest  
8 groups.

9           In the past two days, the Court's received  
10 about 2,000 calls, give or minus a thousand, in the  
11 Covington chambers. In fact, I've had to turn the  
12 phone off to voice mail to make sure I can actually  
13 get other work done.

14           I've got three lawyers that work in my  
15 office, and the phone was ringing off the hook for and  
16 against everyone in this case, so we just decided that  
17 it would be best not to listen to those calls. We  
18 started to, but it actually just took up too much of  
19 the Court's time.

20           So apparently, according to my staff, who's  
21 much more socially media savvy than I, someone posted  
22 the office number on some social media site, which  
23 caused all the volume to probably increase.

24           So while the Court appreciates the public  
25 interest in the case and the issues raised, public

1 opinion and someone's personal opinion, including my  
2 own, simply aren't relevant today.

3           The contempt issue will be decided on the  
4 law, and will be designed to obtain compliance with  
5 the Court's lawfully issued order. Because after all,  
6 that's what this hearing is about, to gain compliance  
7 with the Court's order.

8           Both sides of the debate are somewhat -- and  
9 I -- when I say both sides, I'm referring to the  
10 parties and the lawyers. And I'm not including you,  
11 Mr. Vance, or counsel for the Senate President because  
12 I don't believe there's been a whole lot from you in  
13 the public arena, but the primary parties, the  
14 plaintiffs and the defendant, Ms. Davis, and to a  
15 lesser extent, Rowan County, have tried to keep this  
16 debate going in the public arena.

17           As I stated, the Court cannot and will not be  
18 swayed by what is happening outside court or outside  
19 the court record. There's a lot of things that are  
20 part of the public record that are not part of the  
21 court record, and I'm speaking now of lawyers know  
22 what the difference is.

23           Many of the individuals who perhaps are in  
24 the gallery or will be reading about this  
25 instantaneously or tomorrow. Some of us still get a

1 newspaper and read it, but I understand that's behind  
2 by about 24 hours today.

3           The court record is what the Court's deciding  
4 the issues on, not the public record.

5           There's a reason why the individual woman  
6 holding the scales is blindfolded. We've got to  
7 consider the case based upon the law and the facts as  
8 set forth here in the courtroom.

9           And then finally, I'm going to expect all  
10 litigants and supporters of both sides to exhibit  
11 proper decorum during the hearing. We're in federal  
12 court. Whether or not you're down at -- in  
13 Catlettsburg at the Boyd Circuit Court or here in this  
14 court, every judge and the proceedings that go on in  
15 his or her courtroom expects the parties and the  
16 public to exhibit proper decorum, so I will not  
17 tolerate any outbursts. And if there are any  
18 outbursts, one way or the other, I'll be asking you,  
19 with the assistance of some marshals, to escort you  
20 from the courtroom.

21           Okay. We have several motions that are  
22 pending. The motion that we're here to decide is  
23 Docket 67, the motion to hold Ms. Davis in contempt.  
24 There was a response filed yesterday. There was also  
25 a motion filed on Tuesday.

1           Today's the 3rd, right, Madam Clerk? Is that  
2 right?

3           DEPUTY CLERK: Yes, Your Honor.

4           THE COURT: Okay. Tuesday of this week, a  
5 motion pursuant to Rule 62(c) of the Federal Rules of  
6 Civil Procedure to clarify the preliminary injunction  
7 pending appeal.

8           And then just yesterday there was a motion  
9 filed by defendant, Davis for an injunction pending  
10 appeal, as well as a motion by Senate President Robert  
11 Stivers, which I've mentioned earlier, for leave to  
12 file a brief as an amicus.

13           Mr. Gannam, Mr. Christman, I know you had  
14 indicated in your response in a footnote -- I think  
15 it's footnote 2 to Docket 72, that you want to file a  
16 written response to the motion filed by plaintiffs on  
17 Tuesday.

18           We're here today. The case wasn't noticed  
19 for that hearing. However, I think it makes sense to  
20 take that motion up today. So whatever you would file  
21 in a written response, I'm going to go ahead and let  
22 you be heard on that today.

23           One other thing I want to mention, there was  
24 a footnote -- I think it's also in that same  
25 response -- where you objected to the page limitation.

1 I'm not going to hold you to the page limitation. I'm  
2 not just going to consider the first five pages. You  
3 filed seven pages in your response. They filed seven  
4 pages in their motion. I'm considering the seven  
5 pages of the motion, as well as the seven pages of  
6 your response. So your objection as it relates to the  
7 length of the pages is sustained.

8           So I know you had objected formally to that,  
9 but I read through that, and I just want to make sure  
10 that you appreciate I'm going to consider your entire  
11 response.

12           And I have read your response. And it was  
13 just filed yesterday. There's been a lot of paperwork  
14 filed in a very short amount of time, and we have been  
15 meeting, I don't want to say around the clerk, as some  
16 of us have to have a little bit of sleep, but we have  
17 been trying to prepare for this hearing as best we  
18 can.

19           So I want to go ahead and hear you from now  
20 on Docket 6 -- I think it's 68, which, in essence, for  
21 everyone in attendance, as you know, procedurally, the  
22 Court granted the plaintiffs' motion for the  
23 preliminary injunction back on August 12th, enjoining  
24 Ms. Davis from applying her "no marriage licenses"  
25 policy to future marriage licenses requested by the

1 plaintiffs in this case.

2           The motion itself seeks to clarify pursuant  
3 to Rule 62(c) of the Federal Rules of Civil Procedure,  
4 to have that injunction include any future marriage  
5 license requests submitted by plaintiffs or any other  
6 individuals who are legally eligible to marry. That  
7 was filed on the 1st.

8           There are a couple of companion cases, 46 and  
9 I think 49? 51? I can't remember the numbers, but  
10 there are three cases now pending with various  
11 plaintiffs.

12           You represent the defendant on all those  
13 other cases; do you not, Mr. Gannam?

14           MR GANNAM: We do, Your Honor.

15           THE COURT: Okay. So I want to just let  
16 you -- I want to give you a chance to be heard, and  
17 then I'll give you a chance, Mr. Sharp. Because I  
18 want to take up this issue, and then we'll move on to  
19 the contempt issue.

20           MR. GANNAM: Thank you, Your Honor. We  
21 object to proceeding on the motion to clarify or  
22 modify the injunction that's already been issued.  
23 First of all, just because of the timing. This  
24 hearing was called quickly. That motion was filed,  
25 and we simply haven't had adequate time to prepare

1 to -- to argue against that motion.

2 THE COURT: Well, I've had very little time  
3 to prepare myself, so I'm -- the issues are the same.  
4 All the issues you've raised in 1544, the defenses  
5 that your client has raised, the responses, I'm sure,  
6 would all be the same. It's the same issue for each  
7 case.

8 If I were to -- for instance, if the order  
9 only applies to the four plaintiffs -- I guess eight  
10 plaintiffs in this case -- it would be -- it would not  
11 be a violation perhaps of the Court's order dated  
12 8-12-2015, if your client, or any of the deputies, did  
13 not issue a marriage license to anyone eligible to  
14 marry who aren't these plaintiffs because that's not  
15 covered under the order. Would you agree with that?

16 MR. GANNAM: I agree that would not be a  
17 violation of the order, yes, Your Honor.

18 THE COURT: Okay. So why would there be --  
19 why should I parse this out? And I realize from the  
20 very beginning, and you have in your written  
21 pleadings, seemed to take issue with the Court's  
22 attempt to try to expeditiously take up its docket in  
23 this case. Why doesn't it make sense to consider all  
24 of the cases together, at least as it relates to the  
25 other plaintiffs who would be eligible to marry?

1 MR. GANNAM: Your Honor, first of all, the --

2 THE COURT: Well, your objection to not  
3 taking it up today will be overruled because I really  
4 want to hear you on this.

5 MR. GANNAM: The plaintiffs moved for  
6 preliminary injunctive relief against -- with respect  
7 to themselves only. They have --

8 THE COURT: I understand that.

9 MR. GANNAM: And the --

10 THE COURT: At that time, I think they were  
11 the only plaintiffs that had been potentially  
12 identified.

13 MR. GANNAM: They have a -- a pending motion  
14 for class certification --

15 THE COURT: That I stayed.

16 MR. GANNAM: -- which has been stayed.  
17 They're essentially seeking a class-wide --

18 THE COURT: I don't think -- I'm not going to  
19 certify a statewide class. I'm -- I'm interested in  
20 the Rowan County Clerk because she's a defendant in  
21 all three of the cases that have been filed on my  
22 docket here in Ashland.

23 MR. GANNAM: Well, their class that they've  
24 alleged is the class consisting of Rowan County  
25 residents. And so to grant the injunction, it would

1 apply to all Rowan County residents would essentially  
2 be granting a class-wide injunction based on the facts  
3 that they've alleged here.

4           THE COURT: Well, why shouldn't -- wouldn't  
5 it seem rather odd to only have an injunction that  
6 applies to four couples versus -- if you had John Doe  
7 and someone other than John Doe who would be eligible  
8 to marry Jane Roe, or what have you, same-sex,  
9 opposite-sex, why wouldn't they -- doesn't it seem a  
10 little bit unusual to have an order that would apply  
11 to some, but not others?

12           MR. GANNAM: Your Honor, that's the motion  
13 that the plaintiffs filed.

14           THE COURT: I understand, but they're not  
15 seeking to amend that.

16           MR. GANNAM: And, Your Honor, our objection  
17 is not only on the timing, but also as to the fact  
18 that the prior order is on appeal. And what they're  
19 essentially seeking to do is to change that order and  
20 to do something else, to expand it. And this Court  
21 does not have jurisdiction to -- to do anything with  
22 respect to that prior injunction while it's on appeal,  
23 so this would have been treated as a new injunction.

24           THE COURT: Would you prefer that I order  
25 that my 8-12-2015 order, change the caption and just

1 enter a preliminary injunction as it relates to those  
2 plaintiffs without -- it's not my intention to do  
3 that, but the issues are exactly -- well, seem to be  
4 fairly consistent throughout the three cases, this one  
5 and the two companion cases.

6 MR. GANNAM: Well, the difference, Your  
7 Honor, is in the plaintiffs' case, they could each  
8 allege and put on evidence as to their eligibility to  
9 marry, for example.

10 THE COURT: And I think they have done that.

11 MR. GANNAM: Whereas they're now seeking to  
12 expand an injunction to cover unnamed members of the  
13 putative class --

14 THE COURT: Who would otherwise be eligible  
15 to marry.

16 MR. GANNAM: But we have -- unless it's a  
17 class-wide injunction, they're essentially asserting  
18 rights that haven't been established yet in this  
19 court.

20 THE COURT: Okay. All right. What's your  
21 response?

22 MR. SHARP: Your Honor, 62(c) specifically  
23 contemplates and authorizes this Court to modify the  
24 injunction while an interlocutory appeal from the  
25 preliminary injunction ruling is pending.

1           The Court is correct that it does retain  
2 jurisdiction to actually grant plaintiffs' motion. The  
3 Court is also correct insofar as the legal issues and  
4 the relevant facts regarding the disposition of  
5 plaintiffs' motion to modify or amend that preliminary  
6 injunction ruling are identical, not only as to the  
7 plaintiffs in this case, but to any other individuals  
8 who would otherwise be qualified to marry.

9           We're not asking the Court to compel the  
10 Rowan County Clerk's office to issue marriage licenses  
11 on request, but rather upon certification that other  
12 legal requirements are met.

13           As the Court's aware, prior to *Obergefell*,  
14 the Rowan County Clerk's office issued 99 marriage  
15 licenses this year, 214 last year. Obviously, we're  
16 talking about hundreds of people who are affected and  
17 are continuing to be denied marriage licenses because  
18 of the "no marriage license" policy.

19           THE COURT: All right. A brief reply.

20           MR. GANNAM: Your Honor, essentially, they're  
21 seeking to get relief that they didn't request in the  
22 original motion and --

23           THE COURT: I know. They're requesting it  
24 now. I recognize they did not request it in the  
25 original motion.

1 MR. GANNAM: And so it can't be a  
2 clarification or a modification of that prior order  
3 because it would be -- it would be an expansion of  
4 that prior order, which is -- which is improper while  
5 it's on appeal, so this must be treated as a new  
6 motion for preliminary injunction. And we would  
7 maintain our objection that it would be improper to  
8 proceed on that today with the -- the little notice  
9 that we've had and without the opportunity to -- to  
10 again, put on evidence as we deem necessary to  
11 establish our defense to it.

12 THE COURT: All right. And I want to give  
13 you all an opportunity to be heard, to the extent you  
14 wish to be heard on this. Ms. Parsons?

15 MS. PARSONS: The County has no position on  
16 this, Judge.

17 THE COURT: All right. Mr. Watkins?

18 MR. WATKINS: No, Judge.

19 THE COURT: Mr. Vance?

20 MR. VANCE: No, Your Honor.

21 THE COURT: All right. I must apologize --  
22 I'm -- you've cited Rule 62(c) in your motion. I may  
23 have an older version, and I have to apologize; I have  
24 a cataract, so my right eye is not as good as it could  
25 be.

1 All right. Thank you. I did have an older  
2 version.

3 All right. Over the plaintiffs' objection --  
4 defendant's objection, I'm going to grant the motion,  
5 finding that the prior injunction be modified to  
6 reflect that it preliminarily enjoins Ms. Davis in her  
7 official capacity from applying her "no marriage  
8 license" policy to any future marriage license  
9 requests submitted by the named plaintiffs in this  
10 case, or -- and this is the modification -- or by any  
11 other individuals who are legally eligible to marry in  
12 the Commonwealth of Kentucky.

13 And here's the order. We'll go ahead and  
14 enter the order. I have signed it dated today. Madam  
15 Clerk. Thank you.

16 DEPUTY CLERK: Thank you, Your Honor.

17 THE COURT: And I'll rely upon on Rule 62(c).

18 MR. GANNAM: Your Honor, may I make a --

19 THE COURT: And your objection's overruled.

20 MR. GANNAM: May I make a request for a  
21 certification for immediate appeal of this order?

22 THE COURT: You can appeal that, yes. That's  
23 part of the appeal. We'll just include that as part  
24 of the appeal.

25 Any objection to that?

1 MR. SHARP: No objection, Your Honor.

2 THE COURT: Okay. Very well. So you can  
3 include that. And I'm sure someone has already  
4 requested the transcript of this proceeding. And the  
5 Sixth Circuit can certainly decide if that's  
6 appropriate.

7 I do find, in granting that relief that's  
8 requested at Docket 68, the Court finds that given the  
9 fact that it does have two companion cases that  
10 involve, in essence, the very same allegations with  
11 the same lawyers, it just makes judicial sense to have  
12 the Circuit review the decision for all three of them.

13 I'm not granting a class certification  
14 motion. But I do believe that allowing the injunction  
15 as it currently exists to apply to some, but not  
16 others, simply doesn't make practical sense, so that's  
17 the Court's ruling.

18 All right. Let me now turn to the actual  
19 merits of the matter that's before the Court.

20 Well, let me take up one additional thing.  
21 Unfortunately, we have other motions.

22 I am going to grant -- first of all, is there  
23 any objection to -- let me find it here -- to Docket  
24 73? That's the motion -- the amicus motion.

25 I know the Sixth Circuit, when it was

1 reviewing the Court's -- the motion to stay, the order  
2 pending appeal had an amicus brief filed, and they  
3 went ahead and granted that. Mr. Fleenor had filed a  
4 motion for leave of Senate President Robert Stivers to  
5 file an amicus brief.

6 I, just this morning, since this was filed  
7 late yesterday, I've just this morning had an  
8 opportunity to review this. I read it on my phone  
9 last night, small print, though. I was able to print  
10 it out and read it earlier this morning. Any  
11 objection to that?

12 MR. SHARP: No objection, Your Honor.

13 THE COURT: Any objection -- they favor your  
14 side, so I wouldn't think you would object.

15 MR GANNAM: No, Your Honor.

16 MR. WATKINS: No, Your Honor.

17 MR. VANCE: No, Your Honor.

18 THE COURT: Okay. Mr. Fleenor, I'll go ahead  
19 and grant your motion and --

20 MR. FLEENOR: Thank you, Your Honor.

21 THE COURT: -- have it filed as the -- the  
22 attachment, which is 73-1, Madam Clerk, will be the  
23 amicus brief of Senate President Robert Stivers.

24 All right. Now --

25 MR. GANNAM: Your Honor, may I ask one more

1 question?

2 THE COURT: Yes.

3 MR. GANNAM: Will the Court take up our  
4 emergency motion, pending appeal time?

5 THE COURT: Well, I am going to take that up  
6 as well, actually right now.

7 MR. GANNAM: Okay.

8 THE COURT: I'm not sure if I'm going to rule  
9 on it today because it seems to raise many of the same  
10 things that were raised previously. This is Docket 70  
11 filed yesterday. The defendant Davis's motion for an  
12 injunction pending appeal seeks to have several of the  
13 same issues that were previously raised adjudicated  
14 again.

15 You haven't had a chance to respond to that,  
16 but this seems to be more substantive than Docket 68.

17 Now, you, of course, will disagree with that,  
18 and I recognize that, and I've given my rulings  
19 granting 68.

20 But 70 itself -- Mr. Gannam, I don't know if  
21 you or Mr. Christman's going to be arguing this one,  
22 but why isn't this simply her attempt to have another  
23 bite at the same apple? It seems like many of the  
24 arguments you raised in your response to the  
25 substantive preliminary injunction motion are raised

1 here again.

2 MR. GANNAM: Your Honor, Mr. Christman will  
3 argue that motion.

4 THE COURT: All right. Mr. Christman. I'm  
5 sorry.

6 MR. CHRISTMAN: Good morning, Your Honor.

7 THE COURT: Thank you, sir.

8 MR. CHRISTMAN: The motion to ask for an  
9 injunction pending appeal against Governor Beshear and  
10 Commissioner Onkst, the issues and substance are  
11 certainly intertwined and interrelated with what the  
12 Court has already decided on the plaintiffs' motion  
13 for preliminary injunction, but not entirely  
14 overlapping.

15 Ms. Davis asked for her own affirmative  
16 preliminary injunction against the third-party  
17 defendants. That was a motion that was effectively  
18 and practically denied by this Court in its August  
19 25th, 2015 order, which has now been taken up on  
20 appeal, and that --

21 THE COURT: And that order being the motion  
22 to the stay -- the motion to hold those motions in  
23 abeyance; which one are you referring to?

24 MR. CHRISTMAN: Correct. The August 25th  
25 order that -- the practical effect of that order was

1 to deny Ms. Davis the preliminary injunctive relief  
2 against the third-party defendants.

3 THE COURT: Right. And frankly, my reason --  
4 and I'll explain that for the parties. The issue --  
5 it seems as if the Sixth Circuit's decision on the  
6 review of this Court's August 12, 2015 order --  
7 memorandum, opinion and order -- the resolution of  
8 that will have, whether the parties agree or disagree  
9 with this statement, at least in this Court's view,  
10 will have some impact on the resolution of that  
11 motion, of perhaps other motions.

12 So it made sense to the Court -- this, of  
13 course, isn't the Court's only case -- to give the  
14 Circuit, and you have -- you immediately appealed, I  
15 think, the same day it went on, that order, which you  
16 have a right to do under the rule. But I really  
17 thought it was appropriate to have the Circuit look at  
18 that because that will have a very real impact on the  
19 Court's adjudication of these other issues. And if we  
20 get a resolution of that by the Circuit, that will --  
21 the decision will be germane to these other motions,  
22 so that's why I stayed that.

23 Do you think -- and I understand you want to  
24 be heard on that today, but some of the issues raised  
25 in that -- in your Docket Entry 70, and it's 30 pages.

1 I am impressed with the ability to crank out very  
2 substantive briefs, and I appreciate the table of  
3 contents; I really do. It does help in reviewing the  
4 pleadings that are filed. But unlike a two-page  
5 order, which is relatively straightforward, this is a  
6 30-page motion with -- involving the third-party  
7 defendant.

8           Mr. Vance, you, of course, haven't had a  
9 chance to respond at all. But would you  
10 acknowledge -- I think you have acknowledged that some  
11 of the issues are intertwined?

12           MR. CHRISTMAN: Your Honor, the reason --  
13 respectfully, the reason that the motion was first  
14 filed in front of Your Honor, rather than filing that  
15 motion for injunction pending appeal and the appeal  
16 that we took up, that second notice of appeal that was  
17 filed, the Federal Rules of Appellate Procedure say  
18 that ordinarily and generally, you ask for the relief  
19 first --

20           THE COURT: Oh, I completely agree,  
21 completely agree.

22           MR. CHRISTMAN: -- first from the district  
23 court, unless it would be impracticable to obtain it.  
24 We decided that under these general circumstances that  
25 rather than first going to the Sixth Circuit, we would

1 seek the injunction pending appeal in her claims  
2 vis-a-vis the third-party defendants in this case.

3           The original appeal that was taken up of the  
4 August 25th, 2015 order is Ms. Davis's rights and  
5 claims and defenses vis-a-vis the plaintiffs in this  
6 case. The governor and Commissioner Onkst are not  
7 parties to that first appeal.

8           THE COURT: Correct.

9           MR. CHRISTMAN: Ms. Davis, on the same day  
10 that she filed her motion to dismiss plaintiffs'  
11 complaint in its entirety, the arguments of which have  
12 not been taken up, also brought a third-party  
13 complaint against Governor Beshear and Commissioner  
14 Onkst essentially arguing that any liability that  
15 Ms. Davis has in this case is really the liability of  
16 the third-party defendants. And so asserted those  
17 claims, and then within three days filed a motion for  
18 preliminary injunction against Governor Beshear and  
19 Commissioner Onkst, again, raising certainly many of  
20 the same substantive arguments and issues, but it's  
21 from a different approach as her as an individual.  
22 That motion was filed and her third-party complaint  
23 was filed before this Court even entered its original  
24 injunction order.

25           THE COURT: That's correct. And the Court

1 worked as quickly as it could to resolve that.

2 I -- I recognize that. I don't think I'm  
3 prepared to make a ruling on that today. I want to  
4 give Mr. Vance's client an opportunity to respond to  
5 that, as well as the plaintiffs, if they wish to.

6 Mr. Vance?

7 MR. VANCE: Judge, thank you. On behalf of  
8 the governor and Commissioner Onkst, we would say, as  
9 the Court has noted, the motion's not ripe for  
10 consideration. We have not filed a responsive  
11 pleading as yet, and it is not due, per agreement of  
12 the parties, until September the 11th.

13 We're in the process of preparing a motion to  
14 dismiss because we believe the third-party complaint  
15 is wholly without merit as per the Eleventh Amendment,  
16 among other reasons. And certainly we believe that  
17 the request for injunctive relief against the governor  
18 and Mr. Onkst is likewise without merits, and we will  
19 respond to that at the appropriate time, and respond  
20 further on the merits now, if you wish.

21 THE COURT: No, I don't -- I have some other  
22 things we need to take up today, and I don't want to  
23 be here all afternoon.

24 But as far as the responsive pleading that  
25 you have to file, and I do think that I have

1 continuing jurisdiction to address these other issues  
2 while the other case is on appeal. Does everybody  
3 agree with that?

4 MR. SHARP: Yes, Your Honor.

5 THE COURT: Everybody's nodding  
6 affirmatively. Mr. Christman?

7 MR. CHRISTMAN: Your Honor used the phrase  
8 "these issues", and I'd just ask for clarification of  
9 what issues.

10 THE COURT: Okay. This motion, your motion,  
11 your motion Docket 70.

12 MR. CHRISTMAN: Certainly, Your Honor, we  
13 filed it in front of you so we believe you have  
14 jurisdiction.

15 THE COURT: Okay. I figured you would since  
16 you filed it here.

17 Here's what we're going to do. If you would,  
18 you can file the Rule 12 motion that you believe is  
19 appropriate on behalf of your clients. If you think  
20 that the response to Docket 70 is otherwise covered,  
21 if you will, by your motion, you can file a response  
22 indicating such. If there are certain things in the  
23 motion itself that you believe need to be specifically  
24 addressed in the response, you can address them that  
25 way.

1 I'm not going to take that motion up on the  
2 merits today because it has some things in it -- while  
3 there is some intertwined issues, clearly, and I think  
4 it would be perhaps -- the Court would be served by  
5 getting a decision by the Circuit on the appeal of the  
6 preliminary injunction that was granted, and I think  
7 it would be helpful to do it in that way.

8 Would you be able to do that?

9 MR. VANCE: Yes, Your Honor.

10 THE COURT: To file your -- file your motion  
11 by the 11th, I think, by agreement --

12 MR. VANCE: Yes.

13 THE COURT: -- and then any response you  
14 would have to Docket 70, you can file by that date as  
15 well?

16 MR. VANCE: We will do that, Your Honor. And  
17 I suspect you're exactly right; we should be able to  
18 incorporate it a little bit by reference and limit the  
19 amount of paper --

20 THE COURT: All right. Thank you.

21 MR. VANCE: -- or electronic material that is  
22 filed.

23 THE COURT: Yes. And if you want to file a  
24 written response to that, you can, by the same date,  
25 the 11th.

1 MR. SHARP: Thank you, Your Honor.

2 MR. CHRISTMAN: Your Honor --

3 THE COURT: Yes, sir?

4 MR. CHRISTMAN: -- if I could ask for a slight  
5 clarification.

6 THE COURT: All right.

7 MR. CHRISTMAN: By -- by what you've just  
8 ordered and directed, does that mean that you will not  
9 have an order on the motion for injunction pending  
10 appeal prior to September 11th?

11 THE COURT: On your motion?

12 MR. CHRISTMAN: On the motion for injunction  
13 pending appeal. I mean, you absolutely will not rule  
14 on the motion for injunction?

15 THE COURT: No. I will make not a ruling  
16 until I get a response, clearly.

17 And I think -- this motion was filed  
18 yesterday. That would give me nine days. I think the  
19 last motion took 45 days to adjudicate. So I'm not  
20 planning on ruling on Docket 70 before the 11th. Is  
21 that what you're asking?

22 MR. CHRISTMAN: Yes. Just wanted to ask for  
23 that clarification for the record.

24 THE COURT: I'm not going to rule on the  
25 motion Docket 70 until it becomes ripe. And I'll give

1 -- how much time would you like to respond?

2 MR. CHRISTMAN: We filed the motion, Your  
3 Honor. You're asking for --

4 THE COURT: Well, but you can file a reply.  
5 I mean ...

6 MR. CHRISTMAN: Correct. It's -- Your Honor,  
7 to be honest, it's to clear up the record. As I said  
8 earlier, that the Federal Rules of Appellate Procedure  
9 ordinarily direct you to file in the district court,  
10 but if it's deemed impractical to get the relief that  
11 you're asking for, which we believe is emergent, that  
12 then we are --

13 THE COURT: Well, I will do my level best  
14 to -- I understand that anything filed under Rule 65  
15 takes precedence over any other case, other than a  
16 case of similar nature, I think is what the law says.  
17 So I will work on that as expeditiously as I can.

18 I know you have an expedited briefing  
19 schedule at the Circuit on the underlying substance of  
20 the merits of the appeal. Perhaps that may need to be  
21 modified. I'll try to get that order out as soon as  
22 you -- if you want to file a reply within seven days,  
23 is that ...

24 MR. CHRISTMAN: That's fine, Your Honor.

25 THE COURT: Okay. Seven days, Mr. Vance, or

1 any other interested party, can file a response by the  
2 11th of September. Any reply would be due on the  
3 18th.

4 MR. CHRISTMAN: And in light of these  
5 rulings, Your Honor, we would also move to reconsider  
6 the Court's prior order not giving us an opportunity  
7 to respond to plaintiffs' motion filed under Rule 65  
8 to modify and enlarge this Court's prior order.

9 We would ask for the same amount of time that  
10 the governor will have to respond to our motion for  
11 injunction pending appeal.

12 THE COURT: I'm going to deny that.

13 MR. CHRISTMAN: Thank you, Your Honor.

14 THE COURT: I think you've been heard here  
15 for that.

16 Okay. Let's see. We have -- oh. We're  
17 going to go now -- turn to -- all right.

18 All right. As everyone knows, the Court  
19 denied Ms. Davis's motion to stay the Court's August  
20 12th, 2015 preliminary injunction pending appeal, but  
21 did stay that order until August 31st, to give her an  
22 opportunity to ask the Sixth Circuit to review the  
23 motion to stay.

24 And a little clarification. I initially had  
25 not put a deadline in the order. And then after

1 speaking with my law clerks, I realized that the  
2 practical impact of that would be, it's just a  
3 definite. And you probably all realized that. If  
4 there's no other order, we're not in violation of  
5 that.

6           So I felt like a -- approximately a two-week  
7 window to give the appellate courts an opportunity to  
8 take that up, kind of a period of time, let the  
9 appellate judges, three of them, review it, and then  
10 as everyone knows, there was a petition to the Supreme  
11 Court as well on the stay issue.

12           On August 26th of this year, a panel of the  
13 Sixth Circuit unanimously denied her motion to stay.  
14 In its decision, the Court of Appeals stated that  
15 there was little to no likelihood that Ms. Davis in  
16 her official capacity will prevail on appeal. And  
17 that's the language of three appellate judges, not  
18 mine.

19           She then filed an emergency petition with the  
20 Supreme Court seeking a stay. And as everyone knows,  
21 on Monday of this week, Justice Kagan referred that  
22 petition to stay to the entire court, and the petition  
23 was denied.

24           So the procedural options that she has to  
25 stay the prior order have now been exhausted, at least

1 those that I think are available.

2           We're here on the plaintiffs' motion to hold  
3 her in contempt for not complying with the Court's  
4 prior order.

5           Contempt proceedings, for those of you who  
6 are not of a legal mind, are brought under 18 U.S.  
7 Code, Section 401. 18 U.S. Code is the federal  
8 criminal code, although it does contain in various  
9 provisions and some civil directions on civil cases as  
10 well, and this case falls within that example. It  
11 does give the Court the power to enforce compliance  
12 with its lawful orders.

13           Now, I'm sure there are some that think that  
14 the Court's order wasn't lawful. Well, here in  
15 America when a judge issues an order, it's -- unless  
16 it's otherwise illegal -- and I think most of us  
17 district judges like to avoid issuing illegal  
18 orders -- lawful orders are orders signed by judges.  
19 State court judges sign lawful orders all the time.

20           "Courts do have the power to punish or  
21 fine -- punish by fine or imprisonment, or both, at  
22 its discretion, such contempt of its authority and  
23 none other as disobedience or resistance to its lawful  
24 orders."

25           So at this point, both sides have filed a

1 motion and a response. I'm going to waive the time  
2 for filing and reply because I went ahead and set this  
3 matter today at the request of counsel.

4 In your response -- I don't know who's going  
5 to take this one, Mr. Christman or Mr. Gannam?

6 MR. GANNAM: Mr. Christman.

7 THE COURT: Mr. Christman. You state that  
8 she has a present inability to comply with the Court's  
9 order -- and again, I'm paraphrasing, trying to keep  
10 it -- kind of summarizing the argument -- that she has  
11 a present inability to comply due to her religious  
12 beliefs. I mean, that's kind of -- and there's more  
13 to it than that, but that's kind of in a generic  
14 sense, that's what you're arguing.

15 The law in the Sixth Circuit -- and frankly,  
16 there's not a whole lot of law on civil contempt. And  
17 if you think about it, the reason for that is most of  
18 the time when an order goes on, there is compliance  
19 with the order. So it's probably a good thing in our  
20 society that there's not a lot of law in this area.  
21 Because most of the time you get compliance and you  
22 don't have to compel the action of a party, or perhaps  
23 a non-party, who's acting as an agent of a party, to  
24 comply with an order.

25 But doesn't the Sixth Circuit, Mr. Christman,

1 seem to require more than just someone's statement  
2 that they don't wish to comply?

3 I've got this First Amendment right, I've got  
4 this Kentucky constitutional right to exercise my  
5 religion, and I'm -- I can't comply because of that.  
6 Doesn't it require more like a physical or a factual  
7 impossibility to not comply? If so, why not?

8 MR. CHRISTMAN: Your Honor, it does. It is a  
9 factual impossibility --

10 THE COURT: Okay. Why is it factually  
11 impossible here?

12 MR. CHRISTMAN: It's factually impossible for  
13 Ms. Davis to authorize the union of a same-sex couple  
14 and place her name and approval by that on that union.

15 THE COURT: Okay. What -- go ahead.

16 MR. CHRISTMAN: She cannot do it in her  
17 conscience.

18 THE COURT: Okay. What -- what would prevent  
19 --

20 MR. CHRISTMAN: It's factually impossible  
21 that she's unable to do.

22 THE COURT: What would prevent -- I'm from  
23 northern Kentucky, and I know Kentucky is a melting  
24 pot of religions. There's a lot of Baptists, there's  
25 a lot of Catholics in northern Kentucky and this area,

1 and down in Owensboro, a lot of other religions.

2 I'm Catholic. Part of Catholicism says that  
3 if you're married and get divorced and you want to get  
4 married in the Catholic church, you need to get an  
5 annulment before you get remarried. I mean, that's  
6 how -- some Catholics follow that, some don't.  
7 Whether they do or they don't, that's really not  
8 relevant. But the question is, what would prevent a  
9 Catholic clerk from -- if I were to not -- if I were  
10 to agree with your client's position on this contempt  
11 motion, what would prevent a Catholic clerk from, when  
12 two, let's say, same-sex or opposite-sex couples come  
13 in, and they're gathering the information, what's your  
14 name, how old are you, have you been married before?  
15 Yes, I've been married before. Has that -- are you --  
16 he's Catholic and he asks, or she asks, "Well, has  
17 that marriage been annulled?" And either they refuse  
18 to answer or they say, "No, it hasn't."

19 That clerk may say, "Well, gosh, I'm not  
20 going to issue that because I'm -- in my Catholic  
21 beliefs, I can't issue a marriage license because that  
22 individual has been -- that marriage hasn't been  
23 annulled, and you can't get married. In essence, it's  
24 still a marriage in the eyes of the -- some Catholics.

25 How is that any different than this? Or it

1 may not be different, I ...

2 MR. CHRISTMAN: The difference, Your Honor,  
3 is that if someone would step up and assert that and  
4 make that argument, which --

5 THE COURT: You would defend them?

6 MR. CHRISTMAN: -- there is no -- there is no  
7 evidence that anybody has. I'm sure if there were  
8 discovery in this case on that issue, that we could  
9 find Catholic clerks who have served in the role who  
10 have been faced with those situations, and maybe  
11 they've said, "I believe one thing, but I'm -- I'm  
12 willing to issue this license."

13 THE COURT: So in that case, it wouldn't be  
14 factually impossible because they're willing to do it?

15 MR. CHRISTMAN: It wouldn't be factually  
16 impossible. Because what person is saying is they  
17 might believe one thing, but what -- their conscience  
18 is not directing upon them that they are unable to  
19 issue the license.

20 What's different for Ms. Davis is she's not  
21 just willy-nilly spur of the moment saying, "I just  
22 don't want do it, Judge, and I just -- it's no big  
23 deal. I don't -- I just don't want to do it."

24 We would not -- we would not be where we are  
25 today and be through everything that we've been

1 through, Your Honor, with all the different  
2 proceedings and the different hearings. And as this  
3 Court has been inundated with calls, that is, you  
4 know, just scraping the surface of what Ms. Davis has  
5 had to personally endure because of her compulsion to  
6 follow her conscience. That this is not a matter of,  
7 "I just don't want to issue a license to a couple  
8 that's been divorced because I have a problem with  
9 divorce." That's not the -- that's not the religious  
10 belief, that's not the conscience issue that's --

11 THE COURT: So it's -- there's certain things  
12 that are -- there's certain things that are  
13 conscious-driven and certain things that aren't from  
14 her perspective? Like someone who's previously  
15 divorced is not that important?

16 MR. CHRISTMAN: Correct. We don't have that  
17 here.

18 THE COURT: Okay.

19 MR. CHRISTMAN: What we have here is a  
20 request -- and as we've said and tried to articulate  
21 before, is that Ms. Davis does not have a religious  
22 conscience objection to an opposite-sex couple being  
23 married. She has no problem giving that  
24 authorization, putting her name on that license. The  
25 reason to date that she's yet been able to --

1 THE COURT: Well, that's been  
2 well-established; she doesn't want to violate their  
3 equal protection rights, she's -- I understand.

4 MR. CHRISTMAN: Right. But I'm putting that  
5 out there to say she is not factually unable to issue  
6 that license for conscience reasons. She's factually  
7 unable to issue the license to the opposite-sex couple  
8 right now because her conscience prevents her from  
9 issuing a license to a same-sex couple. And her  
10 understandings and applications and adherence of the  
11 law coming down saying "same-sex couples have to be  
12 treated the same as opposite-sex couples," then her  
13 interpretation and understanding of Kentucky marriage  
14 law as it exists in the statutes now and as is being  
15 applied is that as she's operating and acting through  
16 that scheme and those requirements, that she has to  
17 treat couples the same, and so she's factually  
18 prevented from doing it.

19 In a lot of cases in the contempt world, what  
20 arises on the factual impossibility side is -- is a  
21 bank account that has zero dollars.

22 THE COURT: Right, but they can't actually  
23 comply with it. And I've read pretty much every Sixth  
24 Circuit case on civil contempt in the last 24 hours,  
25 so I recognize that.

1 MR. CHRISTMAN: And by analogy, Your Honor,  
2 we're not in the -- this case is not about money, at  
3 all. Her bank account of conscience, she -- she  
4 cannot -- that it is as if asking -- you know,  
5 ordering somebody to write a \$1,000 check from a bank  
6 account that has no money. She has no ability, no  
7 conscience -- no money in her conscience bank to write  
8 the check that would come from the order.

9 THE COURT: All right.

10 MR. CHRISTMAN: And yes, Your Honor's  
11 correct, you know, out of the Sixth Circuit cases that  
12 are out there to date, you know, they're -- we're not  
13 going to be able to point you to a Sixth Circuit case  
14 that says --

15 THE COURT: Neither side is.

16 MR. CHRISTMAN: -- because *Obergefell* just  
17 came down months ago and has redefined the institution  
18 of marriage. And as was actually argued by the amicus  
19 party, that the -- the legislators need to look at the  
20 entire scheme because the entire scheme has been  
21 rewritten and overturned by what the Supreme Court  
22 did.

23 THE COURT: Right. And I'll say that --  
24 civics lesson -- we've got executive and legislative  
25 branches and you've got -- and you have our branch --

1 thank you. If you would escort someone. Thank you.

2 Thank you.

3 [INTERRUPTION IN THE COURTROOM]

4 THE COURT: As I was saying, the other  
5 branches are designed for that type of thing. The  
6 other branches generally, having seen it firsthand for  
7 many years, generally have to be responsive to those  
8 types of changes by their constituencies because they  
9 have to -- if they aren't, perhaps they don't get  
10 re-elected.

11 This Court acts by motion. This Court has  
12 limited jurisdiction. This Court does not engage in  
13 social policy.

14 December of 2001, I took an oath to the  
15 Senators that I would follow the law and not let my  
16 personal opinions impact my decisions. And I  
17 generally do that every day. It's not every day I get  
18 to do it in such a public forum with so much people  
19 watching, but frankly, that's part of what is  
20 happening today.

21 The law does change. If the -- as  
22 Mr. Stivers indicates in his amicus brief, if there  
23 are legislative fixes, if you will, I use that term  
24 loosely, which would enable someone to apply for -- I  
25 don't think the plaintiffs necessarily have an issue

1 with the legislative fix which would allow them in  
2 Rowan County to get their marriage license from  
3 another entity, if that entity would be available to  
4 issue the license going forward. If there's a change  
5 in the law by the legislature, I'm sure they wouldn't  
6 care about that. In fact, they probably would applaud  
7 that because that ultimately -- the Court would like  
8 that too because it would perhaps resolve this  
9 litigation, to some extent.

10 I'm sure there'll be corollary motions that  
11 are filed at some point for various relief, but that's  
12 not the Court's job.

13 This issue of willfulness in a civil contempt  
14 proceeding, I mean, do you agree that it's not an  
15 element under the Sixth Circuit law?

16 MR. CHRISTMAN: Willfulness is not an element  
17 to the finding of contempt itself --

18 THE COURT: Correct. It would be to the  
19 sanction perhaps.

20 MR. CHRISTMAN: -- but it is a consideration  
21 in terms of the -- the extent or the breadth of -- if  
22 a contempt finding is made and in determining what the  
23 --

24 THE COURT: Appropriate sanction would be.

25 MR. CHRISTMAN: -- the appropriate sanction

1 --

2 THE COURT: I agree with that. That's what  
3 that *Rolex Watch* case says in the Sixth Circuit.

4 MR. CHRISTMAN: Intent and willfulness is a  
5 consideration that the Court can -- can make.

6 And on the issue of willfulness and intent, I  
7 think the Court would recall the testimony that  
8 Ms. Davis has -- has already given and is prepared to  
9 give in her defense to establish the factual  
10 impossibility that -- you know, there is certainly no  
11 intent here whatsoever to harm or injure or burden the  
12 plaintiffs in this case.

13 THE COURT: All right.

14 MR. CHRISTMAN: And I know that there may be  
15 characterizations and say, you know, that that is  
16 exactly what she wants to do, but ...

17 THE COURT: I haven't made any of those  
18 characterizations.

19 MR. CHRISTMAN: No. Those characterizations  
20 have come from elsewhere. That -- that is not her  
21 intent in any way.

22 It's also not her intent to violate or  
23 disregard or ignore or disobey the Court's orders,  
24 that that is not her intent.

25 Her intent is to adhere and follow what her

1 conscience is commanding and compelling that she must  
2 do. That here I stand, I can do no other. That she  
3 cannot do anything but what she is doing, faithfully  
4 applying her duties and obligations and understanding  
5 of the law, Kentucky Religious Freedom Restoration  
6 Act, a Kentucky marriage scheme that's been  
7 obliterated. And then Governor Beshear comes over the  
8 top and says, "Legislature's not in session. I'm not  
9 calling them. Here's what you must do, clerks.  
10 Without any exception, you must issue this license on  
11 a form I'm going to revise, but I'm not going to  
12 revise it in a way that accommodates any religious  
13 beliefs or concerns."

14           And so again, that dovetails and goes back to  
15 why Ms. Davis -- part -- also part of her defense is  
16 that she has not been given due process fully for  
17 contempt because any liability that she is claiming,  
18 she's saying, "I have a claim against the governor.  
19 And the governor has issued this directive." The  
20 legislature's ready to act and solve the problems, but  
21 the governor says, "No."

22           THE COURT: Are they ready to act?

23           MR. CHRISTMAN: They are, Your Honor.

24           THE COURT: Okay. Well, they haven't acted  
25 yet.

1 MR. CHRISTMAN: Because they can't because it  
2 requires a special session by which Governor Beshear  
3 exercises the unilateral authority to call.

4 THE COURT: Well, maybe he's waiting for the  
5 new governor.

6 MR. CHRISTMAN: He may very well may be. And  
7 both gubernatorial candidates, both Mr. Bevin and  
8 Attorney General Conway have indicated an intent to do  
9 something to protect the religious liberties and  
10 objections.

11 In fact, Attorney General Conway, in response  
12 to the Kentucky Clerks Association's proposal to  
13 remove the name, said he's fine with that.

14 So there is -- and again, it goes to this  
15 idea this is premature to take an action to hold her  
16 in contempt when she's filed a motion to dismiss her  
17 complaint in its entirety. She's filed preliminary  
18 injunctive relief against the governor seeking relief.  
19 Her conscience does not allow it. She's entitled to  
20 due process to be heard on all of those claims before  
21 the Court could reach a conclusion that says, "You're  
22 in contempt. You're disobeying my order."

23 THE COURT: Well, again, this -- due process  
24 in this contempt proceeding. That's -- she's had  
25 notice of this hearing, and she's being given an

1 opportunity to be heard by you.

2 I mean, the motion to dismiss you've raised,  
3 and I guess I'll -- he brought it up, so I'll raise it  
4 with you, Mr. Sharp, Mr. Cannon. Many of the issues  
5 raised in the motion to dismiss were intertwined with  
6 the decision the Court made on the preliminary  
7 injunction order.

8 We have all these various motions raising a  
9 number of things. Again, the Sixth Circuit's decision  
10 on the issue before the Sixth Circuit, the substantive  
11 merits appeal, that decision will have some --  
12 hopefully, will be instructive on other issues before  
13 the Court.

14 I appreciate your -- I -- you're -- I know  
15 you want to put your client on as a witness -- or in  
16 defense of the contempt issue, and I'm going to give  
17 her a chance to do that. But let me ask you, what's  
18 your response about this present -- you can sit down.  
19 Thank you. What's your response to this present  
20 inability to comply, because you really didn't have a  
21 chance to file a reply. I want to give you a chance  
22 to be heard on that.

23 MR. SHARP: Thank you, Your Honor. Despite  
24 their arguments to the contrary, what they're really  
25 trying to do is redefine factual impossibility as

1 unwillingness. I mean, it's analogous to the free  
2 speech realm in which an individual self-censors their  
3 speech because of some anti-harassment policy.

4           You know, whether or not the speech would  
5 actually violate the policy, you know, the Court would  
6 need specific facts in that regard. Here, it --  
7 there's not a factual impossibility to comply with the  
8 Court order. It's an unwillingness to comply because  
9 of sincerely-held religious beliefs.

10           As Ms. Davis testified during the preliminary  
11 injunction hearing, she was specifically asked on  
12 cross-examination, "If the preliminary injunction  
13 hearing in this case were issued, what would you do?"  
14 Ms. Davis testified at that time, "I'll cross that  
15 bridge when I get to it."

16           After the Supreme Court denied the  
17 application for a stay, Ms. Davis was noted as saying  
18 that she was going to pray about what she was going to  
19 do the following day, given the exhaustion of stay  
20 requests.

21           And when she went to work on Tuesday morning,  
22 we think the evidence will clearly show that she made  
23 a choice, and the fact that that choice was motivated  
24 by a sincerely-held belief does not render it anything  
25 other than a choice.

1           It's not a factual impossibility for someone  
2 to choose a course of action because of a  
3 sincerely-held religious belief, but that is  
4 insufficient as a defense to contempt.

5           THE COURT: All right. Now, in your motion,  
6 you seem to ask for fines in this case. The statute  
7 gives the Court the discretion, depending on the  
8 circumstances, what the Court believes is necessary to  
9 gain compliance by the defendant herself or perhaps  
10 agents of the defendant.

11           Do you expect her to comply with your order  
12 if the Court imposes a fine only?

13           MR. SHARP: Your Honor, it's our hope that  
14 the Court can fashion a remedy that would secure  
15 compliance in ways --

16           THE COURT: Because that -- frankly, that's  
17 what this hearing is about --

18           MR. SHARP: Exactly. We wanted to --

19           THE COURT: -- to coerce compliance -- this  
20 is a civil contempt hearing. Nobody's seeking  
21 remedial -- we have coercion of the party to comply,  
22 or a remedial contempt. Remedial contempt's not what  
23 we're -- no one's asking for money here; they're  
24 asking for compliance. This is not -- this is civil  
25 contempt, not criminal contempt.

1 All right. Do you want -- how do you wish to  
2 proceed now? Do you wish to call her as a witness or  
3 --

4 MR. GANNAM: Yes, Your Honor. We'd like to  
5 put her on the stand.

6 THE COURT: All right. That's fine. You can  
7 do that. Come around, please.

8 [KIM DAVIS, having been first placed  
9 under oath, was examined and testified as  
10 follows:]

11 THE COURT: Here's a water, ma'am.

12 THE WITNESS: I don't want any.

13 THE COURT: Are you sure? All right.

14 THE WITNESS: Do you have any tissues?

15 THE COURT: No, I don't have they of those.  
16 Here we go. Here, take this just in case. You might  
17 need that. There you go. Thank you.

18 MR. GANNAM: And for clarification, Your  
19 Honor, will the Court be relying on the entire record  
20 that's already been developed in this case for  
21 purposes of today?

22 THE COURT: I -- I will, yes. Anything that  
23 was previously testified to at the hearing or was part  
24 of the record, you all can rely upon it freely in  
25 making your positions known.

1 Good afternoon, ma'am.

2 THE WITNESS: Good afternoon.

3 THE COURT: All right. You may proceed, sir.

4 MR. GANNAM: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY: MR. GANNAM:

7 Q. Ms. Davis, what is your -- your current  
8 religious denomination?

9 A. I'm Christian Apostolic.

10 Q. And when did you become a Christian?

11 A. 2011 is when I had dedicated my life to  
12 God, January, 2011.

13 Q. Do you remember the day that you became a  
14 Christian?

15 A. Yes. January 23rd. It was the day my  
16 mother-in-law passed away. She died about 6:00 that  
17 morning, and she wanted all of her family to go to  
18 church that night. She's a Godly woman. And we went  
19 -- all went that evening.

20 Q. At the time that you went to church that  
21 night, was there any reason, other than her request,  
22 her dying wish, that you went to church that night?

23 MR. SHARP: Objection, relevance.

24 THE COURT: Overruled.

25 A. It was out of respect for her.

1 Q. Did you wake up that day and simply  
2 decide, "I'm going to become a Christian tonight?"

3 A. No.

4 Q. When you became a Christian, can you --  
5 describe as best you can, you know, why you believed  
6 at that moment, if you can remember it.

7 A. I haven't always been a very good person.  
8 I did a lot of vile and wicked things in my time. And  
9 it was through my mother-in-law's death, seeing the  
10 way God's people just surrounded her with loving  
11 kindness and -- God's mercy touched me that night.  
12 And I know it will never be the same. I promised to  
13 love Him with my whole heart, mind, body and soul,  
14 because I want to make heaven my home.

15 Q. Ms. Davis, when you experienced what you  
16 experienced that night and believed what you believed  
17 that night, could you make a decision to unbelieve  
18 that?

19 A. You can't be separated from something  
20 that's in your heart and in your soul.

21 Q. And that belief that you acquired that  
22 night that you became a Christian, is that the same  
23 belief that motivates your -- your actions today?

24 A. Every day.

25 Q. And as part of that belief, do you have a

1 belief about what marriage is?

2 A. Yeah.

3 Q. And what is marriage, according to that  
4 belief?

5 A. Marriage is a union between one man and  
6 one woman.

7 Q. Do you have the ability to believe that  
8 marriage is anything else?

9 A. No.

10 Q. Is there anything preventing you from  
11 issuing marriage licenses currently, other than that  
12 belief as to what marriage is?

13 A. No.

14 Q. And is that belief, to be clearer, is it a  
15 religious belief?

16 A. It is.

17 Q. Ms. Davis, if I asked you the question:  
18 Do you -- do you approve of same-sex marriage, what  
19 would your answer be?

20 A. No. It's not of God.

21 Q. And are you able to -- to change your mind  
22 about that?

23 A. No.

24 Q. And is there any circumstance that you can  
25 envision where you could authorize a marriage of a

1 same-sex couple based on your religious belief?

2 A. No.

3 Q. Can you change your conscience on this  
4 matter?

5 A. I cannot.

6 Q. Ms. Davis, if there were any way for a  
7 Rowan County marriage license to be issued that did  
8 not depend on your authorization and did not bear your  
9 name, would you have any objection to that?

10 MR. SHARP: Objection. Relevance.

11 THE COURT: Overruled. I don't think it  
12 matters, but -- go ahead. You may answer.

13 A. Ask the question again, please.

14 Q. If there were a way to issue a marriage  
15 license from Rowan County that did not depend on your  
16 authorization and bear your name, would you have any  
17 objection to that?

18 A. No.

19 Q. Do you -- apart from those things, your  
20 authorization and your name being on the license, do  
21 you have any objection to the plaintiffs obtaining a  
22 marriage license anywhere?

23 A. No.

24 Q. Ms. Davis, are you aware of any change by  
25 the legislature in the marriage licensing statutes

1 that, at least prior to the *Obergefell* decision,  
2 controlled your duties and your authority to issue  
3 marriage licenses?

4 A. Can you restate -- can you ask that again.  
5 I'm sorry.

6 Q. Are you aware of any action by the  
7 Kentucky General Assembly, Kentucky Legislature, to  
8 change the marriage laws in effect at the time the  
9 Supreme Court issued its *Obergefell* decision?

10 A. No.

11 Q. And are you aware of any executive orders  
12 issued by the Governor of Kentucky that dictate what  
13 the marriage laws and policies are in Kentucky since  
14 the *Obergefell* decision?

15 A. No.

16 Q. And as you sit here today, apart from the  
17 existing Kentucky law at the time the *Obergefell*  
18 decision came down and the *Obergefell* decision itself,  
19 are you aware of any other controlling law on the  
20 issuance of marriage licenses in Kentucky?

21 A. No.

22 MR. GANNAM: I have no further questions,  
23 Your Honor.

24 THE COURT: Any cross?

25 MR. SHARP: Thank you, Your Honor.

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CROSS-EXAMINATION

BY: MR. SHARP:

Q. Good afternoon, Ms. Davis.

A. Good afternoon.

Q. You are, of course, aware of the preliminary injunction ruling that was issued in this case?

A. I am.

Q. You testified at a hearing about that in Covington a few weeks ago?

A. I did.

Q. And after that preliminary injunction ruling was entered on August the 12th, you and your attorneys sought to have its execution stayed, correct?

A. Correct.

Q. First in this court?

A. Yes.

Q. Then in the Court of Appeals?

A. Yes.

Q. And then finally, in the United States Supreme Court?

A. Yes.

Q. And on each occasion, your request to stay that injunction was denied?

1 A. Yes.

2 Q. I'm sorry?

3 A. Yes.

4 Q. When you testified on July the 20th, in  
5 connection with that preliminary injunction motion,  
6 you were asked what you would do if the Court issued a  
7 preliminary injunction?

8 A. Yes.

9 Q. Do you recall your response?

10 A. I think you said earlier that I said I  
11 would have to wait until that time came, pretty much.

12 Q. Was that an accurate recitation of how you  
13 testified?

14 A. I don't have the transcript in front of  
15 me, but I believe that you wouldn't say something that  
16 was not on it.

17 Q. And after the Supreme Court's decision was  
18 handed down on Monday, did you make a statement about  
19 what you would do then?

20 A. You mean on the first?

21 Q. Yes, ma'am.

22 A. Did I make a statement of what I was going  
23 to do?

24 Q. Were you asked by the media what you were  
25 going to do after the Supreme Court issued its

1 decision?

2 A. I've been inundated with media and stuff.  
3 I can't recall.

4 Q. Let me refresh your recollection. Do you  
5 recall telling the press that after the Supreme  
6 Court's decision, you were going to have to pray about  
7 what to do following the stay denial?

8 A. I pray every day, Mr. Sharp.

9 Q. Do you recall telling the press that?

10 A. I don't know if I -- if you said I did, I  
11 probably did.

12 Q. So after the Supreme Court denied the stay  
13 application, did you have to think about what you were  
14 going to do when you went to work the next day about  
15 the "no marriage license" policy?

16 A. Did I have to think about it?

17 Q. Yes, ma'am.

18 A. I didn't have to think about it. There  
19 was no choice there.

20 Q. When you denied the marriage licenses on  
21 Tuesday, you said that no marriage licenses would be  
22 issued, pending your appeals in this case, correct?

23 A. Correct, yes.

24 Q. Did you really mean to say that no  
25 marriage licenses would issue unless you won this

1 case?

2 A. No, sir.

3 Q. Well, then if you lose this case, will you  
4 go back to issuing marriage licenses?

5 A. Hopefully, our legislator will get  
6 something -- legislature will get something taken care  
7 of, sir.

8 Q. On July 20th then, did you know then that  
9 if a preliminary injunction ruling was issued, that  
10 you would not comply with it?

11 A. No, because it hadn't happened.

12 Q. On Tuesday, you went to work, correct?

13 A. Yes.

14 Q. And you met with your deputy clerks?

15 A. We probably did meet. I don't know if  
16 they -- if all of them got there early or not.

17 Q. You notified them about the Supreme  
18 Court's decision?

19 A. They all knew.

20 Q. And you told them that notwithstanding the  
21 Supreme Court's decision, your office was not going to  
22 issue any marriage licenses?

23 A. We are not issuing marriage licenses.

24 Q. I'm sorry?

25 A. We are not issuing marriage licenses.

1 Q. You told them that irrespective of the  
2 Supreme Court's decision, your "no marriage license"  
3 policy remained in place?

4 A. Correct.

5 Q. Despite the fact that the preliminary  
6 injunction contradicted that?

7 A. Correct.

8 Q. When one of the couples was denied a  
9 marriage license on Tuesday, you told them that you  
10 were denying the marriage license or not issuing them  
11 under God's authority?

12 A. That's right.

13 Q. Because to your religious beliefs, God's  
14 authority supersedes this Court's authority?

15 A. He supersedes everything, sir.

16 Q. And that includes this Court's authority?

17 A. Yes, sir.

18 Q. You interpret the Court's preliminary  
19 injunction ruling as contrary to God's will?

20 A. I do.

21 Q. As contrary to God's law?

22 A. I do.

23 Q. As contrary to what you've described as  
24 natural law?

25 A. I do.

1 Q. But you chose to disobey this Court's  
2 order because of your sincerely-held religious  
3 beliefs?

4 A. I have.

5 Q. On Tuesday morning, two of the plaintiffs  
6 in this case, Dr. April Miller and Karen Roberts, went  
7 to your office to get a marriage license, correct?

8 A. They said they were there. I don't -- I  
9 didn't see them. That doesn't mean they weren't  
10 there.

11 Q. The deputy clerks that were there that day  
12 continued to follow your directive of not issuing  
13 marriage licenses?

14 A. That's correct.

15 Q. This may seem like an obvious question,  
16 Ms. Davis, but other than your religious beliefs, are  
17 there any other reasons why your office cannot issue  
18 marriage licenses?

19 A. Not presently, no.

20 Q. Your office was certainly capable of doing  
21 so before the Supreme Court's *Obergefell* decision?

22 A. Correct.

23 Q. Your office issued 99 marriage licenses  
24 this year alone before that decision was handed down?

25 A. You're correct.

1 Q. And issued 214 last year?

2 A. That's correct.

3 Q. You've got the equipment to issue marriage  
4 licenses?

5 A. We do.

6 Q. You've got the personnel?

7 A. I do.

8 Q. So there's nothing physically preventing  
9 you from -- or your office, from issuing marriage  
10 licenses as to eligible applicants?

11 A. Presently you are correct.

12 Q. Am I correct that you have six deputy  
13 clerks?

14 A. There are eight that work in -- or seven  
15 that work in my office, and six that are front line --  
16 five that are front line.

17 Q. And of those, how many are able and  
18 qualified to issue marriage licenses?

19 A. The five that work the front line.

20 Q. Those five deputy clerks, when they issue  
21 a marriage license, do you physically have to sign or  
22 otherwise handle the marriage license application  
23 itself?

24 A. No.

25 Q. You've previously indicated that you

1 object to your name as the Rowan County Clerk  
2 appearing on those licenses, right?

3 A. That's correct.

4 Q. If you're not handling or signing the  
5 licenses yourself, is your name being populated on  
6 those forms by the software?

7 A. It is.

8 Q. Ms. Davis, of course, you're aware that  
9 we're here today on plaintiffs' motion to hold you in  
10 contempt?

11 A. I am.

12 Q. You are aware that if found in contempt,  
13 the Court could impose fines or other relief against  
14 you?

15 A. I am.

16 Q. Based on your earlier testimony, am I  
17 correct that your religious beliefs have not changed  
18 since Tuesday?

19 A. They have not.

20 Q. And you continue to refuse to comply with  
21 the Court's preliminary injunction ruling?

22 A. My conscience will not allow me.

23 Q. Ms. Davis, if the Judge were to order the  
24 imposition of fines, what's your understanding of who  
25 would be responsible for paying those?

1 MR. GANNAM: Objection, Your Honor. It calls  
2 for a legal conclusion from the witness.

3 THE COURT: Overruled.

4 THE WITNESS: That means I have to answer it?

5 THE COURT: You need to answer, ma'am.

6 A. I guess me.

7 Q. In the three weeks since the Court issued  
8 its preliminary injunction ruling, have you talked  
9 with anyone about obtaining financial assistance to  
10 pay for any contempt fines that may result in this  
11 case?

12 A. No.

13 Q. Are you aware if anyone has offered or  
14 agreed to provide financial assistance to you in the  
15 event that you incur contempt fines in this case?

16 A. There's people calling the office all the  
17 time wanting to know where we can -- where they can  
18 send money.

19 Q. And what do you tell them?

20 A. Send them to my counsel.

21 Q. Liberty Counsel?

22 A. There's funds set up through the Family  
23 First Foundation and -- I don't know. People want to  
24 set up Go Funds, and I don't know what to tell them.  
25 It's not my -- I don't have anything to do with that.

1 THE COURT: Those Go Funds, I've seen those  
2 before like for individuals who -- like I know I've  
3 had situations where individuals have children who are  
4 killed and put money into a bank, and it's raised for  
5 funeral expenses, et cetera.

6 Is that kind of what we're talking about  
7 here, something like that?

8 THE WITNESS: Uh-huh (affirmatively), yeah.

9 THE COURT: Okay. I've heard of that before.

10 A. I, myself, have not solicited any money  
11 from anybody.

12 Q. How much money has been raised on your  
13 behalf?

14 A. I couldn't tell you.

15 Q. How'd you find out about the efforts to  
16 raise money for you?

17 A. People calling, people coming in.

18 Q. Do you expect that the county's insurance  
19 carrier would pay any fines associated that you might  
20 incur as a result of this contempt hearing?

21 A. No. I was told that KaCO has dropped me  
22 like a hot potato.

23 Q. And who told you that?

24 A. County Attorney.

25 Q. Ms. Davis, has there been a change in your

1 staffing since you testified in July within the  
2 clerk's office?

3 A. No. I have a little part-time girl I  
4 hired to help with the preparation of elections.

5 Q. Did you count her in the total today?

6 A. Let me see, 1, 2, 3 -- 5, 6, 7, and I  
7 guess there's eight. But she doesn't wait the front,  
8 or she just simply files and helps, but she is a  
9 part -- she is a part-time deputy.

10 Q. Thank you. Ms. Davis, as an elected  
11 county clerk, your salary is a matter of public  
12 record?

13 A. Sure it is.

14 Q. I'm sorry?

15 A. I said, sure it is.

16 Q. You make approximately \$80,000 a year?

17 A. About that.

18 Q. Ms. Davis, in your verified complaint in  
19 this case, you stated that in order to be --

20 THE COURT: Her third-party complaint?

21 MR. SHARP: Yes, sir.

22 THE COURT: All right, sir.

23 Q. In order to be a county clerk, you swore  
24 an oath to support the Constitution and laws of the  
25 United States and the Commonwealth of Kentucky?

1 A. Correct.

2 Q. You also said that you understood that  
3 those oaths meant that you also would uphold the moral  
4 law of God?

5 A. Yes.

6 Q. And natural law?

7 A. Yes.

8 Q. And your sincerely-held religious beliefs  
9 and convictions?

10 A. Yes.

11 Q. You decide when your job duties conflict  
12 with God's moral law, correct?

13 A. No. It's more like God's moral law  
14 convicts me when it conflicts with my job duties.

15 Q. But you were the -- you were the  
16 decision-maker about when your job duties conflict  
17 with God's moral law?

18 A. My conscience is.

19 Q. And you're also the decision-maker about  
20 when your job duties conflict with what you've  
21 described as natural law?

22 A. Yes.

23 Q. I'm sorry. We're going to need an audible  
24 answer.

25 A. I said yes.

1 THE COURT: If we don't have the air  
2 conditioning on in here at all, it's going to get an  
3 oven, so everybody has to try to keep their voices up.  
4 Thank you.

5 Q. And when, in your judgment, a statute or  
6 constitutional provision or job duty conflicts with  
7 God's moral law or natural law, God's moral law or  
8 natural law trumps, correct?

9 A. Yes.

10 Q. As it did in this instance when your  
11 belief about God's law conflicted with the Court's  
12 preliminary injunction ruling?

13 A. Yes.

14 Q. And is it your contention that each and  
15 every government employee has the same right that you  
16 do?

17 A. Yes.

18 Q. Regardless of what their religion may be?

19 A. Yes.

20 MR. SHARP: Nothing further, Your Honor.

21 THE COURT: All right. Anything else  
22 redirect-wise -- or I didn't ask you. Ms. Parsons,  
23 anything?

24 MS. PARSONS: No, Judge.

25 THE COURT: Mr. Vance?

1 MR. VANCE: No, Your Honor.

2 THE COURT: Mr. Gannam?

3 MR. GANNAM: May I have a moment, Your Honor?

4 THE COURT: Sure.

5 REDIRECT EXAMINATION

6 BY: MR. GANNAM:

7 Q. Ms. Davis, does your office receive any  
8 money from marriage licenses that your office does not  
9 issue?

10 A. No.

11 THE COURT: Now, the testimony at the  
12 preliminary injunction hearing was it was just a small  
13 amount of her entire budget. I remember we talked  
14 about that.

15 MR. GANNAM: It was one-tenth of one percent.

16 THE COURT: Yeah, a very small amount, very  
17 small.

18 Q. But just so I'm clear, but if your office  
19 isn't issuing a marriage license, it's not receiving  
20 any funds from marriage licenses, correct?

21 A. That's correct.

22 Q. And, Ms. Davis, does any deputy clerk in  
23 your office have any authority to issue a marriage  
24 license that doesn't come from your authority as the  
25 county clerk?

1           A.           No, they do not.

2                   MR. GANNAM:  No further questions, Your  
3 Honor.

4                   THE COURT:  All right.  I just have a couple  
5 of follow-ups, and I will try to be as specific as I  
6 can.

7                   Given your testimony today, it's not your  
8 intention on complying with the Court's August 12th,  
9 2015, order which enjoined you from applying your "no  
10 marriage license" policy; is that correct?  Yes?

11                   THE WITNESS:  Yes.

12                   THE COURT:  All right.  And have you  
13 instructed your deputy clerks not to comply with the  
14 order as well?

15                   THE WITNESS:  Yes.

16                   THE COURT:  All right.  All right.  Very  
17 well.  You may step down.  Thank you.

18                   THE WITNESS:  Thank you.

19                   MR. GANNAM:  Your Honor, may I have just a  
20 brief follow-up on that issue?

21                   THE COURT:  Sure.  I mean, I just asked two  
22 questions, so ...

23                                   REDIRECT EXAMINATION

24           BY:  MR. GANNAM:

25           Q.           Ms. Davis, as the clerk who employed eight

1 employees in your office, do you have an obligation to  
2 consider any religious objection that an employee  
3 might make to any job duty in your office?

4 A. Yes.

5 MR. GANNAM: No further questions, Your  
6 Honor.

7 THE COURT: All right. And you testified  
8 previously, ma'am, in July that -- and I have my  
9 notes; I know the transcript reflects the actual  
10 language that was used, but I didn't realize you had  
11 seven or eight. You may have hired someone part time  
12 in the interim to help with the elections, as you've  
13 stated, but several of the deputies shared your  
14 belief, and at least one had indicated that they would  
15 issue the licenses if you would allow it; is that  
16 still the case?

17 THE WITNESS: It is.

18 THE COURT: All right. Okay. Thank you.  
19 You may step down now. Anything else? I don't mean  
20 to -- did you have any follow-up?

21 MR. SHARP: No follow-up with her, Your  
22 Honor. We did intend to call one of the plaintiffs.

23 THE COURT: Okay. That's fine. Thank you.  
24 Any further proof with respect to the defense of the  
25 civil contempt charge here? Mr. Gannam?

1 MR. CHRISTMAN: No, Your Honor.

2 THE COURT: No?

3 MR. CHRISTMAN: No, Your Honor.

4 THE COURT: Mr. Sharp.

5 MR. SHARP: Thank you, Your Honor. The  
6 plaintiffs call Dr. April Miller.

7 THE COURT: That's fine. Come around, ma'am.

8 [APRIL MILLER, having been first  
9 placed under oath, was examined and testified  
10 as follows:]

11 THE COURT: You're welcome to a water, ma'am,  
12 if you need it.

13 THE WITNESS: Okay. Thanks. Awesome.

14 THE COURT: Good catch. Try to keep your  
15 voice up, please. You may proceed.

16 DIRECT EXAMINATION

17 BY: MR. CANON:

18 Q. Good afternoon, Dr. Miller.

19 A. Good afternoon.

20 Q. Would you please state your full name for  
21 the record.

22 A. April Miller.

23 Q. And, Ms. Miller, do you live in Rowan  
24 County?

25 A. I do.

1 Q. How long have you lived there?

2 A. Nine years and one month.

3 Q. Do you work in Rowan County?

4 A. Yes.

5 Q. What do you do for a living?

6 A. I'm a university professor at Morehead  
7 State University.

8 Q. What do you teach?

9 A. My courses are focused on special  
10 education, and also some that are relevant for  
11 elementary education teachers as well.

12 Q. Very good. And how long have you held  
13 that position?

14 A. Nine years.

15 Q. And do you pay taxes in Rowan County?

16 A. I do.

17 Q. And do you vote for elected officials in  
18 Rowan County?

19 A. I do.

20 Q. And did you vote in the last county clerk  
21 election?

22 A. Yes, I did.

23 Q. Who'd you vote for?

24 A. I actually voted for Kim Davis.

25 Q. Are you currently in a relationship?

1 A. Yes, I am.

2 Q. And can you describe that relationship to  
3 the Court.

4 A. It's a long-term, mutually exclusive  
5 partnership with Karen Roberts. We've been together  
6 as a family for 11 years with our daughter.

7 THE COURT: The record will reflect  
8 Ms. Roberts just raised her hand in court.

9 Q. Now you said "long-term," that was --  
10 you've been together for 11 years?

11 A. Yes, sir.

12 Q. And you have a daughter together?

13 A. Our daughter is -- biological mother is  
14 Karen Roberts. But when we came together as a family  
15 in 2000 -- 11 years ago, I accepted both Karen and  
16 Jessica into my heart and my home, and we are a  
17 family, and I consider Jessica my daughter as much as  
18 Karen considers her her daughter.

19 Q. And you've parented Jessica now for 11  
20 years approximately?

21 A. Yes. And was a very close friendship for  
22 many years before that.

23 Q. And are you engaged to be married to  
24 Ms. Roberts?

25 A. I am.

1 Q. And when did you become engaged to be  
2 married to her?

3 A. Actually, we probably made that commitment  
4 to each other in 2000 -- I'm sorry, 11 years ago when  
5 in Dallas, Texas, we -- we started living together as  
6 a family, and we made a commitment then to eventually  
7 get married.

8 Q. And so you've had an approximately 11-year  
9 engagement?

10 A. Yes, sir.

11 Q. And so why didn't you get married for that  
12 entire 11 years?

13 A. Well, first, we lived in places where  
14 marriage equity was not available to us under the  
15 Constitution or the state laws.

16 Q. And you said first you lived in those  
17 places. Explain what you mean by that.

18 A. That's the number one reason. The second  
19 reason is there were other states that were available  
20 that were issuing same-sex couples marriage licenses.  
21 But when we considered going to another state or  
22 another country even, we recognized that our marriage  
23 would not be available to us or recognized in many  
24 parts of the United States, and specifically in the  
25 places that we lived.

1 Q. But you know that's different now, right?

2 A. Yes, sir.

3 Q. And why is that; what's your understanding  
4 of that?

5 A. On June 26th, the Supreme Court of the  
6 United States ruled that there was marriage equity  
7 under the Fourteenth Amendment.

8 Q. And tell the Court a little bit about how  
9 you felt when that ruling came down.

10 A. Elated. We were really proud of our  
11 country. We celebrated, and were very excited that we  
12 had now the opportunity across all 50 states to  
13 have -- to be married and to have that marriage  
14 recognized.

15 Q. And did you make plans to actually get  
16 married once that decision came down?

17 A. We didn't make physical plans as in oh,  
18 here's our date, or here's our -- we made plans to do  
19 it and get married, actually we were thinking about in  
20 the summer.

21 Q. And so you've testified previously to this  
22 Court about your efforts to get a license in Rowan  
23 County?

24 A. Uh-huh (affirmatively).

25 Q. And since the last time you testified,

1 have you made any further efforts to get a marriage  
2 license in Rowan County?

3 A. Yes. Our first attempt was June 30th, and  
4 we did discuss that in court in hearings previously.

5 The second attempt was August 13th, after a  
6 preliminary injunction was decided by this Court.

7 The third time we attempted to get a marriage  
8 license was on September 1st, Tuesday of this week.

9 Q. And let's just focus on what happened this  
10 week. Tell the Court what happened when you went up  
11 there to get your marriage license.

12 A. Well, actually we came to the courthouse a  
13 few minutes before 8:00. We rallied a bit with  
14 Supporters of Equality, and we actually sang with --  
15 along with Kim Davis's supporters, "Amazing Grace."

16 A few minutes passed, and we entered the  
17 courthouse after it opened. We went to the counter.  
18 We asked for a marriage license. And the clerk that  
19 we saw that day said, "We are not issuing marriage  
20 licenses pending appeals."

21 We said, "Our understanding was that the  
22 appeal on the preliminary injunction had gone through  
23 the court system to the Supreme Court, and they had  
24 ruled to deny a continuing stay."

25 We asked again, and she said, "We are not

1 issuing marriage licenses pending appeals."

2           We asked to speak with Ms. Davis. We were  
3 told that she was working on monthly reports and was  
4 not available to speak to us.

5           We commented that we thought this might be a  
6 more important business matter, and we would like to  
7 see Ms. Davis. And we were again refused. We said,  
8 "Thank you very much. Have a nice day," turned around  
9 and left the courtroom.

10          Q.       Did you actually hope that you were going  
11 to get your license that day?

12          A.       Yes. We were hopeful that we would walk  
13 in there and receive a license and sign the  
14 information so that we could get married.

15          Q.       And I think you testified that it was your  
16 understanding that the Supreme Court said no stay,  
17 right?

18          A.       Correct.

19          Q.       At that time?

20          A.       Yes.

21          Q.       And tell the Court how you felt having  
22 been denied a third time on the application for a  
23 marriage license.

24          A.       Well, each time we entered the -- the  
25 county clerk's office to get a marriage license, we

1 had obviously an intent to get married and wanted a  
2 marriage license so that we could go get that -- so  
3 that we could go get married.

4           When you go into a courthouse to get a  
5 marriage license, you are -- you have that giddiness  
6 of, "We're gonna' get married. This is going to be  
7 it." And each time we went there, we were very  
8 excited and hopeful.

9           When the *Obergefell* decision came down, it  
10 meant that no longer were we -- could we be  
11 discriminated against in requesting a marriage  
12 license, that we could -- that we could actually get a  
13 marriage license.

14           So, yes, every time we've gone in, we've been  
15 very excited and very hopeful.

16           Q.       Do you feel like being able to get married  
17 would bring any sort of validity to your relationship,  
18 to your family?

19           A.       Yeah. That's what marriage is about, to  
20 show other people that you are in a long-term,  
21 committed relationship, and that it's recognized all  
22 across our country, and that you are a family. This  
23 is -- it's legitimized. It's permanent. It's a part  
24 of who you are.

25           Q.       Why is it important to you to get your

1 license in Rowan County? Couldn't you go someplace  
2 else?

3 A. Well, I live in Rowan County. I pay taxes  
4 there. I own property in Rowan County. I work in  
5 Rowan County. In fact, the last nine years that we've  
6 lived there, we've done all of our county business in  
7 Rowan County. So I expect to get my license there,  
8 yes.

9 Q. Safe to say, you're part of a community in  
10 Rowan County?

11 A. We are.

12 Q. Do you feel like more or less part of that  
13 community if you're not able to get a marriage  
14 license?

15 A. Well, for the last two months it's been  
16 pretty demoralizing. We really feel like this  
17 marginalizes us again. After the *Obergefell* decision  
18 on June 26th, we expected that we were going to be  
19 treated equally and fairly.

20 On June 30th, when that first refusal or  
21 denial of being allowed a marriage license, that just  
22 marginalized us. And actually we were, I believe told  
23 to just go to another county by the clerk's office,  
24 the clerk that -- or deputy clerk that saw us that  
25 day.

1           That's kind of like saying, "We don't want  
2 gays or lesbians here. We don't think you're  
3 valuable. We don't think you're equal. We don't want  
4 you here."

5           Q.       Are you still planning to get married to  
6 Ms. Roberts?

7           A.       Oh, yeah.

8           Q.       And what's the stat -- how are you  
9 planning to do that? What's the status of your  
10 marriage plans now?

11          A.       Well, right now we're waiting on a  
12 marriage license. But Karen and I have rings, we --  
13 we have an officiant for our wedding. We are waiting  
14 to find a date, which is dependent on the marriage  
15 license, for a venue. We have picked out some  
16 catering and flowers, and we've kind of envisioned all  
17 of how our party's going to go.

18          Q.       But you haven't picked a date yet?

19          A.       Can't pick a date.

20          Q.       Why not?

21          A.       Well, this case has obviously changed our  
22 plans for getting married in the summer. And if I  
23 pick a date right now, when I am -- when I'm able to  
24 get a license in Rowan County, once I get that  
25 license, I'll have 30 days. During that 30-day window

1 is when we'll have to get the marriage performed and  
2 have our party and do our thing.

3           We're doing it as a legitimate wedding.  
4 There's nothing else but this party, that we're  
5 waiting for our family and friends to come and witness  
6 our marriage and enjoy a celebratory party with us.  
7 So we can't make an arrangement for it.

8           Q.       Safe to assume that you plan on having  
9 your wedding here in Rowan County?

10          A.       Oh, yeah. Yes, sir.

11          Q.       Are you trying to force Ms. Davis to  
12 change her beliefs about anything?

13          A.       No.

14          Q.       Is it your intention to force her to  
15 believe anything in particular?

16          A.       No.

17          Q.       What's the point of this lawsuit?

18          A.       I want to get a marriage license.

19               MR. CANON: Nothing further.

20               THE COURT: Any cross?

21               MR. GANNAM: No questions, Your Honor.

22               THE COURT: All right. You may step down.

23 Thank you. Any further proof?

24               MR. SHARP: No, Your Honor.

25               THE COURT: All right. Turn the white noise

1 on, please.

2 [SHORT PAUSE IN THE PROCEEDINGS]

3 THE COURT: Turn that off.

4 All right. I always like to make sure the  
5 court reporter has an opportunity for a break.

6 All right. I've read your briefs. Do you  
7 all wish to be heard on the motion? And we've already  
8 kind of argued the motion itself.

9 MR. SHARP: Your Honor, we think the evidence  
10 and the previous argument speaks for themselves.

11 THE COURT: Counsel?

12 MR. CHRISTMAN: Your Honor, we've -- we've  
13 asserted additional arguments in the briefing.

14 THE COURT: You have.

15 MR. CHRISTMAN: Just -- if Your Honor would  
16 like any further argument on any -- any kind of  
17 contempt finding that would be made in this Court,  
18 would be subject to the Federal Religious Freedom  
19 Restoration Act as well, and which requires this Court  
20 to go through the substantial burden analysis, and  
21 also find a compelling government interest. But we  
22 specifically --

23 THE COURT: Well, and we've addressed that in  
24 the prior ruling. I understand that.

25 MR. CHRISTMAN: The prior ruling did not

1 address contempt.

2           Now, as a matter of substantial burden,  
3 Ms. Davis is being faced with the Hobson's choice of  
4 choosing this conscience that is being applied on her  
5 and making it factually impossible for her to  
6 complying with the Court's order, or dangling out on  
7 the other side a potential finding of contempt by this  
8 Court, and by any understanding or interpretation of  
9 the Supreme Court's precedent on what a substantial  
10 burden is, just like heavy fines and heavy penalties  
11 for companies that have to provide contraceptive  
12 coverage or abortion-related coverage --

13           THE COURT: Or any other non -- I mean,  
14 there's a lot of other things other than that.

15           MR. CHRISTMAN: -- and any other -- any other  
16 government kind of mandate, the choice between  
17 contempt and one's conscience is a substantial burden.  
18 And as a result of substantial burden, this Court  
19 would then also have to find that a compelling  
20 government interest has been found. But that's a  
21 compelling government interest in forcing the  
22 particular religious claimant to violate their  
23 sincerely-held beliefs, which there's no dispute  
24 Ms. Davis has those beliefs.

25           So this Court would have to find a compelling

1 government interest in forcing Ms. Davis to violate  
2 her religious beliefs, and I think that showing has  
3 been made. In addition to that --

4 THE COURT: Thank you. Go ahead.

5 MR. CHRISTMAN: -- I think the Court would  
6 have to analyze the case under the least restrictive  
7 means. And as we set forth in our briefing, we have  
8 parties in this case who have authority to make  
9 modifications, make changes that allow the plaintiffs  
10 in this case to obtain a marriage license in Rowan  
11 County. If that's is what they really desire and  
12 really want, they can get licenses elsewhere. But  
13 there are means available, alternatives available that  
14 they can get a license in Rowan County, and  
15 Ms. Davis's conscience can be forever protected and  
16 not irreversibly harmed. We've set forth those  
17 alternatives for this Court --

18 THE COURT: In your response.

19 MR. CHRISTMAN: -- in prior -- in prior  
20 briefing.

21 THE COURT: And the prior briefing. But the  
22 prior briefing was on the preliminary injunction,  
23 correct?

24 MR. CHRISTMAN: Correct.

25 THE COURT: All right.

1 MR. CHRISTMAN: And we set forth those  
2 alternatives. The power of contempt is a wand that is  
3 meant to be waved rarely and --

4 THE COURT: Completely agreed. Completely  
5 agreed.

6 MR. CHRISTMAN: -- and in this case, all of  
7 those alternatives being made available and presented  
8 with a party in this case, including Governor Beshear  
9 and Commissioner Onkst who are ready, equipped, and  
10 available to make these alternatives available because  
11 it's a license -- it's a Kentucky marriage license  
12 that's requiring Kim Davis personally to authorize  
13 that license and affix her name on it.

14 The governor can change that form, make it a  
15 state form with no personal authority, no Kim Davis  
16 name on it, available in a Rowan County Clerk's  
17 office, and this case would be over, Your Honor.

18 THE COURT: Okay. Thank you. Is Governor  
19 Beshear -- can he do this by executive order?

20 MR. VANCE: Your Honor, there is no executive  
21 order. In fact, Governor Beshear isn't going to do  
22 anything.

23 THE COURT: But is he -- does he have the  
24 authority to do that by executive order versus by  
25 calling a special session? And I have some

1 familiarity with the requirements of a special  
2 session, but I'm just curious. By executive order, I  
3 know the president can issue executive orders for a  
4 variety of reasons. I'm assuming that the executive  
5 of the state would be able to do that on certain  
6 things as well.

7           Is this something where he can just change  
8 the form by executive order?

9           MR. VANCE: No, Your Honor, because the  
10 requirements or the composition of marriage license is  
11 dictated by statute, and the governor cannot change  
12 the statute.

13           THE COURT: All right.

14           MR. CHRISTMAN: Your Honor --

15           THE COURT: Hold on. How do you respond --

16           MR. SHARP: Thank you, Your Honor.

17           THE COURT: -- to Mr. Christman's argument?

18           MR. SHARP: Your Honor, with all due respect  
19 to Ms. Davis, the sincerity with which she believes  
20 that issuing these licenses is a substantial burden on  
21 her religious belief does not necessarily correlate to  
22 a finding of substantiality in this Court.

23           As the Court found, and as the parties  
24 briefed in the preliminary injunction ruling itself,  
25 in support of the preliminary injunction ruling, the

1 burden, though sincerely held, and to Ms. Davis  
2 certainly substantial, is not sufficient for a court  
3 of law to find a substantial burden sufficient to  
4 justify heightened scrutiny under either Kentucky or  
5 federal RFRA standards. As the Court wrote, "The  
6 burden on her religious belief is more slight than  
7 substantial."

8 THE COURT: Well, and the Sixth Circuit may  
9 disagree with that. And you stood up. I'm going to  
10 certainly give you every right to be heard, sir.

11 MR. CHRISTMAN: Thank you, Your Honor. With  
12 all due respect to counsel, Governor Beshear has  
13 already made the change. The form that existed in  
14 Kentucky before the *Obergefell* decision was a form  
15 that was designed by the KDLA, and that form would not  
16 have prevented the plaintiffs from even obtaining a  
17 marriage license because it was tied to gender-based  
18 terms.

19 THE COURT: I recall the change.

20 MR. CHRISTMAN: So Governor Beshear then  
21 ordered and directed the KDLA to modify the form, and  
22 change, very limited fashion, change it to just say  
23 "spouse" and take out the gender --

24 THE COURT: Right.

25 MR. CHRISTMAN: -- the gender-based terms.

1 So Governor Beshear cannot now argue that, "I suddenly  
2 don't have authority to modify the form." We're in  
3 this courtroom because he modified the form and forces  
4 Kim Davis to authorize that license.

5           So he can certainly modify that form with the  
6 least restrictive alternative that doesn't place that  
7 substantial burden, which my counsel for the  
8 plaintiffs, in all due respect, has just conceded is a  
9 substantial burden on Ms. Davis. By that  
10 concession --

11           THE COURT: Did you concede that?

12           MR. SHARP: No, Your Honor.

13           MR. CHRISTMAN: He just said it was sincere.  
14 The record will reflect that.

15           THE COURT: Well, it's sincere. I never have  
16 -- hold on. I've never found that it wasn't sincere.  
17 I've not -- I've never once in this case taken a  
18 position that was contrary to her belief. I mean, I  
19 -- or stated that it was anything other than genuinely  
20 held. I have never said that.

21           MR. CHRISTMAN: Mr. Sharp said it was a  
22 sincerely-held religious belief --

23           THE COURT: Well, I previously found that.

24           MR. CHRISTMAN: -- and that substantially  
25 burdens Kim Davis. Then he said the Court -- the

1 Court has reached a different decision as the  
2 substantial burden, but he's admitted that there is a  
3 substantial burden --

4 THE COURT: Well, my prior order -- I'm not  
5 going to repeat what the Court found, and it's law of  
6 the case, at least for now, and so -- I understand  
7 your argument. He changed it before, why he can't  
8 change it now.

9 Mr. Vance, how do you respond to that?

10 MR. VANCE: Judge, the form was changed in  
11 response to a final decision of the United States  
12 Supreme Court that did change marriage in the sense  
13 that same-sex marriage was protected by the Fourteenth  
14 Amendment, and so the form was modified to reflect  
15 compliance of the decision of the United States  
16 Supreme Court.

17 The United States Supreme Court disturbed no  
18 other portion of Kentucky's marriage laws, so the  
19 governor does not have the ability to change those  
20 himself because they are in the statute.

21 THE COURT: All right. Well -- I do plan,  
22 and I haven't decided if I'm going to enter a written  
23 order or not. I probably will enter some sort of  
24 written order following up the Court's decision.

25 The Court finds that the plaintiffs have

1 established through not only their filing, but the  
2 testimony of Ms. Miller, as well as Ms. Davis's own  
3 admissions here this morning and into this afternoon,  
4 by clear and convincing evidence that she has and will  
5 continue to violate this Court's order requiring that  
6 she issue marriage licenses to the plaintiffs in this  
7 case. And I'll explain my reasoning, but I want to  
8 make sure that the record reflects the Court's  
9 decision.

10           The Court also finds that Ms. Davis has  
11 failed to establish that she took all reasonable steps  
12 within her power factually and otherwise to comply  
13 with the Court's order. She says she can't do it  
14 because of her religious beliefs; that's her  
15 honestly-held religious beliefs. She says she can't  
16 do it, but that's not a factual impossibility.

17           Her reasons for non-compliance are simply  
18 insufficient to establish that she is presently unable  
19 to comply with the Court's order under the Sixth  
20 Circuit authority that the Court has reviewed.

21           In the case of *In Re Jaques*, and it's  
22 J-A-Q-U-E-S, 761 F.2d 302 at page 306. It's a 1985  
23 decision. The Sixth Circuit stated that, "A  
24 contemnor's intent in disobeying an order is  
25 irrelevant to the validity of a civil contempt