

1 finding."

2           While it may be relevant to the chosen  
3 sanction, it's not relevant to the validity of the  
4 contempt finding. The Court finds that Ms. Davis is  
5 therefore in contempt of this Court's order.

6           Now, the Court doesn't do that lightly,  
7 ma'am. I don't -- you don't strike me as being  
8 someone who's contentious or combative. I simply  
9 believe that in making this contempt finding, it's  
10 necessary, for a number of reasons that I'll get into.

11           The Court does reject your argument that you  
12 are presently unable to comply. The case law  
13 discusses the concept of being factually unable to  
14 comply where you may not have any control over certain  
15 things. There was an example of money in a bank  
16 account. That's -- one of the cases discusses that.

17           There's simply no authority that the Court  
18 can find for the proposition that "presently unable to  
19 comply" includes a situation where someone chooses not  
20 to comply because they have religious objections from  
21 doing so.

22           This case is not a situation where there is a  
23 factual impossibility of complying. In fact,  
24 Ms. Davis testified herself that she's not  
25 physically -- it's not physically impossible for her

1 to issue the licenses. She's choosing not to do so  
2 because of her religious beliefs.

3 Her good faith belief is simply not a viable  
4 defense in this civil context proceeding. And the  
5 Court cites the *Glover V. Johnson* case, 934 F.2d 703,  
6 at page 708, Sixth Circuit, 1991.

7 The Court must be mindful, especially in  
8 cases which have garnered the public's interests, as  
9 this one has, in avoiding situations which would cause  
10 a proverbial slippery slope.

11 And in making the Court's determination that  
12 she's in contempt, I have to be mindful of the fact  
13 that whatever the Court does here, it may have a  
14 ripple effect on other types of situations.

15 What's to prevent the next person or party  
16 from refusing to comply with a lawfully issued order  
17 because they personally disagree with it for a variety  
18 of reasons, in this case, the reason being her  
19 genuinely-held religious beliefs.

20 I, myself, have generally-held religious  
21 beliefs. I'm sure many of the folks in this courtroom  
22 have their own genuinely-held religious beliefs.

23 I took an oath 13-plus years ago. Ms. Davis  
24 took an oath in January. Many of the marshals in this  
25 room took an oath. Many of the law enforcement

1 officers took an oath. Oaths mean things.

2 I used the example earlier about a Catholic  
3 clerk, and I only used that because I'm Catholic, and  
4 I generally have an idea of what is in the Catechism,  
5 the Second Vatican Council, I have a general idea. I  
6 went to Catholic high school. I have some vague  
7 familiarity from my prior life of what Catholics  
8 believe in.

9 The marriage license forum itself asks  
10 questions such as prior marriages. And if a Catholic  
11 clerk wouldn't -- didn't want to issue a marriage  
12 license to someone who was eligible to marry because  
13 they hadn't had their marriage annulled, would that  
14 clerk be able to do so? That's just one example.

15 I mean, if I were to agree that someone could  
16 have a religious objection to doing this, what's to  
17 prevent him or her from doing it in that case? And  
18 you can extend this out to other types of situations  
19 where it could cause a ripple effect.

20 In this country, we live in a society of  
21 laws. Our system of justice requires citizens, and  
22 significantly our elected officials, to follow orders  
23 of the Court. Indeed, the fabric of our judicial  
24 branch relies upon that principle practically every  
25 day.

1           There's a number of other particular  
2 arguments in the response that the Court is going to  
3 address.

4           Ms. Davis raises the issue of due process,  
5 that her due process rights have been violated during  
6 these contempt proceedings. She has had notice and an  
7 opportunity to be heard. Her constitutional rights  
8 have been addressed in the Court's prior decision.  
9 There's simply no viable due process argument in the  
10 Court's view regarding these civil contempt  
11 proceedings.

12           She also argues that criminal contempt  
13 proceedings require greater protections. The Court  
14 agrees. If this was a criminal contempt proceeding,  
15 there would be greater protections. However, this is  
16 a civil contempt proceeding, which is designed to  
17 coerce or gain compliance with the Court's order. So  
18 these added protections that are mentioned in the case  
19 law for criminal contempt simply don't apply.

20           She also argues, and Mr. Christman has argued  
21 this this afternoon, that any contempt order will  
22 substantially burden her religious rights under RFRA.  
23 The Court did address her RFRA argument in the prior  
24 memorandum, opinion and order. And I may issue a  
25 brief order on that particular issue post-hearing.

1 But for today's purposes, the Court -- those of you  
2 who have read the Court's order know what the Court's  
3 prior decision was.

4           The Court found no substantial burden because  
5 she is merely certifying that the couple is legally  
6 qualified to marry. And frankly, that -- I think when  
7 it comes to that particular issue, given the fact that  
8 the Circuit language in its order denying the motion  
9 to stay was so specific as it relates to her substant  
10 -- her ability to prove that she has a likelihood of  
11 success on the merits. That order, while it's only an  
12 order denying the motion to stay, it is telling us to  
13 what the Circuit -- or how the Circuit may view the  
14 merit's appeal.

15           Also, the defendant argues that by entering a  
16 contempt order, it would be premature and improperly  
17 intrusive in the state of affairs. The Court  
18 disagrees. It's not premature in the Court's view.  
19 This Court and both appellate courts, as everyone  
20 knows, both the Sixth Circuit Court of Appeals and the  
21 Supreme Court, have upheld the denial of the motion to  
22 stay, pending appeal.

23           The Court does have the authority under  
24 rule -- not Rule 4, but Section 401 of Title 18 to  
25 enforce its lawfully issued orders through this civil

1 contempt proceeding.

2           The defendant argues that it's not a  
3 situation to where contempt is warranted because less  
4 intrusive alternatives are available.

5           I recognize, and I mentioned this when we  
6 first came out earlier this morning, that the  
7 legislative and executive branches do have the ability  
8 to make changes. And those changes may be beneficial  
9 to everyone. Hopefully, changes are made. But it's  
10 not this Court's job to make those changes. I don't  
11 write law.

12           Now, sometimes district courts are called to  
13 rule on things that there aren't any cases or other  
14 authority for. They talk about writing on a clean  
15 slate. It's a rare opportunity for a court to write  
16 on a clean slate. In those situations, the Court  
17 occasionally is called upon to interpret what the law  
18 is, and that's kind of what this Court is doing here,  
19 to a certain extent.

20           These legislative and executive options which  
21 have been identified in the response have not yet come  
22 to pass, or were previously addressed in the prior  
23 memorandum, opinion, and order. This idea that she's  
24 absent because she's chosen not to issue these  
25 licenses, I previously addressed that. I'm not going

1 to plow that same ground here this afternoon.

2           Civil contempt is the Court's way of  
3 compelling or coercing compliance with its orders. If  
4 legislative or executive remedies do not -- or do come  
5 to fruition, as I stated, better for everyone.  
6 However, the Court cannot condone the willful  
7 disobedience of its lawfully issued order. To do  
8 otherwise, would allow individuals to violate the  
9 orders of the Court without any consequences. And the  
10 Court simply cannot allow that to occur.

11           I simply think that if you give people the  
12 opportunity to choose which orders that they follow,  
13 that's what potentially causes problems. Society  
14 depends on individuals and entities and parties to  
15 follow lawfully issued orders.

16           This idea of natural law superseding this  
17 Court's authority. I have no doubt that you believe  
18 that, ma'am; I do. I mean, that's your right to  
19 believe that. But to allow that to carry the day, if  
20 you will, in ruling on this motion simply would be a  
21 dangerous precedent, indeed.

22           Regarding the sanction, the case law suggests  
23 that we have the least possible sanction considered to  
24 coerce compliance with the order.

25           In this case, the Court finds that the

1 requested financial penalties would simply be  
2 insufficient to compel her immediate compliance with  
3 the order.

4           The probable effectiveness of any financial  
5 sanction will not bring about the desired result of  
6 compliance. I don't say these things lightly; I  
7 don't. I have given this case a lot of thought.

8           Each of the judges that have sworn an oath to  
9 uphold the Constitution and follow the law and not  
10 create law, have a handful of cases where what is  
11 required that they do may be different than what I  
12 think perhaps the Court should do.

13           But 13 years ago, I told senators in  
14 Washington that I would do what was required to be  
15 done. So -- and I brought that up initially because I  
16 think it's important for everybody to recognize  
17 that -- I mean, I don't hold -- I think I've had two  
18 or three times in 13 years where I've actually been  
19 asked to hold a party or a person in contempt. And  
20 the Court doesn't do this lightly. It's necessary in  
21 this case, because to do otherwise, would allow  
22 someone to -- who took an oath to follow the law, to  
23 kind of pick and choose what orders they want to  
24 follow. And that's simply not the way that the court  
25 system is set up, nor is it the way that the court

1 system can operate in a civilized society.

2           And frankly, the judicial branch wouldn't  
3 function properly if we allowed individuals to simply  
4 decide not to follow orders of the court.

5           In not ordering that a fine be issued, and I  
6 know you've requested a fine here. The fact that  
7 there's these other funds set up, and I realize the  
8 testimony was somewhat vague about that, I'm not  
9 convinced that other individuals would pay the  
10 penalties if I imposed a fine.

11           So in this particular instance, ma'am, I'm  
12 going to order that you be remanded to the custody of  
13 the marshal. To gain compliance with the order, I  
14 believe it's necessary in this case. So I'm going to  
15 order that you be remanded to the custody of the  
16 marshal for your refusal to comply with the Court's  
17 order.

18           You can purge yourself of that contempt order  
19 by indicating compliance. I'm not going to put a  
20 deadline on it. If you want to order your clerks to  
21 allow the licenses to be issued, you can purge  
22 yourself of contempt.

23           So that will be the order of the Court. So  
24 you'll be remanded to the custody of the marshal,  
25 pending your compliance with the Court's order.

1           Now -- you can go ahead and escort her out.

2 Thank you.

3           THE DEFENDANT: Thank you, Judge.

4           THE COURT: Thank you, ma'am.

5           All right. Before moving on to the deputy  
6 clerks, I want to mention that the Court's order dated  
7 August 12th, enjoined the defendant, Ms. Davis, in her  
8 official capacity from enforcing her policy, which I  
9 amended this morning over the plaintiffs' objection.  
10 That is a continuing order, unless and until it's set  
11 aside by this Court, having a different order or any  
12 other reviewing court.

13           So if there's a -- if I'm notified that  
14 Ms. Davis has purged herself of the contempt, I can do  
15 that. The fact that this contempt hearing was even  
16 necessary demonstrates the need for that.

17           All right. As you know from the telephone  
18 conference two days ago, I did order the deputy clerks  
19 to be present for the hearing today.

20           Rule 65(d)(2)(B) and (C) set forth who was  
21 bound by the injunction. And I brought out my statute  
22 book -- or my rule book, excuse me.

23           Two, persons -- the order binds only the  
24 following who received actual notice of it by personal  
25 service or otherwise.

1           The parties' -- B., the parties' official's  
2 agents, servants, employees.

3           And C., other persons who are in active  
4 concert or participation with anyone described in the  
5 rule.

6           So she did testify, Ms. Davis, that she  
7 instructed the deputy clerks not to issue licenses.  
8 So would you concur or disagree with the proposition  
9 that under Rule 65(d)(2)(B) and (C), that the deputy  
10 clerks are agents or servants or employees of the  
11 parties in this case?

12           MR. GANNAM: Your Honor, the deputy clerks --

13           THE COURT: You don't represent them?

14           MR. GANNAM: We do not, Your Honor.

15           THE COURT: Okay.

16           MR. GANNAM: And I would simply assert that  
17 they have a right to be heard in this case.

18           THE COURT: They do. They do. And we're  
19 going to take up that in a second. But do you wish --  
20 you both stood up immediately, and I want to give you  
21 an opportunity to be heard.

22           MR. CHRISTMAN: Your Honor, before we move on  
23 to the deputies and whatever the Court has in mind,  
24 we'd ask that your finding of contempt, that you would  
25 certify that finding and ruling for immediate appeal

1 to the Sixth Circuit under 1291.

2 THE COURT: Well, I'll take that up in a  
3 moment. I'm not going to do that right now because I  
4 have some other matters I need to take up first.

5 MR. CHRISTMAN: And in addition to that, we  
6 would ask that you would -- upon certifying it, if you  
7 grant that motion, then you would also stay any  
8 enforcement for sanction from the contempt to allow  
9 Ms. Davis to seek emergency relief from the Sixth  
10 Circuit from this very weighty ruling from the Court  
11 that is different and substantial in terms of  
12 affecting her individual rights.

13 THE COURT: Well, I recognize it's an  
14 important ruling. I do. I do. I certainly haven't  
15 made the decision lightly, Mr. Christman.

16 MR. CHRISTMAN: And given that, Your Honor,  
17 we would ask that you would allow immediate appeal of  
18 that ruling and a stay of any enforcement of any  
19 sanction from which the Court has just ordered.

20 THE COURT: So your oral motion is to certify  
21 the issue for immediate appeal. Because a contempt  
22 order is ordinarily not something like the preliminary  
23 injunction was entered, you had an appeal of right.  
24 You don't have an appeal of right on a contempt order.  
25 And you recognize that it needs -- it needs to be

1 certified.

2 MR. CHRISTMAN: There are exceptions to the  
3 1291 ruling, the Collateral Order Doctrine in  
4 particular that can be raised. But to expedite the  
5 appeal process, given the weightiness and significance  
6 of this Court's ruling today, we would ask for that  
7 emergent -- that certification to short-circuit our  
8 ability to file that appeal in the Sixth Circuit,  
9 because the Court's order today is tied to the  
10 merits of --

11 THE COURT: Well, I agree with that.

12 MR. CHRISTMAN: -- the preliminary injunction  
13 that had been taken up.

14 THE COURT: So I'm just trying to make sure  
15 since we'll have the minutes of this proceeding -- and  
16 frankly, just before I forget. Madam Clerk, when  
17 you're doing the minutes --

18 DEPUTY CLERK: Yes, sir.

19 THE COURT: -- the plaintiffs' motion, it's  
20 67, to hold Ms. Davis in contempt was granted for the  
21 reasons set forth on the record. I'm likely going to  
22 supplement with that with perhaps a brief follow-up  
23 memorandum order on part of the reasoning that I  
24 wanted to kind of -- I may want to supplement that,  
25 and I'll do that relatively quickly.

1           The minutes will also reflect that you're  
2 orally moving for the Court to certify the issue  
3 regarding the granting of the motion for contempt, and  
4 also orally moving to have that order stayed pending  
5 appeal.

6           MR. CHRISTMAN: That's correct, Your Honor.

7           THE COURT: Okay. All right. We'll make  
8 sure the record reflects that.

9           Do you want to file a written response to  
10 that?

11          MR. SHARP: I mean, we object, Your Honor.  
12 I mean, we --

13          THE COURT: I know you object. I understand  
14 that. I'll just -- I'll just submit that.

15          I know I could probably have a 30-page motion  
16 with a memoranda filed by this afternoon by, I guess,  
17 other Liberty Counsel who aren't in court, but I --

18          MR. CHRISTMAN: Your Honor, with all due  
19 respect, we could not get more emergent than the  
20 circumstances that have happened, so we --

21          THE COURT: Well, I understand that.

22          MR. CHRISTMAN: -- would ask for a ruling on  
23 that motion.

24          THE COURT: Okay. That motion will be  
25 denied.

1 MR. SHARP: Your Honor, thank you.

2 THE COURT: That motion will be denied.

3 Now, the motion to stay will be denied, and  
4 the motion to -- to --- the certification motion will  
5 be denied as well.

6 MR. CHRISTMAN: In -- in light of that, Your  
7 Honor, then alternatively, we would move that you  
8 would suspend any sentence until the legislature meets  
9 and has an opportunity to revise the Kentucky marriage  
10 licensing scheme and permit Kim Davis to be taken out  
11 of the custody until the legislature has a chance to  
12 address the entire Kentucky marriage licensing scheme.

13 THE COURT: That motion will be denied as  
14 well.

15 This case, at its core, is about individuals  
16 following the Court's order, and that's -- the Court  
17 previously found that she had not, and the Court  
18 certainly didn't make its decision lightly.

19 Okay. Given that Ms. Davis and her deputies  
20 did discuss, and she, in fact, did indicate that she  
21 had instructed her deputies not to issue the marriage  
22 licenses, the Court has chosen to ask several  
23 court-appointed counsel who are members of the Federal  
24 Public Defender list here in Ashland to advise the  
25 deputies.

1           And I don't know who the deputies are. Up to  
2 this point, they've just been deputies of Kim Davis.  
3 So what I'm going to need to do is I have -- and what  
4 we did, I just had the clerk call the six panel  
5 attorneys who would otherwise be appointed to  
6 represent individuals who may have -- may be subject  
7 to being in contempt themselves.

8           So if you're one of the deputy clerks --  
9 there were eight identified, but I only called six  
10 attorneys because -- the individuals who are  
11 front-line deputies, I don't know who you are, if you  
12 would all would stand. I mean, if you're one of the  
13 five.

14           Okay. All right. There were six. But if  
15 you would just first of all identify yourself, sir.

16           MR. DAVIS: Nathaniel Ray Davis.

17           THE COURT: Nathaniel Davis?

18           MR. DAVIS: Yes.

19           THE COURT: Okay. All right. And you,  
20 ma'am?

21           MS. PLANK: Kristie Plank.

22           THE COURT: What's your last name?

23           MS. PLANK: Plank, P-L-A-N-K.

24           THE COURT: Plank, P-L-A-N-K?

25           MS. PLANK: Uh-huh (affirmatively).

1 THE COURT: All right. Sir?

2 MR. MASON: Brian Mason.

3 THE COURT: B-R-Y-A-N?

4 MR. MASON: B-R-I-A-N.

5 THE COURT: Okay. Mason --

6 MR. MASON: Yes, M-A-S-O-N.

7 THE COURT: -- like the county?

8 MR. MASON: M-A-S-O-N.

9 THE COURT: Okay. You, ma'am?

10 MS. RUSSELL: Kim Russell.

11 THE COURT: Kim Russell, common spelling last  
12 name, like the county here?

13 MS. RUSSELL: R-U-S-S-E-L-L.

14 THE COURT: All right. Kim, K-I-M?

15 MS. RUSSELL: Yes.

16 THE COURT: All right. And what's your name,  
17 ma'am?

18 MS. THOMPSON: Melissa Thompson.

19 THE COURT: Melissa Thompson?

20 MS. THOMPSON: Uh-huh (affirmatively).

21 THE COURT: Okay. Now, what I'm going to do,  
22 in the order in which Kelly, the clerk, yesterday gave  
23 me the list in order. I'm assuming the list she gave  
24 me was just the order in which they'd be -- they would  
25 have been called?

1 DEPUTY CLERK: Yes.

2 THE COURT: All right. Mr. Davis, I'm going  
3 to have you meet with Mike Campbell. He's a member of  
4 the federal public defender list here in Ashland.

5 Ms. Plank, I'm going to have you meet with  
6 Michael Fox.

7 Brian Mason, the Court is going to -- and I'm  
8 going to appoint each of you to represent each of  
9 the -- because you are -- each of you are non-parties  
10 to this litigation. But because of the way the rule  
11 reads, you could potentially be held in contempt  
12 yourselves because you're acting as her agent. That's  
13 why the Court felt it was important to have you talk  
14 to counsel. Liberty Counsel represent Ms. Davis, not  
15 each of you.

16 So, Mr. Mason, you'll be meeting with  
17 Mr. Hughes. Ms. Russell, you'll be meeting with  
18 Mr. Joy. And, Ms. Thompson, you'll be meeting with  
19 Mr. Markelonis.

20 Mr. Clark, I thought there were six clerks.

21 MR. CLARK: That's fine, Your Honor.

22 THE COURT: I apologize for having you here.  
23 All right.

24 MS. EARLEY: Judge, as Barry said, I'm a  
25 non-issuing marriage license -- I'm not -- the

1 department I work in does not issue marriage licenses,  
2 but I am one of the deputies.

3 THE COURT: But are you eligible to issue the  
4 licenses, though?

5 MS. EARLEY: As a deputy, I would assume. I  
6 do not do it now. It's not part of my department.

7 THE COURT: Okay. Well, I -- just out of an  
8 abundance of caution then, ma'am, I'm going to have  
9 Jeremy Clark, a member of the public defender list,  
10 appointed to represent you.

11 MS. EARLEY: Okay.

12 THE COURT: What we're going to do -- I know  
13 we have a large contingency of folks here today. And  
14 this courtroom and courthouse is somewhat small. So  
15 rather than clear the courtroom, I'm going to give  
16 each of you 30 minutes. We'll come back at 1:45.

17 Each of you can meet with each of your  
18 respective lawyers. And what I'm going to in essence  
19 be asking, the Court could find that one or more of  
20 you would be in contempt of the order as a non-party  
21 pursuant to the rule I previously stated, and the  
22 sanction for such finding could include fines and/or  
23 imprisonment. The Court has asked each of these  
24 public defenders to advise you of your rights.

25 So after having the opportunity to meet with

1 counsel, I'm going to be asking each of you, after a  
2 brief recess, whether or not you intend on complying  
3 with the Court's order requiring you to issue marriage  
4 licenses from the plaintiffs in this case, or any  
5 other individuals who are legally eligible to marry.

6           So, Mr. Marshal, if you could -- I know  
7 there's several jury rooms. There's the grand jury  
8 suite in the back. There's a jury room back here in  
9 chambers.

10           I'm, of course, not going to be party to any  
11 of this. I'm just trying to get -- if you could find  
12 six different places for them to meet --

13           DEPUTY MARSHAL: Yes, Your Honor.

14           THE COURT: -- with their respective  
15 attorneys. And we'll make sure that each of you are  
16 appointed to represent each of these particular  
17 deputies.

18           So we'll allow that to occur. We'll come  
19 back in at 1:45.

20           MR. CHRISTMAN: Your Honor, if I could -- if  
21 I could make an objection.

22           THE COURT: What -- what's your objection to?

23           MR. CHRISTMAN: That all of these deputies  
24 can only issue marriage licenses based upon the  
25 authority of Kim Davis, and Kim Davis has not given

1 them that authority.

2           So the one deputy clerk has -- who has said  
3 she cannot issue licenses, it's not in her department,  
4 that applies to all of the deputy clerks because none  
5 of the deputy clerks can issue a marriage license  
6 bearing Kim Davis's name and on her authorization  
7 because she has not given that authorization.

8           THE COURT: Well, your objection's noted and  
9 overruled. I'm going to have them talk to these  
10 lawyers.

11           MR. CHRISTMAN: Thank you, Your Honor.

12           THE COURT: We'll be in recess until 1:45.

13           [RECESS - 1:13 - 1:51 p.m.]

14           [IN OPEN COURT]

15           THE COURT: All right. Before we took our  
16 recess, I had appointed CJA panel attorneys to the six  
17 deputies.

18           And I apologize, what was your name, ma'am?

19           MS. EARLEY: Mine?

20           THE COURT: Yes.

21           MS. EARLEY: Roberta Earley.

22           THE COURT: Earley?

23           MS. EARLEY: Earley, E-A-R-L-E-Y

24           THE COURT: Is that E -- E-A-R-L?

25           MS. EARLEY: E-A-R-L-E-Y.

1 THE COURT: Okay. All right. And I had  
2 appointed counsel for the six deputies so that they  
3 could advise them of their rights.

4 And before we broke, and I apologize, I had  
5 been citing to Rule 62. It's actually Rule 65(d)(2).  
6 That was my error.

7 I mentioned earlier, I'm -- my eyes aren't as  
8 good as they used to be, so I was just -- I had the  
9 wrong rule regarding whether or not agents or  
10 employees are bound by a prior injunction order, and  
11 that rule will stand for that proposition.

12 And there was an issue that you had raised,  
13 Mr. Christman, about they only act at her behest, and,  
14 therefore, they can't do something without her  
15 authority.

16 I have found earlier that she is in contempt  
17 of the Court's order. And, of course, you disagree  
18 with that, and I recognize that, because she's not  
19 complying with the order.

20 If she instructs the deputies to not comply  
21 with the order, how is that different than from, like,  
22 for instance, a biracial couple comes in, and she  
23 says, "Don't issue the license."? Or a completely  
24 African-American couple comes in and she says, "Don't  
25 issue the license."? If it's an unlawful order, do

1 they have to -- do they have to -- do they have to  
2 follow it?

3 MR. CHRISTMAN: Which lawful order -- the  
4 lawful order --

5 THE COURT: Well, either one. I mean, giving  
6 those examples, let's say, for instance, Ms. Davis  
7 gave an order to her clerks -- and I'm not saying that  
8 she would ever do this -- but hypothetically, a  
9 biracial couple comes in, "Don't issue the order." Of  
10 course, *Loving V. Virginia*, and we're not going to get  
11 into the details, but, I mean, that's -- obviously,  
12 that would be an unlawful order. Would they have to  
13 follow it, even if they -- gosh, I don't think that's  
14 right, but if that's an unlawful order, do the  
15 deputies have to follow it?

16 MR. CHRISTMAN: Well, their authorization  
17 under Kentucky statute comes from --

18 THE COURT: What statute?

19 MR. CHRISTMAN: -- the county clerk. The  
20 chapter for marriage laws is 402, and --

21 THE COURT: What chapter governs what the  
22 deputy clerks have to do?

23 MR. CHRISTMAN: Well, the statute that was in  
24 place before *Obergefell*, 402.100, and --

25 THE COURT: What does that say the deputy

1 clerks have to do?

2 MR. CHRISTMAN: Well, that -- that statute is  
3 the one that says the authorization statement is from  
4 the county clerk, which hasn't been given, and also --

5 THE COURT: Well, I'm holding that she's in  
6 violation of the Court's order by not authorizing it.

7 MR. CHRISTMAN: That -- that is what you held  
8 --

9 THE COURT: Correct.

10 MR. CHRISTMAN: -- but their authority comes  
11 from her, not from you.

12 THE COURT: Well, if they follow her  
13 authority and her authority's in contempt, why can't  
14 they be held in contempt as agents or employees of  
15 hers?

16 MR. CHRISTMAN: Because the only authority  
17 they can give is from her. This Court doesn't have  
18 authority to rewrite Kentucky marriage statutes.

19 THE COURT: Okay. So I can't -- so taking  
20 that to its logical conclusion, though, if someone --  
21 an employer tells an employee to do something, and  
22 they -- just general agency principals, if they're an  
23 agent, why, under Rule 65(d)(2)(B), shouldn't they be  
24 bound by the Court's preliminary injunction?

25 MR. CHRISTMAN: Well, because here, the

1 employer has told the employee, "You don't have my  
2 authority to issue it." You're --

3 THE COURT: Are they able to do it without  
4 that? Let's say one of them --

5 MR. CHRISTMAN: The analogy you're creating  
6 is you're inserting yourself as the employer and the  
7 authorizing agent and issuer of the marriage license.

8 THE COURT: Okay. If I told them they can't  
9 do it, but a court says they have to, they still --  
10 you're saying they can't do it because she said they  
11 couldn't?

12 MR. CHRISTMAN: Because their authority --  
13 because at that point then, you're raising  
14 implications and issues with respect to what the  
15 Kentucky marriage law and the marriage licensing  
16 scheme, which again, has been completely overwritten,  
17 but those aspects that are being -- are trying to be  
18 applied, that authority comes exclusively from the  
19 county clerk. That's the -- that's the core issue  
20 here.

21 THE COURT: All right. Mr. Sharp, what's  
22 your response to this? They're arguing, in essence --  
23 and correct me if I'm wrong, because I want to make  
24 sure that we get it right -- because the clerk is not  
25 authorizing them to issue the licenses, and she

1 testified this morning that she's very plainly,  
2 candidly, and I certainly appreciate that, that she  
3 told them that, "We are not issuing licenses pending  
4 appeal," I think is what she said.

5 MR. SHARP: We think the Court's absolutely  
6 correct as far as there is a valid court order  
7 preliminarily enjoining Ms. Davis in her official  
8 capacity from enforcing the "no marriage license"  
9 policy.

10 To the extent her employees continue to  
11 adhere to enforcement of what this Court has enjoined,  
12 then we think 65(d)(2)(B) would in fact be implicated,  
13 and, you know, their ability to be held in contempt,  
14 even as a non-party, would be at play.

15 THE COURT: Okay. Let me ask you,  
16 Ms. Parsons, Mr. Watkins. What the Court does -- I  
17 recognize that what the Court does here potentially  
18 impacts the services, et cetera, provided by the  
19 clerk's office of Rowan County. Do you all take a  
20 position on the applicability of Rule 65(d)(2)(B) as  
21 it relates to the deputies?

22 MR. WATKINS: Judge, I -- I think they can  
23 issue them in her absence at that point because  
24 they're -- they're acting in concert as -- as the  
25 clerk.

1           If -- if what they say is true, she's allowed  
2 to pick the religious beliefs of her deputy clerks,  
3 and everybody knows that's -- that's illegal.

4           THE COURT: Ms. Parsons? So -- so it's the  
5 position of the county attorney, sir, that they can  
6 issue the licenses in her absence?

7           MR. WATKINS: Absolutely.

8           THE COURT: All right. Ms. Parsons?

9           MS. PARSONS: I have the same position.

10          THE COURT: All right. All right. Let me  
11 now turn to the actual individuals in play here and --  
12 I can't remember who was appointed to represent who,  
13 so maybe you all can help me.

14          I'll start with you, Mr. Campbell.

15          MR. CAMPBELL: I was appointed to represent  
16 Mr. Davis.

17          THE COURT: All right, sir. Did you have an  
18 opportunity to talk to him in the interim?

19          MR. CAMPBELL: I did, Your Honor.

20          THE COURT: All right. Did you explain to  
21 him the potential consequences of compliance with the  
22 Court's order?

23          MR. CAMPBELL: I did.

24          THE COURT: All right. Mr. Davis, did you  
25 meet with Mr. Campbell, sir?

1 MR. DAVIS: I did, sir.

2 THE COURT: Okay. And I take it -- and I  
3 don't think the record really reflects this, so I'll  
4 just ask. I mean, Kim Davis is your mother; is that  
5 right?

6 MR. DAVIS: She is my mother, sir, yes.

7 THE COURT: Okay. All right. Again, we go  
8 back to what's of the public domain and what's  
9 actually of record domain, and I wanted to make sure  
10 that reflects that. Mr. Campbell?

11 MR. CAMPBELL: Yes, that's his mother, Your  
12 Honor.

13 THE COURT: All right. Okay. I'm going to  
14 ask you all collectively something. Thank you.

15 Mr. Fox, who were you appointed for?

16 MR. FOX: Yes, Your Honor. I represent  
17 Ms. Plank.

18 THE COURT: Ms. Plank?

19 MS. PLANK: Yes.

20 THE COURT: All right. Mr. Fox, did you have  
21 an opportunity to talk to Ms. Plank about the  
22 potential consequences of compliance with the Court's  
23 order?

24 MR. FOX: I did, Your Honor.

25 THE COURT: All right. Ms. Plank, did you

1 talk to Mr. Fox about that?

2 MS. PLANK: I did.

3 THE COURT: Okay. All right. Mr. Joy?

4 MR. JOY: Yes, sir.

5 THE COURT: Let me make a note here.

6 Campbell, Fox.

7 MR. JOY: I have Ms. Russell, Judge.

8 THE COURT: Ms. Russell? All right.

9 In the interim during the recess, Mr. Joy,  
10 did you have an opportunity to talk to Ms. Russell?

11 MR. JOY: I did, Your Honor.

12 THE COURT: And did you explain to her the  
13 potential consequences of a contempt finding?

14 MR. JOY: I did, Your Honor.

15 THE COURT: All right. Ms. Russell, is that  
16 accurate; did you speak with Mr. Joy?

17 MS. PLANK: I did.

18 THE COURT: Okay. All right. Thank you.

19 Mr. Hughes, you have Mr. Mason?

20 MR. HUGHES: Yes, sir, I do.

21 THE COURT: All right. Mr. Hughes, did you  
22 have an opportunity to discuss with Mr. Mason the  
23 contempt proceedings and the possibilities and the  
24 possible consequences for not complying with the  
25 Court's order?

1 MR. HUGHES: Yes, I did.

2 THE COURT: All right. Mr. Mason, did you  
3 have a chance to talk to him about that?

4 MR. MASON: Yes, Judge.

5 THE COURT: Okay. Thank you. And Mr. --  
6 who's left? Mr. Markelonis, you have Ms. Thompson?

7 MR. MARKELONIS: Yes, sir, I did.

8 THE COURT: And, Mr. Markelonis, the same  
9 questions. Did you have a chance to talk to her about  
10 the contempt proceedings and the potential  
11 consequences of non-compliance with the Court's order?

12 MR. MARKELONIS: I did, Judge.

13 THE COURT: All right. Ms. Thompson, did you  
14 speak with Mr. Markelonis about that?

15 MS. THOMPSON: I did, Judge.

16 THE COURT: Okay. Thank you. And,  
17 Ms. Earley, you met with Mr. Clark; is that right?

18 MS. THOMPSON: I did.

19 THE COURT: Mr. Clark, did you explain to her  
20 the potential consequences of non-compliance with the  
21 Court's order?

22 MR. CLARK: I did, Your Honor.

23 THE COURT: Okay. Ms. Earley, did you speak  
24 to him about that?

25 MS. EARLEY: I did.

1           THE COURT: Okay. All right. Now, up to  
2 this point, the record does not reflect which deputy  
3 the individual plaintiffs may have spoken with on  
4 prior occasions.

5           I know since the order denying the motion to  
6 stay was entered by the Supreme Court, which was  
7 Monday of this week, which was I think approximately  
8 7:00 on Monday night, the 31st, I don't know who  
9 Ms. Miller met with; she may remember which one.

10           But the important thing for the Court at this  
11 point is to see if any of the deputies would be  
12 intending on complying with the Court's order, the  
13 preliminary injunction order which has enjoined  
14 Ms. Davis from enforcing her "no marriage license"  
15 policy to the plaintiffs in this case or to any other  
16 individuals who were legally eligible to marry.

17           I guess we'll just start with each of you in  
18 the order in which I addressed you earlier.

19           MR. HUGHES: Judge, if I may --

20           THE COURT: Yes.

21           MR. HUGHES: -- save that trouble. Mr. Mason  
22 was the one that had discussed that with Ms. Davis,  
23 and he'd already indicated to her that he would issue  
24 those licenses, if he were allowed to do so.

25           He has indicated to me that he will comply

1 with this Court's order to do that. But there are  
2 some practical problems. One, he doesn't even have a  
3 key to get in the offices. That can probably be  
4 overcome.

5           The second is the concern that was raised by  
6 honorable counsel here involving the state statutes  
7 and what authority they have if in fact Ms. Davis is  
8 still saying that she does not give them the  
9 authority.

10           So he -- that may be an issue that has to be  
11 addressed somewhere outside this Court. Perhaps this  
12 Court can answer his question, but he wants you to  
13 know that he intends to comply with this Court's  
14 ruling and issue the licenses.

15           THE COURT: Mr. Davis -- or, Mr. Mason? I'm  
16 sorry. Yes, if you'd come around, please, with  
17 Mr. Hughes.

18           I'm going to go ahead and place you under  
19 oath.

20           Madam Clerk, if you would place Mr. Davis  
21 under oath, please. Sorry, Mr. Mason. I'm sorry. I  
22 have Mr. Davis first on the list. Mr. Mason, I  
23 apologize, sir.

24           [BRIAN MASON, having been first placed  
25 under oath, was examined and responded as

1 follows:]

2 THE COURT: All right. Mr. Mason, do you  
3 intend on complying with this Court's order which  
4 previously enjoined Ms. Davis from enforcing her "no  
5 marriage license" policy?

6 MR. MASON: I advised her that -- and she  
7 knew that I was willing to issue those from the  
8 beginning, but I did not want to go against her  
9 wishes. But, you know, I can't go to jail or be fined  
10 either.

11 THE COURT: How long -- how long have you  
12 been a deputy?

13 MR. MASON: I started working there in  
14 January of 2014.

15 THE COURT: Okay. So you started a year  
16 before she became --

17 MR. MASON: Yes.

18 THE COURT: You worked for her mother?

19 MR. MASON: Yes. Ms. Bailey.

20 THE COURT: Okay. All right. So you are not  
21 going to follow her -- well, put it this way. You've  
22 told me that you are willing to comply with the  
23 Court's order requiring you to issue marriage licenses  
24 to the plaintiffs in this case or any other  
25 individuals who are legally eligible to marry; is that

1 right?

2 MR. MASON: Yes.

3 THE COURT: All right. Now, by doing so, and  
4 I bring this up because I mentioned earlier, that this  
5 Court has an ongoing -- thank you, sir. You -- you  
6 may step back -- this Court has an ongoing interest in  
7 ensuring that its orders are complied with. And what  
8 I want to avoid is a situation where someone issues a  
9 license, something occurs with that individual, we're  
10 right back here next week, and we have a proverbial  
11 ping-pong match going forward.

12 And I have always been, since the very  
13 beginning of this filing when the case was reassigned  
14 to me, interested in trying to see if we could get  
15 some sort of resolution, and there has been -- at  
16 every turn, the parties have been at odds.

17 And I say the "parties." You all are not  
18 parties. The six of you all are non-parties. You are  
19 not sued in this action. But each of you are  
20 employees or agents of Ms. Davis, and I previously  
21 found her to be in contempt. Now, I gave my reasons  
22 for that. I probably am going to follow up with a  
23 brief written order to supplement part of the prior  
24 oral findings.

25 But if -- if Mr. -- I simply don't think in

1 the Court's view that telling someone to not comply  
2 with a lawful order is something that a clerk, or  
3 anyone else who takes an oath to uphold the law, is  
4 able to do.

5 MR. JOY: Your Honor, may I?

6 THE COURT: Yes, sir. Mr. Joy?

7 MR. JOY: Your Honor, I think you addressed  
8 an issue earlier, but I think you kind of glanced over  
9 that. I think I feel the need to -- to bring that  
10 back up. You addressed agency principal earlier.

11 THE COURT: Right.

12 MR. JOY: Under an agency principal, an agent  
13 is able to -- well, consent can be withdrawn at a  
14 certain time. And I think we have an issue here, I  
15 think, if you -- and you also spoke of a ping-pong  
16 match next week coming right back to you. I think if  
17 you -- you are entering a valid order -- you are --

18 THE COURT: I -- I believe it to be a valid  
19 order.

20 MR. JOY: Right.

21 THE COURT: The Circuit may disagree. But  
22 the language the Circuit used in their stay order kind  
23 of tells me that they very well may not disagree.

24 MR. JOY: Correct. And in looking at all of  
25 that, I still don't think the statute under 402.100

1 necessarily gives, under agency theory, the permission  
2 for either Mr. Mason, or my client, Ms. Russell, to  
3 issue a valid marriage license. They could issue you  
4 a license. Now, is that valid? I think that's the  
5 million dollar question that needs to be answered at  
6 some point. I don't think that question's being asked  
7 of us here today, but I just wanted to bring that to  
8 the Court's attention.

9 THE COURT: So you believe that if he issued  
10 the license without her authority, it would be an  
11 invalid license?

12 MR. JOY: Absolutely.

13 THE COURT: All right. Mr. Sharp -- usually  
14 the -- the only time that would come up perhaps would  
15 be if there was a divorce, we were never married, or  
16 some contention later.

17 Mr. Sharp, what's your position on the  
18 validity of the license, if it's issued without her  
19 authority? Do you take a position on that?

20 MR. SHARP: Well, I mean, we think that she  
21 cannot condition her authority on an unlawful act,  
22 and -- which is what she has -- what counsel seems to  
23 be alluding to the fact that if she is withholding or  
24 may withhold her permission to issue licenses based on  
25 illegal conduct as far as --

1           THE COURT: Well, I didn't find it to be  
2 illegal. I found that it was in violation of the  
3 Court's order.

4           MR. SHARP: Contemptuous conduct, correct.  
5 We don't think her authority extends that far, insofar  
6 as the office, apart from Kim Davis, exists to perform  
7 certain public functions. Kim Davis does not have to  
8 personally touch every marriage license. She employs  
9 people for the purpose of carrying out the duties of  
10 that office.

11           To the extent Kim Davis has an erroneous  
12 instruction of her ability to block them from doing  
13 that, that, nonetheless, does not mean that they  
14 cannot perform those functions.

15           THE COURT: Well, the form says the clerk or  
16 deputy clerk. It does bear her name. And we're not  
17 going to plow that ground again. I previously found  
18 that really the clerk is performing a ministerial task  
19 verifying that the person is otherwise legally  
20 eligible to marry, and I'm not going to rehash that.  
21 The prior Court's order speaks for itself.

22           This individual has -- Mr. Mason has  
23 indicated that he will issue the licenses.

24           Now, I don't think it's necessary at this  
25 point, given your statement to me here under oath,

1 that you would issue the licenses, for me to ask each  
2 of the others if they're going to follow the order or  
3 not. Because by doing that -- yes, sir?

4 MR. HUGHES: I don't want to put Mr. Mason in  
5 the position, and he had a valid concern, and I  
6 certainly don't want to put the others in that  
7 position because there's a -- obviously, a least  
8 restrictive way to go ahead involving these licenses.

9 His concern is, is that you heard her use the  
10 term "front-line, five people," and that basically  
11 means he's going to be the only one -- not that  
12 there's that many people that will be applying, but  
13 with the publicity of this case, I wouldn't be  
14 surprised if they come from all over. But the point  
15 is, is that he's going to be --

16 THE COURT: And unfortunately, I can't  
17 control that.

18 MR. HUGHES: I know you can't.

19 THE COURT: This case has been tried -- not  
20 tried -- both sides have been equally -- "guilty" has  
21 a bad context -- participance, equal participance in  
22 making this a very public -- and the issues are  
23 weighty issues; no question, but making it far more  
24 public than it perhaps would otherwise be.

25 And I don't want to put anybody in a bad

1 situation; I don't. It's not the way the Court  
2 operates.

3 MR. HUGHES: He recognizes that. He just --  
4 it's probable that there may be some others that also  
5 agree to comply.

6 But the point is, is that if we would stop it  
7 at this point, as understandable as that is, he faces  
8 singular ostracism from the public.

9 THE COURT: I appreciate that, and you're  
10 right. That's a good point. That's a good point.  
11 Because what -- the Court's whole goal here -- it's  
12 not the Court's goal ever to hold anyone in contempt  
13 for violating an order. I mentioned earlier, I'll  
14 mention it again. I mean, there's very little law  
15 because most individuals comply.

16 If someone is willing to comply, and most of  
17 the -- well, it seems as if there have been situations  
18 where other clerks who may have religious objections  
19 have allowed other deputies to issue licenses for him  
20 or her to enable the Supreme Court's *Obergefell's*  
21 decision to be implemented, and this individual's  
22 willing to do that.

23 Okay. I will proceed. Thank you. You  
24 all -- you can step back, Mr. Mason.

25 Mr. Davis --

1 MR. CAMPBELL: Judge, why don't we ask how  
2 many other compliers we've got before we get to  
3 Mr. Davis. If we have two or three other clerks that  
4 also will comply, I might want to be last in line.

5 THE COURT: Well, I can recognize that. I  
6 mean, I -- we all love our parents. I mean, that's  
7 not a -- well, we -- most of us love our parents.  
8 Perhaps there may be reasons why we may not in an  
9 individual case or two.

10 Any other defense attorneys after speaking  
11 with their respective clients that I appointed  
12 indicate that they would be willing to issue the  
13 licenses?

14 Mr. Markelonis?

15 MR. MARKELONIS: Judge, if we can approach  
16 the podium.

17 THE COURT: Sure. Come around. And this is  
18 Ms. Thompson?

19 MS. THOMPSON: Yes.

20 MR. MARKELONIS: Yes, sir.

21 THE COURT: All right. Ms. Thompson, if you  
22 would swear her, please, under oath. Thank you.

23 [MELISSA THOMPSON, having been first  
24 placed under oath, was examined and responded  
25 as follows:]

1           THE COURT: And I understand that this may be  
2 difficult for all of you. And I -- and I, on behalf  
3 of the Court, had never intended on any of these  
4 proceedings to put any of you in harm's way or make  
5 you uncomfortable with anything. Because frankly, we  
6 were just talking about this during the break. I  
7 mean, the most difficult cases are the hardest ones,  
8 and they're hard for a variety of reasons. Legally  
9 perhaps, emotionally perhaps, factually -- and I've  
10 not been to Morehead recently. I understand what's  
11 occurring almost on a daily basis there. I know folks  
12 that go to Morehead State. We have jurors from Rowan  
13 County who come up here and serve.

14           So I want you all to know that the Court has  
15 tried to shepherd this case through the court, at  
16 least here in the district court level, in a way that  
17 enables the issues to be raised and adjudicated as  
18 promptly as possible, while making sure that each of  
19 your individual circumstances are taken care of.

20           Now, you really haven't -- you've all been  
21 behind the -- we talk about "behind the curtain." I  
22 mean, you've been behind the desk for a long -- for  
23 the whole time. And unfortunately, based upon the  
24 actions here, I've had to summons you each to court.

25           So I just felt -- I saw you getting ready to

1 tear up and I wanted you -- I wanted to address that  
2 to you because I don't like to make anybody cry; I  
3 don't. I don't think the Court would ever want to do  
4 that. I don't think these lawyers would ever want to  
5 do that. They have issues they want to raise, both  
6 sides do.

7 I've said it once, I'll say it a thousand  
8 times. We -- we can have all our individual  
9 disagreements as citizens of the United States. But  
10 here in the United States, we resolve those in a way  
11 that are -- we peacefully have disobedience, we  
12 peacefully protest, we expect at the end of the day  
13 for the Court's orders to be complied with, and that's  
14 how things work here in America.

15 So, Ms. -- did you place her under oath? I'm  
16 sorry.

17 DEPUTY CLERK: Yes, I did.

18 THE COURT: Okay.

19 MR. MARKELOUIS: Judge, if I could?

20 THE COURT: Yes.

21 MR. MARKELOUIS: I spoke at some length, like  
22 the other lawyers, with Ms. Thompson. I would say  
23 that she's uniquely situated here.

24 Before going to work at the county clerk's  
25 office, she worked for Judge Mains, the circuit judge

1 there, for some time as his secretary.

2 THE COURT: Is he still the circuit judge  
3 there?

4 MR. MARKELONIS: No. He's been retired for a  
5 while.

6 THE COURT: That's what I thought. That's  
7 what I thought.

8 MR. MARKELONIS: But I think she's probably  
9 maybe uniquely qualified among the deputies to  
10 appreciate judges who want their orders complied with.

11 THE COURT: Well, I think any judge would  
12 expect, not want, expect the orders to be complied  
13 with.

14 MR. MARKELONIS: And she understands that,  
15 Judge. She's wrestled with this. But she indicated  
16 to me that she's willing to comply with the Court's  
17 order. She has her own personal feelings about the  
18 issue, like all the other persons in here. But she's  
19 indicated to me that she'll comply with the Court's  
20 order and do what she has to do.

21 THE COURT: All right. So, Ms. Thompson, how  
22 long have you been employed with the clerk's office?

23 MS. THOMPSON: I was there almost 13 years,  
24 and then I left and I came back, so probably about 15,  
25 16 years.

1 THE COURT: Okay. So you left there to go  
2 work for the circuit judge?

3 MS. THOMPSON: I worked for Judge Mains about  
4 a year-and-a-half.

5 THE COURT: Okay. And then you came back?  
6 So I worked for Ms. Davis's mother as well?

7 MS. THOMPSON: I worked for Ms. Bailey, yes.

8 THE COURT: It was Ms. Bailey?

9 MS. THOMPSON: Uh-huh, Jean Bailey.

10 THE COURT: Okay. Okay. Are you willing to  
11 comply with this Court's order requiring that marriage  
12 licenses be issued to the plaintiffs in this case or  
13 any other individuals who are legally eligible to  
14 marry in Kentucky?

15 MS. THOMPSON: Yes, Your Honor. I don't  
16 really want to, but I will comply with the law. I'm a  
17 preacher's daughter, and this is the hardest thing  
18 I've ever done in my life --

19 THE COURT: Well, we all have things we  
20 don't --

21 MS. THOMPSON: -- but I will comply.

22 THE COURT: -- we don't want to do. Now,  
23 I've been very careful in this case --

24 MS. THOMPSON: I don't hate anyone at all.

25 THE COURT: Well, I don't believe Ms. Davis

1 does.

2 MS. THOMPSON: None of us hate --

3 THE COURT: The rhetoric that goes on outside  
4 the courtroom --

5 MS. THOMPSON: None of us hate anybody. It's  
6 just hard.

7 THE COURT: No one does. I appreciate that;  
8 I really do.

9 It's always folks that aren't involved that  
10 speak the loudest because they want -- they don't --  
11 they sometimes don't have all the information and they  
12 -- someone sends an email and says, "Look what's going  
13 on in Kentucky. We need to be heard and --"

14 I mentioned the 2,000 calls. I don't blame  
15 folks for calling. I think every judge in America  
16 isn't going to be swayed by calls like that.

17 That's -- the public interest is important,  
18 clearly. I appreciate that. And I appreciate your  
19 hesitation. I think in a very real way, you're likely  
20 like many of the individuals in this courtroom. Both  
21 sides -- there's strong views on both sides, no  
22 question.

23 It's not my job to tell five Supreme Court  
24 Justices that they're wrong. The Supreme Court is  
25 able to revisit their decisions, but it's the Supreme

1 Court that does that.

2           So this issue that's been raised -- I mean,  
3 he doesn't have a key, Mr. Mason. I mean, I don't  
4 know -- Mr. Watkins, you're the county attorney. Are  
5 you in the building --

6           MR. WATKINS: Yes, sir.

7           THE COURT: -- where the county -- the  
8 clerks' office is?

9           MR. WATKINS: Yes, sir. Yes, sir. Usually  
10 when they go to the clerk's office and it doesn't work  
11 out, they end up in my office, Your Honor.

12           THE COURT: Okay. Well, will you -- and I  
13 don't know who -- is there a chief deputy? I know  
14 everybody -- sometimes you have a -- someone who's a  
15 chief --

16           MR. WATKINS: There is. Roberta Earley.

17           MS. EARLEY: Roberta Earley.

18           THE COURT: You're the chief deputy?

19           MS. EARLEY: I am.

20           THE COURT: Okay. I think, and if necessary,  
21 I'll eventually get to you. But I appreciate your  
22 candor, ma'am; I do. Thank you.

23           If you'd step back. And now, Mr. Fox?

24           MS. PLANK: Ms. Plank.

25           THE COURT: Ms. Plank, come around, ma'am.

1 All right. If you would be sworn. Thank  
2 you.

3 [KRISTIE PLANK, having been first  
4 placed under oath, was examined and responded  
5 as follows:]

6 THE COURT: Okay. Ms. Plank, the Court has  
7 asked Ms. Thompson and Mr. Mason about the prior  
8 order. You're aware of the Court's prior order  
9 requiring that Ms. Davis no longer enforce her "no  
10 marriage license" policy?

11 MS. PLANK: Yes, Your Honor.

12 THE COURT: Okay. Have you -- and you've  
13 spoken with Mr. Fox about the potential consequences  
14 of not complying with that?

15 MS. PLANK: Yes.

16 THE COURT: All right. Mr. Fox?

17 MR. FOX: Yes, Your Honor. We did speak at  
18 quite length. And Ms. Plank presents a situation that  
19 I predicted to Mr. Campbell this morning when we  
20 talked about this case that would be present, which is  
21 that --

22 THE COURT: Be what?

23 MR. FOX: That --

24 THE COURT: If you'd try to -- be -- we have  
25 the air on, so ...

1 MR. FOX: I'm sorry.

2 THE COURT: Go ahead, sir.

3 MR. FOX: Ms. Plank's situation's one that I  
4 predicted, Your Honor. She is a mother of an  
5 11-year-old child. She and her husband work hard to  
6 keep up and make ends meet.

7 She's in a situation where she has personal  
8 convictions, just like, as you've indicated, most  
9 people in this courtroom, but she also has financial  
10 obligations. She has a duty to her child, to care for  
11 her child. And she has struggled and is struggling  
12 with the idea of balancing convictions with  
13 obligations, family and otherwise.

14 THE COURT: I think that's something  
15 everyone's doing.

16 MR. FOX: So our discussion primarily for the  
17 half-hour that we met was about those convictions and  
18 the balancing, and ultimately a choice of lesser of  
19 evils. And I think but for some of the these other  
20 obligations and responsibilities that she has, her  
21 response to you today would be different. But these  
22 are real world issues. And there are two things that  
23 she wanted me to talk about.

24 One, she wanted it to be clear that she had  
25 personal opinions and beliefs that are contrary to

1 what is expected of her in her job. But she respects  
2 the Court, and she recognizes that she's under an  
3 obligation under Rule 65 that you discussed, that the  
4 orders that apply to Ms. Davis also would apply to her  
5 as an employee of Ms. Davis, and I believe she will  
6 tell you that she will comply with your order.

7           She was quite articulate in explaining to me  
8 and us discussing this issue of whether she has the  
9 authority to do that. And while I was back there --  
10 and fortunately, recent court orders allow us to bring  
11 these devices into the courthouse -- and 402.080, KRS  
12 402.080 says that, "No marriage shall be solemnized  
13 without a license therefor. The license shall be  
14 issued by the clerk of the county."

15           She believes, and I don't know that she's  
16 wrong, that the authority is with the clerk. And if  
17 the clerk hasn't given her authority, then she  
18 probably doesn't have authority.

19           However, our discussion wasn't about whether  
20 she has authority to issue a license. Our discussion  
21 was about whether she was obligated to follow your  
22 order to do so. And she recognizes that she does have  
23 that -- or that she is under your authority to issue a  
24 license.

25           THE COURT: She appreciates the authority of

1 the Court?

2 MR. FOX: That's right. That's right. And  
3 whether -- as Mr. Joy and I've discussed -- whether  
4 that license, when issued by her or Mr. Mason, or  
5 anyone else, which is done without being given  
6 authority by Ms. Davis, whether that's valid or not,  
7 that's, I guess, going to be up to the plaintiffs to  
8 find out.

9 But her final concern is this, and this  
10 was -- this is almost an emphatic concern. Her duties  
11 within the clerk's office are primarily to deal with  
12 automobile dealers. There are about 30 of them in  
13 Rowan County. This is a large --

14 THE COURT: So she does -- she does like  
15 licensing of autos?

16 MR. FOX: Licensing, the title transfers, and  
17 all the things that go along with that.

18 THE COURT: And I know that line is always  
19 the longest when you go to the clerk's office.

20 MR. FOX: That line's the longest. And  
21 that's her primary duty.

22 She has been directed as an administrative  
23 issue within the office, when the dealers come in,  
24 take care of the dealers. And she's been concerned,  
25 and asked me several times in different ways, "That

1 that's my job, is to deal with the motor vehicle  
2 licensing. If there's no else that can issue other  
3 types of licenses or do other things, then yes, I'm a  
4 deputy clerk and I'll do what I'm told. But I'm also  
5 told to take care of the dealers and those things  
6 first because that's my primary responsibility."

7 THE COURT: Right. And you were told that,  
8 ma'am, by Ms. Davis to take care of those folks,  
9 right?

10 MS. PLANK: Yes, sir.

11 THE COURT: Okay. Okay.

12 MR. FOX: So I've tried to allay her concerns  
13 that if it occurs that, for example, Mr. Mason's  
14 unavailable or if he's out sick, and she's the person  
15 that's there who can issue a license, a marriage  
16 license, she should do her job as she normally does  
17 and take care of the dealers, and then take care of  
18 marriage licenses, because that's what she's done for  
19 the entire time that she's worked in the clerk's  
20 office.

21 MS. PLANK: Well, in the last year. We  
22 changed that last year.

23 MR. FOX: So that's -- that's been a concern.  
24 She doesn't want to be accused of being in contempt  
25 when she's following administrative practices in the

1 office.

2 THE COURT: Understood. Understood. All  
3 right.

4 Ma'am, I appreciate your attorney's comments  
5 about his discussions with you and your concerns. All  
6 the concerns he just raised, do you share those,  
7 ma'am?

8 MR. CHRISTMAN: Your Honor, I'm sorry to  
9 object, but I'm not sure she's been sworn in.

10 DEPUTY CLERK: Yes, she was.

11 THE COURT: Oh, I hadn't -- I swore her  
12 earlier.

13 MR. CHRISTMAN: Okay. Sorry, Your Honor.

14 THE COURT: Thank you. I appreciate the  
15 heads-up. I did do that; did I not, Madam Clerk?

16 DEPUTY CLERK: Yes, you did.

17 THE COURT: Okay. Thank you. So setting  
18 aside for the moment the discussion of whether or not,  
19 without the authority of the clerk, you have the  
20 ability to issue those marriage licenses, I mean,  
21 would you or are you willing to comply with the  
22 Court's order requiring you to issue marriage licenses  
23 to the plaintiffs in this case or any other  
24 individuals who are legally eligible to marry in  
25 Kentucky?

1 MS. PLANK: Yes.

2 THE COURT: What was that?

3 MS. PLANK: Yes.

4 THE COURT: Yes? Okay. All right. Thank  
5 you. All right.

6 MR. HUGHES: Judge, if I may --

7 THE COURT: Yes, sir.

8 MR. HUGHES: -- just briefly. I know you  
9 have others, but on behalf of Mr. Mason, some of the  
10 things we discussed was -- and I want to make it clear  
11 from the decision that he's made as well.

12 One, if you consider that -- that Ms. Davis  
13 is incapacitated at this point, and I think  
14 incarceration probably qualifies for that, and not a  
15 person that dies, leaves office, resigns, or just  
16 incapacitated, there has to be some method to transfer  
17 the authority or the power to other people to keep  
18 operating the office.

19 THE COURT: Well, you know what? It's --  
20 it's an interesting point you raise, and it wasn't my  
21 case. I think it was Judge Van Tatenhove's case. The  
22 former judge/executive in Knott County. I'm not going  
23 to ask either of you to identify where Knott County  
24 was, but some of the other Kentucky lawyers may  
25 remember -- I think his name was Thompson.

1 MR. WATKINS: Randy.

2 THE COURT: Is that correct?

3 MR. WATKINS: Randy Thompson.

4 THE COURT: Randy Thompson, yes. He was the  
5 county judge after being convicted of, I think it was  
6 a vote-buying case. It's been a few years ago, and it  
7 wasn't my case, so again, I don't follow it  
8 completely, but he actually ran the county from jail,  
9 at least allegedly, for a while.

10 MR. FOX: That's correct.

11 THE COURT: So -- if there is, and perhaps  
12 there might be some mechanism that would allow for  
13 that. I don't know.

14 MR. HUGHES: Well, I say that, Judge, and  
15 just coincidentally, the clerk in Boyd County is  
16 retiring. In fact, she retired Monday. She resigned  
17 her office.

18 The office is open and it can't be filled  
19 until a person that's going to be appointed has to  
20 take the test during the vacancy. You can't take it  
21 just in advance, believe it or not. You have to take  
22 it during -- so the office then does not have a clerk.

23 So what they've done is they simply bring a  
24 clerk from another county over. I mean, that's the  
25 position that they've always done when clerks resign

1 or they're incapacitated. I don't know that applies  
2 to this case, but --

3 THE COURT: Well, and I don't know if they  
4 brought another clerk over from another county to do  
5 that here, I mean, whose authority would that be  
6 issued under?

7 MR. HUGHES: I mean, I don't know the answer.  
8 I just know that -- I just to want to make the point  
9 that Mr. Mason is in -- is in the same -- the same  
10 glass globe that everybody is that's going to be  
11 looking at it. He wants to comply with your orders.

12 Now, how they work this out in Rowan County  
13 or Franklin County, or wherever it has to go, will be  
14 their -- their issue. But -- but his consensus is  
15 that he's going to comply with your orders, unless  
16 someone stops him otherwise from doing it.

17 The second thing is, is it's long standing  
18 law in divorce cases, that that's what they're worried  
19 about, is that even if there's a mistake made  
20 somewhere along the line, if the parties thought they  
21 were getting married, they're considered married.

22 THE COURT: Like common law -- common law  
23 marriage.

24 MR. HUGHES: And I don't know about the other  
25 issues that may arise, but -- but at least for that

1 purpose they are.

2 THE COURT: Well, most people when they get  
3 married don't expect to get divorced.

4 MR. CHRISTMAN: Your Honor, I'd -- I'd just  
5 like to make two remarks in response to the comments.

6 THE COURT: Sure, just two. Go ahead.

7 MR. CHRISTMAN: Thank you, Your Honor. The  
8 first would be this gentleman has referred to another  
9 county --

10 THE COURT: Mr. Hughes?

11 MR. CHRISTMAN: Mr. Hughes. I'm sorry. I  
12 didn't remember your name --

13 THE COURT: Thank you, sir. I just wanted to  
14 make sure you were ref --

15 MR. CHRISTMAN: -- immediately. But the --  
16 he just suggested that other county clerks can come in  
17 and issue licenses.

18 THE COURT: I don't know if that's true or  
19 not. That would be a least alternative.

20 MR. HUGHES: I'm just saying that they do it  
21 real commonly when they transfer authority.

22 THE COURT: When authority's transferred?

23 MR. HUGHES: Yes. And I don't know -- you  
24 know, there's not that many clerks that probably this  
25 issue comes up on a regular basis or to challenge. I

1 just know that it has been policy in the past, and  
2 I've been at this 40 years now, that whenever clerks  
3 leave their offices, for whatever, there is a gap  
4 there and that is -- that's commonly how it's taken  
5 care of so that the public offices continue.

6 THE COURT: All right.

7 MR. CHRISTMAN: And I would just raise that  
8 that's exactly one of the least restrictive  
9 alternatives that we've proposed. That if somebody  
10 wanted to get a license in Rowan County issued by the  
11 county clerk, they could get it from another county  
12 authorizing that.

13 THE COURT: Recognizing -- sure.

14 MR. CHRISTMAN: And there's been testimony  
15 being raised previously that 402.240 is a statute  
16 discussing absence of a county clerk. And there's  
17 been discussions now, you know, with Ms. Davis  
18 incapacitated and incarcerated, Kentucky marriage law  
19 provides, as we argued before, that her conscience  
20 provides the absence. And certainly in the Kentucky  
21 --

22 THE COURT: Well, I found previously that the  
23 -- hold on -- I found previously that the conscience  
24 doesn't provide the absence for purposes of absence in  
25 the prior ruling.

1 MR. CHRISTMAN: But Kentucky marriage law  
2 provides the outlet for -- the answer for when the  
3 county clerk is absent and unable to authorize a  
4 license isn't to change Kentucky marriage law and make  
5 the deputy county clerk the authorizing agent. What  
6 that does is turn Judge Blevins into the authority  
7 under that section when the clerk is absent to --

8 THE COURT: But it would still be issued  
9 under her authorization.

10 MR. CHRISTMAN: No.

11 THE COURT: The form would be under her name,  
12 though.

13 MR. CHRISTMAN: No. The statute provides  
14 that when the clerk is absent, that the marriage  
15 licenses be issued by the county judge/executive on a  
16 memorandum.

17 As Judge Blevins testified, he'd -- he had  
18 never done it before, but under the facts and  
19 circumstances here, Kim Davis is currently now  
20 rendered absent.

21 The authority -- there is no authority for  
22 the deputy clerks. Kentucky marriage law then says  
23 that authority vests into the county judge/executive  
24 to issue a marriage memorandum.

25 THE COURT: All right. Mr. Watkins?

1 MR. WATKINS: Judge, I think he just said an  
2 inaccurate statement. It -- it allows him. It says  
3 "may issue a license." There's no requirement there  
4 for a judge/executive to ever issue a license.

5 THE COURT: All right. Well, ultimately  
6 here, if I were to follow your argument,  
7 Mr. Christman, to its logical conclusion by -- it  
8 would enable her to be found in contempt, but then get  
9 what she wants, doesn't it strike you as a little  
10 disingenuous?

11 MR. CHRISTMAN: In terms of get what she  
12 wants?

13 THE COURT: Well, she wants the -- you argued  
14 initially that she wants the judge/executive to do it  
15 as a least restrictive alternative. He can issue it.

16 I previously found that her religious  
17 objection doesn't allow her to be absent. You're  
18 saying now she's been locked up for violating my  
19 order. "She's now absent, actually absent, Judge.  
20 They can go to the county judge." That's what you  
21 argued before. It seems like I would be rewarding her  
22 for her contemptuous behavior by allowing the judge to  
23 do it. Clear those up for me.

24 MR. CHRISTMAN: No. The Court -- the Court  
25 would simply be -- the Court made its determination on

1 what the word "absent" meant in the statute under the  
2 facts and circumstances that were presented before the  
3 Court then.

4 THE COURT: Correct.

5 MR. CHRISTMAN: The facts and circumstances  
6 are different now, so the Court makes an  
7 interpretation of what the word "absent" means. Is  
8 Kim Davis currently absent from issuing marriage  
9 licenses?

10 THE COURT: Okay. Okay. Then when is she  
11 then purged of her contempt?

12 MR. CHRISTMAN: Well, she's purged of her  
13 contempt when, at this point, we're left to file  
14 certain writs in order to have her released from the  
15 custody that she is in, and the merits of her claims  
16 are challenged and taken up on appeal, and she  
17 prevails on the merits of her appeal, which have not  
18 been addressed.

19 THE COURT: No, the merits have not. The  
20 likelihood of success has been addressed.

21 MR. CHRISTMAN: And that was likelihood of  
22 success in her capacity -- in her official capacity to  
23 which the appeal was taken, she has raised those  
24 individual claims against the governor and for any  
25 liability that she may have --

1 THE COURT: Those are not on appeal right  
2 now.

3 MR. CHRISTMAN: -- and they have not been  
4 taken up, which is again, further, why our due process  
5 concerns as to the judgments and determinations that  
6 are being taken here. She's now been sent into  
7 confinement -- as Your Honor said, the purpose of  
8 contempt is to coerce the contemnor into compliance.

9 THE COURT: Correct.

10 MR. CHRISTMAN: Now, in addition and well  
11 beyond that, the Court is now deciding, after putting  
12 Kim Davis in imprisonment for civil contempt of an  
13 order, the Court is now stepping in, short of the  
14 merits being fully decided, and saying, "I'm going to  
15 now order others without the authority, without the  
16 merits of her appeal being taken up to do an act that  
17 she cannot do." It is literally the analogous  
18 situation. And physically -- we've now moved to the  
19 point where if she's in contempt, as you've found, and  
20 now a marriage license that she says she gives no  
21 authority to and is challenging on the merits of  
22 appeal, you force that license to go out on her  
23 authority and on her name, you have forced the nurse  
24 to --

25 THE COURT: Forced the who?

1 MR. CHRISTMAN: -- perform the abortion. You  
2 have forced --

3 THE COURT: Why do we always use that  
4 analogy? There's so many others to use.

5 MR. CHRISTMAN: Because those are the  
6 analogies in which religious conscience claims have  
7 been raised in cases, Your Honor.

8 THE COURT: Well, you've -- you've  
9 represented other parties other than religious cases,  
10 have you?

11 MR. CHRISTMAN: I've -- I've represented  
12 other people who are religious, yes.

13 THE COURT: Well, or non-religious. I mean,  
14 I think ...

15 MR. CHRISTMAN: And I have plenty of years of  
16 representing non-religious people as well.

17 THE COURT: Well, I know that. I know that.  
18 I would just prefer a different analogy; that's all.  
19 I understand your analogy, though.

20 MR. CHRISTMAN: But the analogies are in the  
21 context of religious conscience to understand that she  
22 has -- you have found her in contempt --

23 THE COURT: I have.

24 MR. CHRISTMAN: -- for a conscience claim  
25 that you didn't accept, that conscience claim, the

1 merits of which are being challenged on appeal and  
2 have not been finally decided by a court of final  
3 appeal.

4           And so you told her that she has an  
5 opportunity to purge her contempt if she -- if she  
6 authorizes and issues the license. So her ability to  
7 purge the contempt, her -- again, the purpose of  
8 contempt is to coerce the contemnor into compliance.  
9 You've told her what that is.

10           If it -- if the hearing is now going to turn  
11 into "let's find somebody to issue the license with  
12 Kim Davis's name on it and her authority," then what  
13 the Court is now doing is turning Kim Davis's sanction  
14 into a criminal punishment for what --

15           THE COURT: No. I'm not doing that.

16           MR. CHRISTMAN: -- she's done. You're taking  
17 the extra step of forcing the conscientious objector  
18 to actually have the act that they object to performed  
19 before the merits of that have been decided.

20           If the Judge -- if this Court decides that  
21 it's going to find somebody else to issue a license,  
22 then --

23           THE COURT: Well, I'm not finding anyone.  
24 I'm just asking if they're willing to comply with the  
25 order.

1 MR. CHRISTMAN: Then the authority for that  
2 marriage license is not Kim Davis. It's --

3 THE COURT: Well, it very well may not be  
4 her.

5 MR. CHRISTMAN: -- it's this Court. And our  
6 position would be -- and --

7 THE COURT: Well, it's not this Court; it's  
8 the Rowan County Clerk's office. But go ahead.

9 MR. CHRISTMAN: No, because Rowan County  
10 Clerk's office authority is Kim -- is Kim Davis, and  
11 Kim Davis is not giving that authority.

12 So if marriage licenses are issued, those  
13 marriage licenses -- if Judge Blevins is not willing  
14 to exercise the opportunity he now has to issue the  
15 marriage licenses that he said he would issue, then  
16 this Court becomes the authorizing and issuing agent.  
17 And for any of those marriage licenses, the  
18 authorization statement should come from this Court,  
19 and the authorization agent should be United States  
20 District Court Judge David Bunning --

21 THE COURT: All right. Thank you.

22 MR. CHRISTMAN: -- not Kim Davis.

23 THE COURT: You wanted to say something,  
24 Ms. Parsons?

25 MS. PARSONS: No. I -- I just agree with

1 Mr. Watkins's point. We don't believe that this is an  
2 absence. We believe it is a -- if a religious  
3 conscience objection does not qualify as an absence,  
4 we don't understand how incarceration caused by that  
5 objection and refusal to comply with your order  
6 constitutes an absence.

7 THE COURT: All right.

8 MS. PARSONS: We also believe that the deputy  
9 clerks' willingness to issue the licenses removes that  
10 absent issue entirely under KRS 402.240.

11 THE COURT: All right. Mr. Vance, Mr. Sharp,  
12 do you all wish to be heard on this, this issue of  
13 authorization and --

14 MR. VANCE: No, Your Honor.

15 THE COURT: No?

16 MR. SHARP: No. Your Honor, we agree with  
17 the county.

18 THE COURT: All right. Well, I take it,  
19 Mr. Davis, Ms. Russell, Ms. Earley, you've all spoken  
20 with your attorneys?

21 MR. DAVIS: Yes.

22 MS. RUSSELL: Yes.

23 MS. EARLEY: Yes.

24 THE COURT: Where are we? We're here and  
25 here and here. Okay.

1 MS. EARLEY: Yes.

2 THE COURT: Okay. Let me ask the attorneys  
3 who represent you.

4 Mr. Campbell, Mr. Joy and Mr. --

5 MR. CLARK: Clark.

6 THE COURT: Yes, Mr. Clark. I'm sorry. I  
7 was looking here and not who was standing.

8 I take it after you speaking with your  
9 respective clients, the answers that were given by the  
10 other deputy clerks, is it safe to assume that they  
11 would be different with your clients?

12 MR. JOY: Did you say they'd be different?

13 THE COURT: Different answers.

14 MR. JOY: Your Honor, I don't -- I don't  
15 think that would be accurate. I think they would be  
16 pretty similar, at least from my client.

17 THE COURT: All right. Mr. Clark?

18 MR. CLARK: Your Honor, my client has been  
19 unable to give me her answer at this point.

20 THE COURT: All right. Mr. Campbell?

21 MR. CAMPBELL: Same as Mr. Clark's. We don't  
22 have an answer for the Court at this point.

23 THE COURT: All right. Well, I think it's --  
24 for completeness sake, I think -- and I am -- in  
25 response to what Mr. Christman said, the Court is

1 trying to gain compliance with its order.

2 I -- less than an hour-and-a-half ago, I made  
3 the difficult decision to incarcerate Ms. Davis for  
4 being in civil contempt of the Court's prior order.  
5 This Court recognizes that she has raised issues that  
6 are currently on appeal.

7 I read Rule 65(d)(2)(B) to cover the deputies  
8 because they are employees of the clerk's office, and,  
9 therefore, they are bound by the same order that  
10 Ms. Davis is bound by.

11 I'm not authorizing the issuance of the  
12 licenses on the authority of this Court. I'm trying  
13 to gain compliance with the Court's order.

14 I think whenever any judge -- or whenever any  
15 judge issues an order, he or she expects the party who  
16 is subject to that order to comply or any agents or  
17 employees that are otherwise bound by that order these  
18 deputies under 65(d)(2)(B) to comply as well.

19 We'll go ahead and -- Mr. Joy, and,  
20 Ms. Earley, if you'd come around. I'm sorry.  
21 Mr. Clark. I was -- come around.

22 [ROBERTA EARLEY, having been first  
23 placed under oath, was examined and responded  
24 as follows:]

25 THE COURT: Okay. Now, Ms. Earley, I know

1 your individual situation is a little bit different in  
2 that earlier you told me, or someone represented that  
3 you are -- you're the chief deputy, though?

4 MS. EARLEY: I am the chief deputy, yes.

5 THE COURT: Okay. But you're not really a --  
6 is it true that you're not like one of the front-line  
7 folks?

8 MS. EARLEY: I don't work on the front line.  
9 I work back in the legal department.

10 THE COURT: Okay. The legal department?

11 MS. EARLEY: Uh-huh (affirmatively).

12 THE COURT: So do you work with --

13 MS. EARLEY: Recording, and work -- assist  
14 the attorneys, yes.

15 THE COURT: Okay. So when the attorneys come  
16 in and ask for help --

17 MS. EARLEY: Right.

18 THE COURT: -- they are pointed toward you?

19 MS. EARLEY: Right.

20 THE COURT: Now, how long have you been with  
21 the clerk's office?

22 MS. EARLEY: I've been there 16 years.

23 THE COURT: Sixteen (16) years. Okay. So  
24 you worked for Ms. Bailey as well then?

25 MS. EARLEY: I did.

1 THE COURT: Okay. Are you willing to comply  
2 with the Court's order requiring the issuance of  
3 marriage licenses to the plaintiffs in this case or  
4 any other individuals who are legally eligible to  
5 marry in Kentucky?

6 MR. CLARK: Judge, if I could briefly respond  
7 for her on that.

8 THE COURT: Yes.

9 MR. CLARK: In discussions with her,  
10 obviously, she hasn't issued marriage licenses in  
11 years --

12 THE COURT: Well, she'd been there 16 years,  
13 so, right.

14 MR. CLARK: Yeah. Her concern at this point  
15 is obviously -- it's kind of a short period of time.  
16 I don't know that she expected this to be thrust upon  
17 her in this circumstance like this today.

18 THE COURT: And I -- again, I'm not going to  
19 apologize for everyone here. I'm just -- the docket  
20 is what it is and we're trying to get to a resolution.

21 MR. CLARK: No. I understand that, Your  
22 Honor, and she does as well. I guess what we would  
23 request is -- or what she was asking for was maybe  
24 some more time to think about it. I've explained to  
25 --

1 MS. EARLEY: Get a game plan together,  
2 uh-huh.

3 MR. CLARK: Yeah. I've explained to her  
4 what, in effect, the consequences of the Court's order  
5 of not following that order, and she's well aware of  
6 that. And she's also well aware of the arguments  
7 that, I think, Ms. Davis's counsel has made. And she  
8 does have some differing viewpoints.

9 THE COURT: When you say "differing," there's  
10 lots of different viewpoints.

11 MR. CLARK: Yes.

12 THE COURT: Some of them have been made  
13 available here today. And there's also ones that  
14 remain in each of our hearts.

15 MR. CLARK: Correct, Your Honor. And I think  
16 that she's probably a little bit of all of those. But  
17 she was unable to tell me exactly whether she would  
18 follow the order or not, Your Honor. I would just ask  
19 for time for her to be able to make that decision.

20 THE COURT: And when you say "time", are you  
21 wanting me to recall her a little bit later or ...

22 MR. CLARK: I was thinking maybe a day or  
23 two, Your Honor.

24 THE COURT: Well, I'm certainly -- I am not  
25 going to reconvene another one of these hearings

1 tomorrow here in Ashland, or -- I guess Monday's Labor  
2 Day -- or Tuesday.

3           So you're wanting more time to consider that;  
4 is that right?

5           MS. EARLEY: Well, it seems like every step  
6 we take, we've got questions, and -- like who's in  
7 authority, you know, whose name goes on that. And  
8 that's -- things like that, I think, need to be worked  
9 out, and definitely, I'm not an attorney.

10           THE COURT: Well, we have lots of attorneys  
11 here have been making their arguments here this  
12 afternoon and this morning.

13           MS. EARLEY: And I guess one of the questions  
14 was, is Kim still the one that's going to be telling  
15 us what to do? Do we go by her authority or ...

16           THE COURT: Well, the authority -- the reason  
17 for this hearing is because Ms. Davis was not  
18 complying with the order of the Court. There's a lot  
19 of discussion --

20           MS. EARLEY: Uh-huh.

21           THE COURT: -- but at its very core, the  
22 hearing is about compliance with the Court's orders.

23           MS. EARLEY: I understand that.

24           THE COURT: And whether or not a marriage  
25 license issued tomorrow by any one of the agents of

1 Ms. Davis is a valid license under the Kentucky  
2 statute.

3           These plaintiffs are going to have to decide  
4 whether or not they want to perhaps have a license  
5 issued, which may not be valid under Kentucky law, but  
6 they're willing to take that chance.

7           Or perhaps they're not going to take that  
8 chance and hope that maybe in some future date the  
9 statute is amended or there's some activity by the  
10 elected officials to change it.

11           That's not -- I'm trying to gain compliance  
12 with the order, and that's -- so you do -- have raised  
13 some interesting questions, as the other attorneys  
14 have as well.

15           But what I'm getting at is, if I have  
16 individuals who've indicated they're willing to issue  
17 the licenses, and I order that to occur, it will be on  
18 the form that was used.

19           That's -- if there's a move afoot to amend  
20 that, great. I think that would enable all parties to  
21 come away with something.

22           Many times in litigation certain parties win  
23 and certain parties lose. Oftentimes, though, you  
24 have cases where everybody gets something.

25           I've struggled in this case to find middle

1 ground on anything because both sides have been so  
2 insistent on digging their heels in at every turn,  
3 which is certainly the litigant's right to do. And  
4 it's my job to try to keep the decorum even, try to  
5 keep everybody on the same page.

6 So I guess getting back to my initial  
7 question, do you wish additional time to answer that  
8 question, or are you willing to issue those licenses?

9 MS. EARLEY: Well, I'm not set up to issue  
10 them, but I won't go against your order.

11 THE COURT: All right. Thank you. Mr. Joy,  
12 Ms. Russell.

13 All right. Would you place Ms. Russell under  
14 oath, please.

15 [KIM RUSSELL, having been first placed  
16 under oath, was examined and responded as  
17 follows:]

18 THE COURT: All right. Ms. Russell, you've  
19 had a chance to talk to your lawyer now about the  
20 consequences of not complying with the order, correct?

21 MS. RUSSELL: Yes, sir.

22 THE COURT: All right. Mr. Joy.

23 MR. JOY: Your Honor, in speaking with her --

24 THE COURT: If you'd speak close to the  
25 microphone. The air's on. Thank you.

1 MR. JOY: Your Honor, in speaking with her,  
2 I think the fundamental issue that she had was that  
3 she was rehired by Ms. Davis in March of this year.  
4 She's only worked there for a few months at this  
5 point.

6 On or about June 30th, after -- after the  
7 decision by the Supreme Court came out, Ms. Davis  
8 revoked her authority to issue any marriage licenses  
9 to the entire office. I think that's what led to this  
10 hearing.

11 And as I previously stated, that's the same  
12 issue she has right now, is she does not believe she  
13 has authority to go forward and issue, from Ms. Davis,  
14 that is, no authority to issue a marriage license.

15 But I believe her position will be that in  
16 regards to the Court's order, she will issue a  
17 marriage license, she will comply with that going  
18 forward.

19 She is torn with that decision, but she does  
20 not want to go to jail, and that's the simple  
21 semantical --

22 THE COURT: Well, that's an option the Court  
23 has. I mean, the Court could fine her in the  
24 alternative of jail.

25 MR. JOY: Correct, Your Honor. But I believe

1 the Court's action in regarding to send Ms. Davis  
2 to -- to the marshal's custody for not complying with  
3 that order has led her to believe that -- although a  
4 contempt hearing has not been held in regards to her,  
5 that if the Court does have a contempt hearing, that's  
6 the way the Court could go.

7           So based on that information, I believe she  
8 is willing to issue a marriage license, if the Court  
9 orders her to do so here today.

10           THE COURT: So, ma'am, do you intend on  
11 complying with the Court's order requiring you to  
12 issue marriage licenses to the plaintiffs in this case  
13 or any other individuals who are legally eligible to  
14 marry in Kentucky?

15           MS. RUSSELL: Although I don't believe in it,  
16 yes, sir, I will.

17           THE COURT: All right. Thank you. All  
18 right. Mr. Campbell?

19           MR. CAMPBELL: Your Honor?

20           THE COURT: Yes, sir?

21           MR. CAMPBELL: Since we have so many people  
22 who are going to comply, I don't think there's any  
23 needs to question Mr. Davis.

24           THE COURT: Mr. Davis, you would answer "No"  
25 if -- and I recognize your mother's in custody and

1 I recognize that --

2 MR. DAVIS: I would, yes.

3 THE COURT: Pardon?

4 MR. DAVIS: I said, I would.

5 THE COURT: You would answer "No?"

6 MR. DAVIS: Yes.

7 THE COURT: Okay. All right. I don't think  
8 it's necessary to place him under oath.

9 MR. CAMPBELL: Thank you, Your Honor.

10 THE COURT: All right. Thank you, unless one  
11 of the parties think it's necessary.

12 Having heard from neither of the parties  
13 then.

14 Okay. Here's what we're going to do. Now,  
15 there has been an issue raised about the validity of a  
16 marriage license issued that does not have the  
17 authorization of Ms. Davis under Rule -- I'm sorry --  
18 KRS 402.

19 Whether or not a license issued by the Rowan  
20 County Clerk's office is valid or not, I mean,  
21 that's -- that's kind of something that Mr. Sharp and  
22 your clients, if they believe it to be valid -- I'm  
23 not saying it is or it isn't. I haven't looked into  
24 that point. I'm trying to get compliance with my  
25 order.

1           The impact of compliance with the order is  
2 left for you. I mean, if you think that's a  
3 legitimate issue, then you can advise your clients  
4 accordingly, but that's not really something that I  
5 think precludes the Court from gaining compliance with  
6 the Court's order.

7           And, of course, the Sixth Circuit's decision  
8 denying the motion to stay, it isn't a marriage  
9 decision. I recognize that. I recognize that there's  
10 a motion to dismiss -- or a motion for preliminary  
11 injunction that you filed. I recognize there's a  
12 motion to dismiss filed that you filed. I recognize  
13 that there's going to be a motion to dismiss filed by  
14 the governor's office. There's a whole myriad of  
15 issues which are part of this case which have not yet  
16 been adjudicated. I recognize all of that.

17           I also recognize that pursuant to the Supreme  
18 Court's decision in *Obergefell*, the Fourteenth  
19 Amendment recognizes the rights that these plaintiffs  
20 in this case have.

21           So I've entered my order. I'm seeking  
22 compliance. I've had this hearing. And now I have  
23 multiple deputies.

24           Now, I'm confident that if a deputy clerk  
25 issues a marriage license to any of these plaintiffs

1 or to any individuals who are eligible to marry, given  
2 the nature of this proceeding, that all of you are --  
3 I mean, I think you can do that under the authority  
4 that you were compelled -- you didn't -- you didn't  
5 want to be held in contempt of the Court's order,  
6 because that's what we're here to discuss today.

7 I would doubt that there would be any  
8 employment ramifications for doing so because you're  
9 following the Court's order. And in fact, if there  
10 was, that would be an issue that would be a separate  
11 proceeding, that frankly, I don't know if that even --  
12 we need to even discuss that. But I'm confident that  
13 that's not going to happen. I -- I have every belief  
14 that Ms. Davis is sincere and wouldn't do anything  
15 like that to begin with.

16 But I am going to find that the -- given the  
17 representations of Mr. Mason, Ms. Thompson, Ms. Plank,  
18 Ms. Earley and Ms. Russell, five of the six deputies  
19 that are here, that they would comply with the Court's  
20 order. That the five of you as agents of Ms. Davis  
21 shall comply with the Court's order, which in essence  
22 precludes you or enjoins you from enforcing the prior  
23 order -- or prior -- enforcing the prior "no marriage  
24 license" policy implemented by Ms. Davis, over your  
25 objection. Your objection's noted and overruled, as

1 early as tomorrow. I mean, tomorrow's before a long  
2 holiday. That's going to be the order of the Court.

3           If in fact that's done, I think that would  
4 have the potential impact of purging the contempt.  
5 It's not my job -- it's not my intention to keep  
6 Ms. Davis locked up just because I think it's the  
7 right thing to do. I think it's the right thing to do  
8 to follow the Court's orders, and she has been found  
9 to be in contempt.

10           So -- and I understand, Mr. Davis, you may  
11 not agree with the Court's order, as your attorney  
12 stated and you stated to me under oath, but there's  
13 been enough discussion to fill this courtroom ten  
14 times over outside.

15           I'm hoping that cooler heads prevail and that  
16 the -- these licenses, which I previously found the  
17 policy to be invalid. I'm not going to go into the  
18 reasons; I've already stated that in my prior opinion.

19           So the plaintiffs are going to be able to  
20 obtain the licenses from Rowan County at the clerk's  
21 office. Whether or not they're valid or not's up to  
22 you all.

23           If you want to wait until you absolutely are  
24 sure they're valid, that's up to you. That's not up  
25 to the Court. I'm just trying to gain compliance with

1 the order.

2 I hope there's no shenanigans of, "Well, I'm  
3 going to be off today. I'm going to be off today, and  
4 let's all get together and be off," so the only person  
5 working is Mr. Davis so that they can't comply with  
6 the Court's order.

7 The Court will vigilantly oversee its orders,  
8 understanding that the orders are subject to -- some  
9 orders are subject to appeal as a right.

10 I've previously denied your -- your  
11 interlocutory order -- or your request for an  
12 interlocutory order under 1291. I'm not going to  
13 revisit that.

14 So, Mr. Sharp, I just want to make sure as we  
15 leave today that my order's specific. And it will  
16 be -- I don't know if I'll be entering my minute order  
17 today or not. Given the lateness of the hour, I'm  
18 probably -- I don't know when it will actually be  
19 entered. Probably sometime tomorrow.

20 But we have five deputy clerks who have  
21 indicated they're willing to issue the licenses. They  
22 have argued -- Ms. Davis has argued through counsel  
23 that they're not valid licenses because she hasn't  
24 authorized the licenses. You disagree with that. I'm  
25 not taking a position on that. I think they're agents

1 of her. They can -- agency principals, they can issue  
2 the licenses.

3 MR. SHARP: We agree, Your Honor, and we  
4 agreed with the county.

5 Our primary concern, and we're -- we're happy  
6 for the Court to -- you know, with the deputy clerks'  
7 testimony here today to find that that purges the  
8 contempt. Our --

9 THE COURT: Well, I'm not going to purge the  
10 contempt today --

11 MR. SHARP: Okay.

12 THE COURT: -- because I can see what will  
13 happen, is I purge the contempt, and she goes back and  
14 you're not doing it no more, and then we're right back  
15 here tomorrow.

16 MR. SHARP: That's correct, Judge.

17 THE COURT: And I'm simply not going to allow  
18 that to occur --

19 MR. SHARP: That's precisely our --

20 THE COURT: -- because it's the ping-pong  
21 match that -- if we get to next Tuesday, or let's say  
22 a week from today. I mean, because what I don't want  
23 to happen is I purge the contempt, and then somebody  
24 from Zilpo -- raise your hand if you know where Zilpo  
25 is. Yeah, a few of you. Really good muskie fishing

1 in Cave Run Lake down there. A couple from Zilpo  
2 decides we're going to get married, heterosexual,  
3 same-sex, what have you, and I purge the contempt, and  
4 Ms. Davis says, "I'm -- I'm not going to allow that to  
5 occur." This is not going to go back and forth, in my  
6 view. I'm trying to gain compliance with the Court's  
7 order pending appeal.

8 I mean, if the Supreme Court had said, "Judge  
9 Bunning, you need to stay your decision," it would  
10 have been stayed. We wouldn't have had this hearing.  
11 But the appellate courts said, "You don't need to stay  
12 it, Judge," and I'm following that.

13 MR. SHARP: And we agree, Your Honor. And  
14 that's our biggest concern, that, you know, once the  
15 purge is obtained, disruption to the workforce,  
16 adverse employment actions could follow. We've --

17 THE COURT: Well, I don't think there'll be  
18 adverse employment. If there are, I mean, I think  
19 we've -- the record speaks for itself. I mean, that  
20 would not be prudent.

21 MR. SHARP: And we understand. You know,  
22 what we would suggest to the Court is perhaps a do not  
23 interfere component to the contempt insofar as  
24 Ms. Davis's ability to purge herself of contempt. She  
25 is, based on her testimony, perhaps unlikely to

1 necessarily agree to the issuance of marriage  
2 licenses.

3 THE COURT: I don't think she will.

4 MR. SHARP: But if perhaps she could agree to  
5 a do not interfere component, that would allow her  
6 deputies to do their jobs and issue marriage licenses  
7 to those who are entitled to receive them. Perhaps  
8 that may be a way for her to do so.

9 THE COURT: Rowan County counsel, any  
10 thoughts on that?

11 MR. WATKINS: I'm fine with it, Judge.

12 THE COURT: Mr. Gannam?

13 MR. GANNAM: Your Honor, now that the Court  
14 has obtained the agreement, or at least indication  
15 from at least five of the deputy clerks that they will  
16 issue marriage licenses, at this point, the Court's --  
17 the contemnor is Kim Davis in her official capacity.  
18 And without waiver of any of the prior positions we've  
19 taken and arguments we've made, Kim Davis in her  
20 official capacity with that designation is the Office  
21 of Rowan County. It's a designation for a government  
22 entity through its head.

23 And for that reason, having obtained now the  
24 statements from five deputy clerks that they will  
25 issue marriage licenses, then as a matter of fact, the

1 Court's incarceration of Kim Davis has accomplished  
2 the goal of enforcement of the order. And any  
3 additional confinement would serve the purpose of  
4 punishment and not coercive enforcement of the order,  
5 because you've -- you've already obtained that now  
6 from these other deputy clerks.

7 THE COURT: Well, why don't -- why don't we  
8 do this. Why don't we have her brought back in and  
9 see if she -- if I purge the contempt, and she then --  
10 well, I've had several deputy clerks that have  
11 indicated that they're going to be issuing the  
12 licenses so that they're not in violation of my order.

13 Bring her back in to see if she would then  
14 protest and not let them do that if she's purged of  
15 the contempt.

16 MR GANNAM: Your Honor, may I have a  
17 question? If she's going to be brought back in, that  
18 we have an opportunity to confer, at least briefly,  
19 before they bring her out?

20 THE COURT: Why don't you do that. We'll be  
21 in recess until 3:30.

22 [RECESS - 3:06 - 3:40 p.m.]

23 [IN OPEN COURT]

24 THE COURT: All right. We had given  
25 Mr. Christman and Mr. Gannam additional time that

1 they've asked, approximately ten minutes.

2           You all wanted to be heard without Ms. Davis  
3 being brought into the courtroom; is that right?

4           MR. GANNAM: Yes, Your Honor. You offered to  
5 bring Ms. Davis back in at -- based on our request to  
6 consider purgation of the contempt based on the  
7 representations of the deputy clerks.

8           THE COURT: Correct.

9           MR. GANNAM: At this point, we're prepared  
10 to, rather than bring Ms. Davis in, simply communicate  
11 to the Court that she does not grant her authority for  
12 any licenses to be issued under her authority or by  
13 her name. And she -- she also does not make any  
14 representations as to whether she would allow any  
15 employee of her office to issue those licenses, even  
16 without her authorization.

17           THE COURT: So if I were to ask her if -- so  
18 you're not seeking to have her -- the prior contempt  
19 order purged based upon the answers that you  
20 anticipate she would give?

21           MR. GANNAM: Yeah. Just so I'm clear, Your  
22 Honor, we -- we cannot represent to the Court that  
23 Ms. Davis would -- would allow licenses to be per --

24           THE COURT: So if I would allow her to be  
25 released from custody, you're not able to make a

1 representation that she would allow the issue -- the  
2 licenses to be issued tomorrow?

3 MR. GANNAM: That's correct, Your Honor.

4 THE COURT: Okay. All right. Fair enough.  
5 Fair enough.

6 You can go ahead and take her back into  
7 custody -- or she's still in custody, but she was  
8 waiting outside the hallway.

9 Okay. Well, of course, as I previously  
10 mentioned, the Court will continue to have oversight  
11 of this matter while the litigation continues.

12 Having indicated previously that five of the  
13 deputies have expressed a willingness to comply with  
14 this Court's prior order enjoining Kim Davis in her  
15 official capacity from enforcing the "no marriage  
16 license" policy to these plaintiffs, or anyone else  
17 legally eligible to marry under Kentucky law, the  
18 Court would expect each of the deputies -- and I'm  
19 going to mention this to you, Mr. Davis.

20 I haven't -- at your request and through  
21 Mr. Campbell, I haven't asked you to formally be  
22 placed under oath and answer questions because I have  
23 five others that have indicated a willingness to do  
24 it. I have oversight over this matter. Again, I -- I  
25 rule on what's part of the record.

1           What someone -- and frankly, I don't know why  
2 there's a need to -- just because you're allowed to  
3 take a camera into a clerk's office, why is that  
4 necessary? I have five individuals who've said  
5 they're going to issue the licenses.

6           I know when I -- again, I just -- I want to  
7 ensure that the orders of the Court are complied with,  
8 and that's the whole reason why we've been here for  
9 the better part of five hours, or a little bit less  
10 than five hours today.

11           I would hate for this to turn into, we went  
12 back, we were told by Mr. Davis that he's going to  
13 enforce his mother's order. There's no marriage  
14 policy -- "no marriage license" policy, and we're  
15 not -- "we're not allowing any licenses today," or  
16 we're posting a sign that says, "We're working on  
17 computers, or we're doing something else," that shows  
18 a level of disrespect for the Court's orders. And I  
19 would expect that the Court's orders as reflected by  
20 the five individuals have indicated that they will  
21 follow the Court's August 12th, 2015 order, that it be  
22 enforced, that it be complied with.

23           Two circuit courts, the immediate Circuit  
24 Court, Sixth Circuit and the Supreme Court have not  
25 stayed my order, so it will be -- I do expect

1 compliance.

2 All right. Counsel, we will be entering a  
3 minute order. I would anticipate it not being entered  
4 until tomorrow. I want to make sure that it's  
5 accurate. I likely will follow up with part of the  
6 Court's prior order on the contempt finding with a  
7 white order next week.

8 The -- anything else today that we need to  
9 take up specifically? Mr. Hughes?

10 MR. HUGHES: Judge, only just some  
11 housekeeping.

12 THE COURT: And you are on behalf of  
13 Mr. Mason?

14 MR. HUGHES: Yes.

15 THE COURT: All right, sir.

16 MR. HUGHES: Yes, sir. But I've discussed it  
17 with the other counsel too.

18 At the conclusion of this, that our clients  
19 be allowed to stay until the courtroom's cleared. And  
20 when the courthouse is cleared, then maybe have the  
21 marshals escort them to their vehicles just because of  
22 the emotional issue outside.

23 THE COURT: I think that's appropriate.

24 DEPUTY MARSHALL: Yes, sir.

25 THE COURT: I can only -- I can only say

1 this, and I probably said it in a half-dozen ways  
2 today. And I mentioned in my initial order staying my  
3 order denying the motion to stay. Now, emotions seem  
4 to be running high, and they are. And these are  
5 important social issues that have been addressed. The  
6 Court hopes and expects individuals to treat each  
7 other with respect. Sometimes the person who shouts  
8 loudest is the one who doesn't get hurt. And that  
9 applies not only in a situation like this, but it also  
10 applies in our daily life.

11           Hopefully, the discourse which has occurred  
12 -- and I haven't been outside, but I can hear it --  
13 can be peaceful, and will continue to be so. And I am  
14 hopeful that everyone understands whatever side you're  
15 on in this case, that the Court's order complying --  
16 or compelling compliance with the Court's prior order  
17 was reasoned. And you can disagree with it. But know  
18 that the Court put a lot of time and effort into  
19 reviewing the law and what has occurred up to this  
20 point in this action.

21           I hope that everyone will be civil. Because  
22 someone has indicated to the Court that they are  
23 willing to comply with an order of the Court, they  
24 need to save face because with someone who they're  
25 talking about, the Judge has ordered that we comply.

1 That's correct; I have ordered compliance, because the  
2 Circuits have -- the Circuit and the Supreme Court  
3 have upheld my denial of the order staying or not  
4 staying this action pending appeal.

5 I hope that everyone is treated with respect  
6 in this action. We can have a -- this country has  
7 always had disagreements. But what makes our country  
8 different than other countries is we are able to  
9 respect the rule of law, allow important issues to be  
10 raised fairly and calmly, and then allow decisions to  
11 be made, and then respect those decisions and comply  
12 with those decisions, whether we agree with them or  
13 not, unless such -- unless some court says that they  
14 don't need to be complied with. And up to this point,  
15 there's no court that has done that here. So I hope  
16 the discourse isn't -- doesn't continue.

17 I would hope that individuals would under --  
18 they've stated under oath their intentions. I would  
19 hope that they would follow up with that.

20 I would hate to have to be -- come back to  
21 Ashland tomorrow. I'm certainly not going to come on  
22 Saturday. There's some football games being played on  
23 Saturday that I think some of us probably want to  
24 attend.

25 Okay. Mr. Sharp, anything further, sir,

1 today?

2 MR. SHARP: Not from the plaintiffs, Your  
3 Honor.

4 THE COURT: Mr. Gannam, anything today?  
5 Mr. Christman?

6 MR. GANNAM: No, Your Honor.

7 THE COURT: Ms. Parsons?

8 MS. PARSONS: No, Judge.

9 THE COURT: Mr. Watkins?

10 MR. WATKINS: No, Your Honor.

11 THE COURT: Mr. Vance?

12 MR. VANCE: No, Your Honor.

13 THE COURT: All right. Very well. Court  
14 will be in recess.

15 [END OF PROCEEDINGS - 3:50 p.m.]

16 C E R T I F I C A T E

17 I, Sandra L. Wilder, certify that the  
18 foregoing is a correct transcript from the record of  
19 proceedings in the above-entitled matter.

20

21 /s/ Sandra L. Wilder

22 SANDRA L. WILDER, RMR, CRR,

23 COURT REPORTER Date: 09/05/2015

24

25