

Multiple Documents

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

APRIL MILLER, KAREN ANN ROBERTS,
SHANTEL BURKE, STEPHEN NAPIER,
JODY FERNANDEZ, KEVIN
HOLLOWAY, L. AARON SKAGGS, and
BARRY W. SPARTMAN,

AND

ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

KIM DAVIS, both individually and in her
official capacity as Rowan County Clerk, and
ROWAN COUNTY, KENTUCKY,

Defendants.

Case No. _____

Electronically Filed

PROPOSED CLASS ACTION

COMPLAINT

Preliminary Statement

1. In this 42 U.S.C. § 1983 class action suit, Plaintiffs assert claims on their own behalves as well as on behalf of the putative class for the constitutional violations resulting from the Rowan County Clerk's policy of refusing to issue marriage licenses to applicants who are otherwise legally permitted to marry. Specifically, because Rowan County Clerk Kim Davis objects on religious grounds to the Supreme Court's decision recognizing that states cannot deny the privileges of marriage to same-sex couples, Defendant Davis has adopted a policy and/or practice of refusing to issue marry licenses to any couple, same-sex or different-sex, even though they are otherwise legally entitled to marry.

Plaintiffs are two same-sex couples and two different-sex couples who are in committed relationships. They assert individual and official capacity as-applied claims against Defendant Davis. They seek compensatory and punitive damages for Defendant Davis' refusal to issue them marriage licenses in violation of their rights under the Fourteenth Amendment's Due Process Clause, and they request preliminary and permanent injunctive relief compelling Defendant Davis to receive and process their applications and issue them marriage licenses. Plaintiffs also assert a claim pursuant to *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978), against Defendant Rowan County, Kentucky for damages due the unconstitutional policy or practice adopted by Defendant Davis, a county official with final policymaking authority.

Plaintiffs also assert claims on behalf of the putative class of individuals who are qualified to marry and who intend to seek a marriage license from the Rowan County Clerk. The Class seeks a declaration that the challenged policy or practice of denying marriage licenses entirely violates the Fourteenth Amendment's Due Process Clause as well as the First Amendment's Establishment Clause. They seek preliminary and permanent injunctive relief barring Defendants' unconstitutional actions.

Jurisdiction and Venue

2. The Court has jurisdiction over this case under 28 U.S.C. § 1331 and § 1343.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b), because all parties reside in Rowan County, Kentucky. Defendant Rowan County, Kentucky is a governmental entity organized under Kentucky law, and Defendant Kim Davis (in both her individual

and official capacities) resides in Rowan County. Also, a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Kentucky.

Parties

4. Plaintiff April Miller, Ph.D., is an adult citizen of Kentucky residing in Rowan County, Kentucky.

5. Plaintiff Karen Ann Roberts is an adult citizen of Kentucky residing in Rowan County, Kentucky.

6. Plaintiff Shantel Burke is an adult citizen of Kentucky residing in Rowan County, Kentucky.

7. Plaintiff Stephen Napier is an adult citizen of Kentucky residing in Rowan County, Kentucky.

8. Plaintiff Jody Fernandez is an adult citizen of Kentucky residing in Rowan County, Kentucky.

9. Plaintiff Kevin Holloway is an adult citizen of Kentucky residing in Rowan County, Kentucky.

10. Plaintiff L. Aaron Skaggs is an adult citizen of Kentucky residing in Rowan County, Kentucky.

11. Plaintiff Barry W. Spartman is an adult citizen of Kentucky residing in Rowan County, Kentucky.

12. Defendant Kim Davis is the duly elected Rowan County Clerk who, in her official capacity, is responsible for receiving applications for, and the issuance of, marriage licenses. Defendant in her official capacity is located in Rowan County,

Kentucky. Defendant Davis, in her individual capacity, is an adult citizen of Kentucky residing in Rowan County, Kentucky.

13. Defendant Rowan County, Kentucky is a local governmental entity organized under Kentucky law.

Factual Allegations

14. At all relevant times, Defendant Davis, both in her individual and official capacities, acted under color of state law.

15. On June 26, 2015, the U.S. Supreme Court issued its decision in *Obergefell, et al. v. Hodges, et al.*, 2015 U.S. LEXIS 4250 (U.S. June 26, 2015), declaring, among other things, that same-sex couples have a fundamental right to marry under the Fourteenth Amendment to the United States Constitution.

16. On Monday, June 29, 2015, Defendant Davis adopted an official policy of refusing to issue any marriage licenses. [Plaintiffs' Exhibit 1: J. CHEVES, *Several Kentucky county clerks defy same-sex marriage ruling, refuse to issue marriage licenses* ("Pl. Exh. 1"), at 2.] Defendant Davis declared that the policy was adopted because of "deep religious convictions" which would not "allow" her to issue same-sex marriage licenses. [Plaintiffs' Exhibit 2: ANDREW WOLFSON, *Gay marriage ruling defied by some Ky clerks* ("Pl. Exh. 2"), at 2.]

17. Plaintiffs April Miller and Karen Ann Roberts are loving partners in a committed same-sex relationship, and they are loving parents to a wonderful daughter. Plaintiffs Miller and Roberts have been in a committed relationship for eleven (11) years.

18. Following the Supreme Court's decision in *Obergefell*, Plaintiffs Miller and Robert decided to marry in order to formally solemnize their relationship and gain

access to the myriad benefits conferred by doing so. On June 30, 2015, Plaintiffs Miller and Roberts went to the Rowan County Clerk's office to apply for a marriage license. Because of Defendant Davis' policy of refusing to issue marriage licenses, Plaintiffs Miller and Roberts were not permitted to submit a marriage license application.

19. Plaintiffs Miller and Roberts wish to obtain a marriage license in Rowan County because that has been their home for nine years: they live, work, play, volunteer, vote, and pay taxes in Rowan County.

20. When Plaintiffs Miller and Roberts sought to apply for a marriage license in the Rowan County Clerk's office, they were both over the age of eighteen, unrelated by blood, not married to another person, and not otherwise disqualified from marrying one another under the law. Plaintiffs Miller and Robert intend to again request a marriage license from the Rowan County Clerk.

21. Plaintiffs Shantel Burke and Stephen Napier are loving partners in a committed different-sex relationship, and they are parents to a minor child. Plaintiffs Burke and Napier have been in a committed relationship for three years.

22. Plaintiffs Burke and Napier had been planning to marry during 2015. Following the *Obergefell* decision, however, they decided to accelerate their plans and seek a marriage license. On June 30, 2015, Plaintiff Burke went to the Rowan County Clerk's office to apply for a marriage license. Because of Defendant Davis' policy of refusing to issue marriage licenses, however, Plaintiffs Burke and Napier were not permitted to obtain a marriage license.

23. When Plaintiffs Burke and Napier sought to apply for a marriage license in the Rowan County Clerk's office, they were both over the age of eighteen, unrelated

by blood, not married to another person, and not otherwise disqualified from marrying under the law. Plaintiffs Burke and Napier intend to again request a marriage license from the Rowan County Clerk.

24. Plaintiffs Jody Fernandez and Kevin Holloway are loving partners in a committed different-sex relationship. Plaintiffs Burke and Napier have lived together in Rowan County since 2008.

25. Plaintiffs Fernandez and Holloway decided to marry after the Supreme Court's decision in *Obergefell*. On July 1, 2015, Plaintiffs Fernandez and Holloway went to the Rowan County Clerk's office to apply for a marriage license. Because of Defendant Davis' policy of refusing to issue marriage licenses, however, Plaintiffs Fernandez and Holloway were not permitted to submit a marriage license application or obtain a marriage license.

26. When Plaintiffs Fernandez and Holloway sought to apply for a marriage license in the Rowan County Clerk's office, they were both over the age of eighteen, unrelated by blood, not married to another person, and not otherwise disqualified from marrying one another under the law. Plaintiffs Fernandez and Holloway intend to again request a marriage license from the Rowan County Clerk.

27. Plaintiffs L. Aaron Skaggs and Barry W. Spartman are loving partners in a committed same-sex relationship. Plaintiffs Skaggs and Spartman have been in a committed relationship for twenty-one (21) years, during which time they have been residents of Rowan County.

28. Plaintiffs Skaggs and Spartman love Rowan County and feel that it is essential for them to obtain a marriage license in the county they have made their home.

29. Following the Supreme Court's decision in *Obergefell*, Plaintiffs Skaggs and Spartman decided to marry in order to formally solemnize their relationship. On June 30, 2015, Plaintiff Skaggs called the Rowan County Clerk's office to apply for a marriage license. Because of Defendant Davis' policy of refusing to issue marriage licenses, however, Plaintiffs Skaggs and Spartman were not permitted to submit a marriage license application. In fact, an employee of the Rowan County Clerk's office told Plaintiff Skaggs, "Don't bother coming down here." Further, Plaintiff Skaggs was advised by the Rowan County Clerk's office to seek a marriage license in another county because that office was not issuing *any* marriage licenses.

30. When Plaintiffs Skaggs and Spartman sought to apply for a marriage license with the Rowan County Clerk's office, they were both over the age of eighteen, unrelated by blood, not married to another person, and not otherwise disqualified from marrying one another under the law. Plaintiffs Skaggs and Spartman intend to again request a marriage license from the Rowan County Clerk.

31. Kentucky Revised Statute (KRS) 402.080 provides that "No marriage shall be solemnized without a license therefor."

32. On June 26, 2015, Governor Steve Beshear — the sole remaining Defendant in *Bourke, et al. v. Beshear*, the Kentucky marriage equality cases consolidated with *Obergefell* — sent a letter to all of Kentucky's County Clerks following the Supreme Court's decision in *Obergefell*. [Plaintiffs' Exhibit 3: Gov. Beshear Letter.] In that letter, Governor Beshear stated that "[e]ffective today, Kentucky will recognize as valid all same sex marriages performed in other states and in

Kentucky.” [*Id.*] And he further instructed all “executive branch agencies ... to make operational changes that will be necessary to implement the Supreme Court decision.”

33. In spite of this directive from the Chief Executive and the clear pronouncement of the United States Supreme Court, Defendant Davis and Rowan County persist in their deprivation of Fourteenth Amendment rights to residents of Rowan County, including those residents who could have obtained marriage licenses prior to the *Obergefell* decision.

34. Each and every Plaintiff is a resident of Rowan County, Kentucky. They live, work, vote, and pay taxes in Rowan County. Each and every Plaintiff also wishes to obtain a marriage license from their home county without having to suffer the indignity of securing a marriage license from another county due to Defendants’ unlawful and unconstitutional policy.

35. Each and every Plaintiff has suffered a harm, in that they have been denied a marriage license in their county of residence, along with the associated liberty and property interests enjoyed by married couples, *not* because they did not qualify for a marriage license, but rather because of an unlawful and unconstitutional policy adopted for the primary purpose of promoting a particular religious belief with which they sincerely and adamantly object.

36. Defendants’ policy of refusing to issue marriage licenses to all qualified applicants constitutes a substantial, direct and continuous infringement upon Plaintiffs’ fundamental right to marry, and on the rights of current and future individuals who are similarly situated, because it precludes them from obtaining a marriage license in Rowan County even though they are otherwise eligible to marry. Moreover, the challenged

policy is not rationally related to any legitimate state interest, in that Defendant Davis adopted the policy primarily due to her religious objections to same-sex marriage as opposed to any actual state interest.

37. Plaintiffs are suffering and will continue to suffer irreparable harm to their individual dignity, autonomy and familial security, among other harms, because of Defendants' infringements upon their fundamental right to marriage for which there is no adequate remedy at law.

CLASS ACTION ALLEGATIONS

38. The named Plaintiffs bring this action on behalf of themselves and the Plaintiff class pursuant to Fed. R. Civ. P. 23(a) and (b)(2). The class consists of all present and future individuals who, though legally eligible to marry in Kentucky, will be denied a marriage license pursuant to the Defendants' policy.

39. The size of the class is indefinite, in that it includes an indefinite number of future marriage license applicants who will seek a marriage license in Rowan County, Kentucky.

40. The named Plaintiffs will represent fairly and adequately the interests of the class defined above. Plaintiffs' attorneys are experienced civil rights counsel who have litigated federal class action cases, and whose collective experience includes successfully litigating marriage-related civil rights issues at all levels of the federal court system.

41. The Plaintiff class is only a party to the named Plaintiffs' claims for declaratory judgment and injunctive relief. All claims for damages against the County

Defendant and Defendant Davis, in her individual capacity, are made by the named Plaintiffs on their own behalf.

42. The case involves common questions of law and fact affecting the class, in that the Defendants' policy of refusing to issue marriage licenses has been applied, or will apply, to deny marriage licenses to all class members.

43. The named Plaintiffs' claims are typical of the class claims as a whole. The named Plaintiffs are Rowan County residents who are eligible to marry in Kentucky, and have been subjected to and affected by, and will continue to be subjected to and affected by, Defendants' policy of refusing to issue marriage licenses to all eligible applicants. The named Plaintiffs allege that they and other class members they seek to represent are and will be subject to unlawful violations of their fundamental right to marry and of the Establishment Clause of the First Amendment as a result of the policy or practice complained of in this action.

44. Plaintiffs' interest in obtaining injunctive relief for the violations of their constitutional rights and privileges are consistent with and not antagonistic to those of any other person within the class.

45. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate preliminary and permanent injunctive relief and corresponding declaratory relief with respect to the class as a whole.

**CLAIMS FOR RELIEF
(PLAINTIFFS ON THEIR OWN BEHALF)**

**COUNT I
Fourteenth Amendment — Marriage
(Davis in her individual and official capacities and Rowan County)**

46. Defendant Davis is the Rowan County official with final policymaking authority over the issuance of marriage licenses. Her actions challenged here were taken in both her individual and official capacities while acting under color of state law.

47. Defendant Davis exercised her final policymaking authority by adopting the challenged policy of refusing to issue any marriage licenses to individuals who are otherwise qualified to marry.

48. The challenged policy of refusing to issue Plaintiffs marriage licenses substantially burdens and directly infringes upon Plaintiffs' right to marry by barring them from securing a valid marriage license in Rowan County, Kentucky.

49. The official statement of purpose for adopting the challenged policy — Defendant Davis' "deep religious convictions" opposing same-sex marriage — is not a compelling, important, or legitimate governmental interest.

50. In her individual capacity, Defendant Davis violated Plaintiffs' rights to marry by refusing to issue marriage licenses to them pursuant to the challenged policy even though they were otherwise qualified to marry.

51. By adopting a policy to withhold issuing marriage licenses to all individuals otherwise eligible to marry, Defendant Davis, in her individual capacity, acted intentionally, willfully and in disregard of the clearly established rights of the named Plaintiffs, and with deliberate indifference to the clearly rights of the named Plaintiffs.

52. By adopting a policy to withhold issuing marriage licenses to all individuals otherwise eligible to marry, Defendant Davis acted maliciously, with callous

disregard for, or with reckless indifference to the clearly established rights of the named Plaintiffs.

53. Defendant Rowan County acted under color of state law when Defendant Davis, Rowan County's official with final policymaking authority over the issuance of marriage licenses, exercised that final policymaking authority to adopt a policy that resulted in the denial of marriage licenses to Plaintiffs even though they are otherwise qualified to marry.

54. As a result of Defendants' infringement, Plaintiffs have suffered and continue to suffer irreparable harms, including harms to their dignity and autonomy, family security, and access to the full spectrum of benefits conferred by the state upon others.

**CLAIMS FOR RELIEF
(PLAINTIFFS ON BEHALF OF THE CLASS)**

**COUNT II
Fourteenth Amendment — Marriage
(Davis in her official capacity)**

55. The challenged policy constitutes a present and ongoing denial or burden upon the rights of Plaintiffs and Plaintiff Class to marry which subjects them to serious, immediate and ongoing harms warranting the issuance of declaratory and injunctive relief.

56. By denying Plaintiffs and Plaintiff Class access to legal marriage, the policy deprives them of numerous legal protections, dignity, and autonomy.

57. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

58. The challenged policy of refusing to issue marriage licenses substantially burdens and directly infringes upon the rights of Plaintiffs and the Plaintiff Class by barring them from securing a valid marriage license in Rowan County, Kentucky.

COUNT III

First Amendment — Establishment Clause (Davis in her official capacity)

59. The First Amendment to the United States Constitution states, “Congress shall make no law respecting an establishment of religion . . .”

60. This prohibition is extended to the states through the Fourteenth Amendment.

61. The official statements of purpose given by Defendant Davis for adopting the challenged policy were her “deep religious convictions” opposing same-sex marriage and her religiously-motivated unwillingness to issue marriage licenses to same-sex couples.

62. The primary or principal purpose for the adoption of Defendants’ policy was to promote one particular religious viewpoint about marriage.

63. An objective observer would conclude, based upon the available information regarding official statements of purpose, that the Defendants’ policy was adopted primarily for religious reasons.

64. By adopting a policy to withhold issuing marriage licenses to all individuals otherwise eligible to marry primarily for religious reasons, Davis acted intentionally, willfully and in disregard of the rights of the named Plaintiffs and the Plaintiff Class, and with deliberate indifference to their rights.

65. As a result of Defendants' infringement, Plaintiffs and Plaintiff Class have suffered and continue to suffer irreparable harms, including harms to their dignity and autonomy, family security, and access to the full spectrum of benefits conferred by the state upon others.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court grant the following relief:

- 1) Certify this case as a class action under Fed. R. Civ. P. 23(a) and (b)(2);
- 2) Preliminarily and permanently enjoin Defendants from refusing to issue marriage licenses to applicants who are otherwise eligible to marry in Kentucky;
- 3) Issue a declaratory judgment finding that Defendants' policy is facially unconstitutional under the First and Fourteenth Amendments;
- 4) Judgment finding the Defendants violated Plaintiffs' rights under the United States Constitution;
- 5) Judgment for damages, including punitive damages, in an amount to be proven by the evidence against Defendant Davis for violating the named Plaintiffs' rights under the United States Constitution;
- 6) Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988;
- 7) A trial by jury on all issues so triable; and
- 8) Grant any additional relief to which Plaintiffs may be entitled.

Respectfully submitted,

/s William E. Sharp

William E. Sharp

Legal Director

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themselves and all others similarly situated*

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Several Kentucky county clerks defy same-sex marriage ruling, refuse to issue marriage licenses



Natalia Truszczynski, left, and K.T. White, middle, kissed after being married by Fayette Circuit Judge Kathy Stein in her chambers in Judge Stein's chambers in Lexington, Ky., Friday, June 26, 2015. A divided Supreme Court made history today ruling that the Constitution ensures the right of same-sex couples to marry. Following the ruling, several couples showed up at the Fayette County Clerk's Office to obtain marriage licenses. At least two then got married at the Fayette County

Circuit Courthouse and then returned to the Clerk's Office for the final paperwork. Photo by Charles Bertram | Staff

HERALD-LEADER Buy Photo

Defying the law, several county clerks around Kentucky said they won't issue marriage licenses to anyone because of the U.S. Supreme Court's 5-to-4 ruling Friday in favor of a nationwide right to same-sex marriage.

Rowan County Clerk Kim Davis said Monday that her Christian beliefs make it impossible for her to give marriage licenses to gay men or lesbians seeking to marry a member of the same sex. Rather than face claims of discrimination, Davis said, her office in Morehead is refusing marriage licenses to all couples until further notice.

"We've not had any applicants yet, but we've had several calls," said Davis, 49, a Democrat who took office in January.

"It's hard, I will tell you that," Davis said. "What has happened is that five lawyers have imposed their personal view of what the definition of marriage should be on the rest of us. And I, as a Christian, have strong views, too. And I know I don't stand alone."

Chris Jobe, president of the Kentucky County Clerks Association, said he has heard from several clerks who have religious objections to same-sex marriage, so they have decided to stop issuing any marriage licenses. Lawrence County, where Jobe is clerk, likewise has gotten out of the marriage-license business, at least for now.

"We're exploring our options," Jobe said, citing the suddenness of the change. "We're still trying to sort it out."

Several more clerks are consulting with their county attorneys to determine whether they must obey the letter Gov. Steve Beshear sent them Friday, instructing them to comply with the Supreme Court's decision, Jobe said. In a follow-up statement Monday, Beshear said he expects the clerks "to execute the duties of their offices as prescribed by law and to issue marriage licenses to all Kentuckians."

It's a Class A misdemeanor in Kentucky — first-degree official misconduct — if "a public servant ... refrains from performing a duty imposed upon him by law or clearly inherent in the nature of his office."

Attorney General Jack Conway said in a statement: "Any clerk that refuses to issue marriage licenses is opening himself or herself to potential legal liability and sanctions."

County clerks who won't give a marriage license to qualified applicants of any sexual orientation can expect a civil-rights lawsuit, said Bill Sharp, legal director of the Kentucky chapter of the American Civil Liberties Union.

"We think the governor's directive to the clerks was consistent with the Supreme Court's decision, and the court's decision was final," Sharp said. "The county clerks' duty includes issuing marriage licenses to anyone who is qualified to apply for one. The fact that

they might personally disagree with those qualifications is irrelevant."

Clerks in Casey and Montgomery counties said they also have suspended the issuance of marriage licenses at their courthouses. Clinton County Clerk Shelia Booher said she's "still getting legal advice" on how she can proceed, but nobody has asked her office for a license since Friday, anyway. By contrast, Laurel County Clerk Dean Johnson said he issued a license to a same-sex couple Monday.

"I will follow the letter of the law," Johnson said. "We're bound by the statutes. If there's an alternative to the law, then I don't know of it."

Clerks in Lexington and Louisville began issuing marriage licenses to same-sex couples within hours of the court decision Friday.

In suburban Northern Kentucky, Boone County Clerk Kenny Brown — who publicly had supported the state's same-sex marriage ban — did not issue any marriage licenses Friday while he "digested" the decision. But Monday, his office was issuing licenses to all applicants, deputy clerk Amanda Oberer said.

Beshear sent a letter to all 120 county clerks Friday that read, in part, "The Obergefell decision makes plain that the Constitution requires that Kentucky — and all states — must license and recognize the marriages of same-sex couples. Neither your oath nor the Supreme Court dictates what you must believe. But as elected officials, they do prescribe how we must act."

Montgomery County Clerk Chris Cockrell, though, said he isn't prepared to change his own definition of marriage so quickly.

"I have suspended all marriage licenses until I can get legal counsel," Cockrell said. "Nobody had even read the whole court ruling yet — it was, like, 109 pages — when the governor was sending us a letter saying, 'Go, go, go!' Well, a lot of us still have questions."

John Cheves: (859) 231-3266. Twitter: @BGPolitics. Blog: Bluegrasspolitics.bloginky.com.

courier-journal.com

Gay marriage ruling defied by some Ky clerks

Andrew Wolfson, @adwolfson 11:03 p.m. EDT June 29, 2015

Benjamin Moore, left, joins his new husband, Tadd Roberts, in looking over their marriage license just outside the door of the Jefferson County Clerk's office on Friday. But clerks in at least five Kentucky counties are refusing to issue marriage licenses to any couples to avoid having to grant them to gay and lesbian partners. (Photo: David R. Lutman/Special to The CJ)

Defying the Supreme Court and Gov. Steve Beshear's orders, clerks in at least five Kentucky counties are refusing to issue marriage licenses to any couples to avoid having to grant them to gay and lesbian partners.

But their defiance could bring on the next legal battle over same-sex marriage.

"The U.S. Supreme Court issued the final word on this issue on Friday," Attorney General Jack Conway's spokeswoman Allison Martin said in a statement.

"The ruling does not tell a minister or congregation what they must

do, but it does make clear that the government cannot pick and choose when it comes to issuing marriage licenses and the benefits they confer," she said.

Martin said any couple denied a license could seek relief in federal court and should consult with private counsel.

Rowan County Clerk Kim Davis said in a telephone interview that her "deep religious convictions" compel her to refuse to issue licenses to same-sex couples, so she decided not to issue them to anyone. "Marriage is ordained by God to be a man and a woman," she said.

Davis, who sent a heterosexual couple to another county to get a license Monday morning, said clerks in Casey, Clinton, Lawrence and Montgomery counties have adopted the same stance.

Casey County Clerk Casey Davis said, "I respect their position — the gay community's — that that is how they want to live ... but I would ask for for the same respect for my decision."

But Dan Canon, one of the lawyers who won last week's ruling on behalf of six gay and lesbian Kentucky couples, said: "Personal disapproval, whatever the reason, has never relieved a clerk from performing the duties of her office, and it shouldn't now."

He added: "I'm going to take a wild guess that these clerks have issued plenty of licenses to couples who engage in a whole host of behaviors they might find unbiblical, immoral, or simply distasteful."

Bill Sharp, a staff attorney for the ACLU of Kentucky, said it has contacted one of the clerks refusing to issue licenses, but he wouldn't identify which one because the clerk has not responded yet. He said even if clerks are denying licenses to all couples, they still could be sued if that is just a pretext for denying licenses to gay couples.

"We are not aware of any justification that county clerks would have not to issue marriage licenses to anyone who is eligible and otherwise qualified," Sharp said.

"We are not aware of any justification that county clerks would have not to issue marriage licenses to anyone who is eligible and otherwise qualified."

Bill Sharp, staff attorney for the ACLU of Kentucky
Chris Hartman, director of the Fairness Campaign, which promotes gay rights, said denying licenses should expect "to be sued and spend taxpayer dollars in the process."

In Texas, state Attorney General Ken Paxton said in an opinion Sunday that county clerks can refuse to issue marriage licenses to same-sex couples based on religious objections. He noted that clerks who refuse to issue licenses can expect to be sued but added that "numerous lawyers stand ready to assist clerks defending their religious beliefs," in many cases without charge.

Beshear defended the state's marriage ban, but hours after the Supreme Court's ruling was issued he ordered state agencies and

clerks Friday to comply with it.

The clerks refusing to issue licenses include Lawrence Clerk Chris Jobe, who is the president of the Kentucky County Clerks Association. He did not respond Monday to messages.

Davis, the Casey clerk, said his religious conscience would not permit him to issue a license to a gay couple, so he decided to issue them to no one. "I have always tried to be fair to everyone and treat everyone the same," he said. "If I can't do it for one, I can't for the other."

Davis said he consulted with Casey County Attorney Thomas Weddle Jr., who said in an interview that the refusal to grant any marriage licenses may be permissible because the law doesn't require a particular clerk to issue them, except for minors, who must be licensed to marry in the county where they live.

Kim Davis, the Rowan clerk, who took office in December, acknowledged she swore an oath to uphold the Kentucky Constitution, but she said at the time it defined marriage strictly between a man and a woman.

Asked if she was obligated to follow the 5-4 ruling of the Supreme Court that states must allow and recognize same-sex marriage, she said, "You had five lawyers who forced their own vision of what marriage should be on every person in the United States."

Reporter Andrew Wolfson can be reached at (502) 582-7189

Read or Share this story: <http://cjkyl.com/story/news/local/2015/06/25/gay-marriage-ruling-defied-by-some-ky-clerks/354111>



COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR

STEVEN L. BESHEAR
GOVERNOR

700 CAPITOL AVENUE
SUITE 100
FRANKFORT, KY 40601
(502) 564-2611
FAX: (502) 564-2517

June 26, 2015

Dear Kentucky County Clerks:

Today, the United States Supreme Court issued its decision regarding the constitutionality of states' bans on same-sex marriage. The Court struck down those laws, finding that they were invalid under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

As elected officials, each of us has taken an oath to uphold the Constitution of the United States and the Constitution of Kentucky. The Obergefell decision makes plain that the Constitution requires that Kentucky - and all states - must license and recognize the marriages of same-sex couples. Neither your oath nor the Supreme Court dictates what you must believe. But as elected officials, they do prescribe how we must act.

Effective today, Kentucky will recognize as valid all same sex marriages performed in other states and in Kentucky. In accordance with my instruction, all executive branch agencies are already working to make any operational changes that will be necessary to implement the Supreme Court decision. Now that same-sex couples are entitled to the issuance of a marriage license, the Department of Libraries and Archives will be sending a gender-neutral form to you today, along with instructions for its use.

You should consult with your county attorney on any particular aspects related to the implementation of the Supreme Court's decision. While there are certainly strongly held views on both sides of this issue, I know that Kentuckians are law-abiding people and will respect the rule of law. After all, the things that unite us as a people are much stronger than the things that divide us.

Thank you in advance for the valuable services you continue to render to the people of the Commonwealth.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Beshear".

Steven L. Beshear

Plaintiffs' Exh. 3

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Miller, April; Roberts, Karen Ann; Burke, Shantel;
Napier, Stephen; Fernandez, Jody; Holloway, Kevin; Skaggs, L. Aaron;
Spartman, Barry W., and all others similarly situated

(b) County of Residence of First Listed Plaintiff Rowan County, KY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

ACLU of Kentucky, 315 Guthrie St. Suite 300, Louisville, KY 40202
(502) 581-9746, William E. Sharp

Also See Attachment

DEFENDANTS

Davis, Kim, both individually and in her official capacity as Rowan County Clerk, and Rowan County, Kentucky

County of Residence of First Listed Defendant Rowan County, KY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:

1st and 14th Amendment challenge based on Defendant's refusal to issue marriage licenses.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7-2-15

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ATTACHMENT

Continuation of I. (c) Attorneys:

Clay Daniel Walton & Adams PLC
462 South 4th Street, Suite 101
Louisville, KY 40202
(502)561-2005
Dan Canon
Laura E. Landenwich
Joe Dunman

...

U.S. District Court Eastern District of Kentucky

Civil ***Case Assignment***

Case number **0:15-CV-44**

Assigned : Senior Judge Henry R. Wilhoit Jr.
Judge Code : 4309

Assigned on 07/03/2015

Request New Judge

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

Northern Div. at Ashland

April Miller, Karen Ann Roberts, Shantel Burke,
Stephen Napier, Jody Fernandez, Kevin Holloway,
L. Aaron Skaggs, and Barry W. Spartman, and
all others similarly situated

Plaintiff(s)

v.

Kim Davis, both individually and in her official
capacity as Rowan County Clerk, and
Rowan County, Kentucky

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Kim Davis
Rowan County Clerk
600 E. Main St. #8
Morehead, KY 40351

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: William E. Sharp, Legal Director, ACLU of Kentucky, 315 Guthrie Street, Suite 300, Louisville, KY 40202
and
Dan Canon, Laura E. Landenwich & Joe Dunman
Clay Daniel Walton & Adams PLC, 462 W. 4th Street, Suite 101, Louisville, KY 40202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* Kim Davis, Rowan County Clerk
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☒ Other *(specify)*: **CERTIFIED MAIL**

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

for the

April Miller, Karen Ann Roberts, Shantel Burke,
Stephen Napier, Jody Fernandez, Kevin Holloway,
L. Aaron Skaggs, and Barry W. Spartman, and
all others similarly situated

v.

Civil Action No.

Kim Davis, both individually and in her official capacity as Rowan County Clerk, and Rowan County, Kentucky

SUMMONS IN A CIVIL ACTION

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: William E. Sharp, Legal Director, ACLU of Kentucky, 315 Guthrie Street, Suite 300,

Clay Daniel Walton & Adams PLC, 462 S. 4th Street, Suite 101, Louisville, KY 40202

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Hon. Walter Blevins, Rowan County Judge/Executive
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☒ Other *(specify)*: CERTIFIED MAIL

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

General Information

Court	United States District Court for the Eastern District of Kentucky; United States District Court for the Eastern District of Kentucky
Federal Nature of Suit	Civil Rights - Other[440]
Docket Number	0:15-cv-00044