

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

APRIL MILLER, *et al.*,

Plaintiffs,

v.

KIM DAVIS, *et al.*,

Defendants.

Case No. 0:15-cv-00044-DLB

Electronically filed

**PLAINTIFFS' MOTION PURSUANT TO RULE 62(c)
TO CLARIFY THE PRELIMINARY INJUNCTION PENDING APPEAL**

Following issuance of this Court's August 12, 2015, preliminary injunction and the subsequent denials of Defendant Kim Davis' requests to stay the preliminary injunction pending appeal by the Sixth Circuit and the U.S. Supreme Court, Davis has continued to apply her "no marriage licenses" policy both to named Plaintiffs in this action as well as to other members of the putative class. Plaintiffs therefore move this Court pursuant to Rule 62(c) of the Federal Rules of Civil Procedure for an order to clarify or, in the alternative, to modify the preliminary injunction to state unambiguously that the preliminary injunction applies not only to future marriage license requests submitted by the four named Plaintiff couples in this action, but also to requests submitted by other individuals who are legally eligible to marry in Kentucky.

Plaintiffs' Statement of the Case is set out in Plaintiffs' Motion to Hold Defendant Kim Davis in Contempt of Court, filed contemporaneously with this motion. In further support of this motion, Plaintiffs state the following:

1. Plaintiffs filed this case as a putative class action on behalf of all present and future individuals who, though legally eligible to marry in Kentucky, will be denied a marriage license pursuant to Davis' "no marriage licenses" policy. [RE #1 ¶¶ 38-45.]

2. The Court entered a preliminary injunction enjoining Davis "from applying her 'no marriage licenses' policy to future marriage license requests submitted by Plaintiffs." [RE #43 at 28.] The Court found that Davis' "no marriage licenses" policy "significantly discourages many Rowan County residents from exercising their right to marry and effectively disqualifies others from doing so." [RE #43 at 14.]

3. Because the Order does not unambiguously state that the preliminary injunction applies to future marriage licenses requested by the four named Plaintiff couples in this action, *as well as* to members of the putative class (i.e., other individuals who are legally eligible to marry in Kentucky but who will be denied a license pursuant to Davis' "no marriage licenses" policy), there is confusion as to the Order's scope.

4. Following issuance of the Order, Davis has continued to apply her "no marriage licenses" policy both to named Plaintiffs and to other members of the putative class.

5. Plaintiffs April Miller, Ph.D. and Karen Ann Roberts went to the Rowan County Clerk's office on September 1, 2015, to obtain a marriage license and were again denied by a deputy clerk who asserted that no marriage licenses would be issued "pending appeal" in this case. Despite Plaintiffs' attempts to point out that Davis' stay requests had been denied, the deputy clerk reiterated the refusal. Plaintiffs' additional request to speak with Kim Davis was denied, and Plaintiffs Miller and Roberts left the Clerk's office. [*See attached* Exh. 1: Declaration of April Miller.]

6. Davis also has continued to apply her “no marriage licenses” policy to other putative class members. *See, e.g., Yates v. Davis*, No. 0:15-cv-00062-DLB (E.D. Ky. filed Aug. 25, 2015) (plaintiffs James Yates and Will Smith were denied a marriage license by the Rowan County Clerk on August 13, 2015, one day after the Court entered the preliminary injunction).

7. This Court retains the power to clarify or modify the preliminary injunction pending appeal. *See* Fed. R. Civ. P. 62(c); *Cent. States, Se. v. John R. Concrete & Supply Co.*, No. 08-13896, 2014 WL 4978660, at *4 (E.D. Mich. Oct. 6, 2014). “[A] court of equity may exercise its sound discretion to modify an injunctive order when modification is necessary to achieve the order’s intended purpose and does not otherwise result in prejudice to a party.” *Id.* (quoting *Agro Dutch Indus. Ltd. v. United States*, 589 F.3d 1187, 1192 (Fed. Cir. 2009)).

8. Here, clarification or modification of the preliminary injunction is necessary to bring Davis into full compliance with the Order and to achieve the intended purpose of allowing all eligible Rowan County couples the freedom to marry in the county in which they live, vote, and pay taxes. Moreover, there will be no prejudice to Davis from clarifying the preliminary injunction because, as the Court has already concluded, “Davis herself is unlikely to suffer a violation of her free speech or free exercise rights if an injunction is issued.” [RE #43 at 28.]

WHEREFORE, Plaintiffs move this Court for an order clarifying that the preliminary injunction Order, RE #43, is in full effect and precludes Davis from applying her “no marriage licenses” policy to future marriage license requests submitted by the

named Plaintiff couples and to all individuals who are legally eligible to marry in Kentucky.

Respectfully submitted,

s/ William E. Sharp

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CERTIFICATE OF SERVICE

I certify that on September 1, 2015, I filed this motion and accompanying proposed order with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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