

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

[Electronically Filed on 07/10/2015]

DAVID ERMOLD and DAVID MOORE

PLAINTIFFS

V.

KIM DAVIS, INDIVIDUALLY AND IN HER  
OFFICIAL CAPACITY AS ROWAN COUNTY CLERK

DEFENDANTS

SERVE: Kim Davis  
600 West Main Street Room 102  
Morehead, Kentucky 40351

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**COMPLAINT WITH JURY DEMAND**

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Come the Plaintiffs, David Ermold and David Moore, by counsel, and for their claims herein, state as follows:

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this matter through 28 U.S.C. §1331 and 28 U.S.C. §1343(3).
2. Venue lies in the U.S. Eastern District of Kentucky, the district in which the claim arose, pursuant to 28 U.S.C. § 1391(b).

**PARTIES**

3. Plaintiff David Ermold is a resident of Rowan County, Kentucky.
4. Plaintiff David Moore is a resident of Rowan County, Kentucky.
5. The Defendant, Kim Davis, is, and at all times relevant was, the duly elected Rowan County Clerk and a resident of Rowan County, Kentucky. Defendant Davis in her

official capacity is responsible for issuing marriage licenses and recording all marriages certificates.

**FACTS COMMON TO ALL COUNTS**

6. Plaintiffs have been in a committed romantic relationship for 17 years.
7. The Plaintiffs have resided in Rowan County, Kentucky for the past 10 years.
8. The Plaintiffs jointly own property, vote, and pay taxes in Rowan County.
9. The Plaintiffs are over the age of eighteen, unrelated by blood, not married to another person, and not otherwise disqualified from marrying one another under the law.
10. KRS 402.080 requires marriage licenses to be issues prior to marriages.
11. Kentucky Governor Steve Beshear directed all County Clerks to recognize same sex marriages effective June 26, 2015, following the United States Supreme Court decision in *Obergefell, et al. v. Hodges, et al.*, 576 U.S. \_\_ (2015). See Exhibit A.
12. Defendants publicly announced a policy to deny same sex marriage licenses following the Governor Beshear's directives and the decision of the United States Supreme Court.
13. On July 6, 2015, Plaintiffs entered into the Rowan County Clerk's office to apply for a marriage license from the Rowan County Clerk.
14. As a same sex couple, Plaintiffs were only recently afforded this legal status despite their 17 year relationship.
15. While waiting in line, the Plaintiffs were humiliated and called "the face of ignorance" by local supporters of Defendants' lawlessness.
16. Defendants' deputy clerks advised Plaintiffs of the Defendants' policy to deny their application for a marriage license because of Defendants' "Christian right" not to issue a marriage license and her deeply held Christian beliefs.

17. Defendants denied their application for a marriage license.
18. Defendant Davis explained that the denial of the marriage license was based upon her understanding of Adam, Eve, and the origins of man as set forth in the Old Testament.
19. As a result of Defendant Davis's actions, Plaintiffs significant damages, including emotional damage, humiliation, economic damages, and other compensatory damages.

**CLAIM FOR RELIEF**

**Deprivation of Plaintiffs' Fundamental Right to Marry - 42 U.S.C. § 1983**

20. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.
21. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress  
...

22. Plaintiffs in this action are citizens of the United States and the Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.
23. The individual Defendant to this claim, at all times relevant hereto, was acting under the color of state law and her acts or omissions were conducted within the scope of her official duties or employment.
24. "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

25. “It is well established that the right to marry is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment.” *Wright v. MetroHealth Medical Center*, 58 F.3d 1130, 1134 (6th Cir. 1995).
26. Plaintiffs have an established constitutional right to marry each other as a same sex couple. *See Obergefell, et al. v. Hodges, et al.*, 576 U.S. \_\_\_ (2015).
27. “The freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power. Thus, when the rights of persons are violated, the Constitution requires redress by the courts, notwithstanding the more general value of democratic decisionmaking.” *Obergefell* at \*20 (internal citations omitted).
28. “The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act.” *Id.*
29. Defendants’ actions, while acting under color of state law, were in direct violation of the law by refusing to issue marriage licenses to individuals who are otherwise qualified to marry.
30. 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.

31. Defendants acted intentionally, willfully and in disregard of the clearly established rights of the Plaintiffs, and with deliberate indifference to the clearly establish rights of the Plaintiffs.
32. Defendants acted maliciously, with callous disregard for, or with reckless indifference to the clearly established rights of the Plaintiffs.
33. 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 constellation of benefits conferred by the state upon others.
34. Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Plaintiffs' federally protected constitutional rights.
35. Defendants did so with shocking and willful indifference to Plaintiffs' rights and their conscious awareness that they would cause Plaintiffs severe damage.
36. The acts or omissions of Defendants were moving forces behind Plaintiffs' damages.
37. The acts or omissions of Defendants as described herein intentionally deprived Plaintiffs of their constitutional rights and caused them other damages.
38. As a further result of the Defendants' unlawful conduct, Plaintiffs incurred and continue to incur special damages in amounts to be established at trial.
39. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.
40. In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these Defendants have been taken

maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of the Plaintiffs.

WHEREFORE, Plaintiffs request a trial by jury, and further request that they be awarded actual and punitive damages, pre and post judgment interest, costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and all other relief to which they are entitled under law or in equity.

Respectfully Submitted,

/s/ Joseph D. Buckles  
ATTORNEY FOR PLAINTIFFS

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COMMONWEALTH OF KENTUCKY  
OFFICE OF THE GOVERNOR

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(502) 564-2611  
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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

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

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

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

DEFENDANTS

County of Residence of First Listed Defendant (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, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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, 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): Brief description of cause:

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 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.



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)* \_\_\_\_\_  
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)*: \_\_\_\_\_.

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

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:

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## U.S. District Court Eastern District of Kentucky

# *Civil* **Case Assignment**

Case number **0:15-CV-46**

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

Assigned on 07/10/2015

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