UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
ASHLAND DIVISION

APRIL MILLER, ET AL.,	:	**CIVIL ACTION**
	:	
Plaintiffs,	:	**0:15-CV-00044-DLB**
	:	
v.	:	**DISTRICT JUDGE**
	:	**DAVID L. BUNNING**
KIM DAVIS, ET AL.,	:	
	:	
Defendants.	:	

MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12 and Local Rule 7.1, Defendant Kim Davis ("Davis"), by and through her undersigned counsel, hereby moves for this Court to enter an order dismissing Plaintiffs' Complaint filed in the above-referenced action.

As more fully described in Davis' supporting memorandum of law, which is incorporated by reference here, Plaintiffs' Complaint against Davis should be dismissed for multiple reasons. First, Plaintiffs' claims against Davis in her official capacity are duplicative of their claims against Rowan County, also named as a defendant in this lawsuit, and must therefore be dismissed under well-established Supreme Court and Sixth Circuit precedent. Second, despite citing multiple provisions of the United States Constitution, Plaintiffs nonetheless fail to state any viable federal constitutional claims against Davis in her individual or official capacity. Third, to the extent Plaintiffs allege claims against Davis in her individual capacity, such claims are barred on grounds of qualified immunity because Plaintiffs have not alleged the violation of any clearly established constitutional right. Fourth, Plaintiffs' Complaint also fails to join required parties to this litigation—specifically, the Kentucky Governor and the Commissioner of the Kentucky

Department for Libraries and Archives, and without them, this Court cannot afford complete relief among the existing parties and Davis may be subject to potentially inconsistent obligations.

WHEREFORE, Defendant Kim Davis respectfully requests that this Court enter an order granting her Motion to Dismiss Plaintiffs' Complaint, dismiss Plaintiffs' Complaint with prejudice, and enter judgment in favor of Defendant Kim Davis.

DATED: August 4, 2015

Respectfully submitted:

/s/ Jonathan D. Christman

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed via the Court's ECF filing system and therefore service will be effectuated by the Court's electronic notification system upon all counsel or parties of record:

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DEFENDANT KIM DAVIS' MEMORANDUM OF LAW IN SUPPORT OF HER MOTION TO DISMISS PLAINTIFFS' COMPLAINT

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Defendant Kim Davis ("Davis"), by and through her undersigned counsel, respectfully submits this Memorandum of Law in Support of her Motion to Dismiss Plaintiffs' Complaint.

I. INTRODUCTION

In a targeted rush to have this Court enjoin Davis to commit an act that violates her deeply held religious convictions and conscience, Plaintiffs have failed to allege any claims against Davis sufficient to survive this motion to dismiss, for multiple reasons:

First, Plaintiffs have alleged purported First Amendment and Fourteenth Amendment claims against Davis in her official capacity as Rowan County Clerk, while also naming Rowan County as a defendant in this lawsuit. As a result, Plaintiffs' official-capacity claims against Davis are duplicative and should be dismissed against Davis under well-established Supreme Court and Sixth Circuit precedent.

Second, despite citing multiple provisions of the United States Constitution, Plaintiffs nonetheless fail to state any viable federal constitutional claims against Davis in her individual or official capacity. Plaintiffs do not plead a viable claim relating to a fundamental right to marry because they do not allege that the Commonwealth of Kentucky is preventing them from marrying whom they want to marry. In fact, Plaintiffs plead just the opposite. Moreover, Plaintiffs do not allege that Kentucky is absolutely barring them from obtaining Kentucky marriage licenses. Instead, Plaintiffs admit they can obtain Kentucky marriage licenses elsewhere. Because Plaintiffs fail to plead a viable claim under the Fourteenth Amendment, their purported claims arising thereunder must be dismissed.

Plaintiffs also fail to plead a viable claim under the Establishment Clause of the First Amendment because providing accommodation for conscience-based religious objection does not itself violate the Establishment Clause. The history of the United States is replete with examples

of religious accommodation. That history is also replete with a singular understanding, until recently, of the definition of marriage as the union of one man and one woman. This case does not present any state-wide mandate but rather consideration of a single individual's accommodation and exemption based upon her religiously-informed conscience. Certainly, the mere act of requesting a religious accommodation—apart from even receiving one—does not state an Establishment Clause violation.

Third, to the extent Plaintiffs allege claims against Davis in her individual capacity, such claims are barred on grounds of qualified immunity. As noted above, Plaintiffs have failed to plead a constitutionally-valid claim. This further demonstrates the fatal flaws to Plaintiffs' claims against Davis in her individual capacity because Plaintiffs have not alleged the violation of any federal constitutional right, let alone one that is "clearly established." Accordingly, the individual capacity claims against Davis should be dismissed.

Fourth, Plaintiffs' Complaint also fails to join required parties to this litigation—specifically, the Kentucky Governor and the Commissioner of the Kentucky Department for Libraries and Archives ("KDLA"). This Court cannot afford complete relief among the existing parties without such persons joined to this action. Both the Kentucky Governor and KDLA Commissioner have an interest in this litigation that will be impaired without their involvement in this litigation and, without them, Davis is subject to inconsistent obligations. In fact, the indispensable need for their presence in this litigation is only further demonstrated by Defendant Rowan County's recent assertions that Davis is a state official, rather than a municipal official, for purposes of this lawsuit.

For all the foregoing reasons, Plaintiffs' Complaint should be dismissed.

II. RELEVANT BACKGROUND

A. Kentucky Marriage Law.

The Commonwealth of Kentucky has a body of democratically-approved law regarding the definition of marriage. Among other things, in 2004, the Kentucky legislature proposed a constitutional amendment on marriage that was approved by seventy-four (74%) of the voters, and enacted in the Commonwealth's basic charter affirming that "[o]nly a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky." *See* KY. CONST. § 233A; *see also* KY. REV. STAT. § 402.005 ("'[M]arriage refers only to the civil status, condition, or relation of one (1) man and one (1) woman united in law for life, for the discharge to each other and the community of the duties legally incumbent upon those whose association is founded on the distinction of sex."); *Jones v. Hallahan*, 501 S.W.2d 588, 589 (Ky. App. 1973) (holding that two Kentucky women who had applied for a marriage license in Kentucky were not entitled to one because marriage was "the union of a man and a woman").

But on June 26, 2015, a majority of the United States Supreme Court held that democratically-approved laws from four states, including Kentucky, defining marriage as the union of a man and a woman were "invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples." *Obergefell v. Hodges*, 135 S.Ct. 2584, 2605 (2015). According to the "five lawyer" majority, *id.* at 2612, 2624 (Roberts, C.J., dissenting), the United States Constitution "does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex," *id.* at 2607 (Kennedy, J., majority).

Before the ink was even dry from this opinion, Kentucky Governor Steven L. Beshear ("Governor Beshear"), the "state official[] responsible for enforcing" the Kentucky marriage law

in question in *Obergefell*, 135 S.Ct. at 2593, sent a letter on the same day to all "Kentucky County Clerks" informing them that "[e]ffective today, Kentucky will recognize as valid all same sex marriages performed in other states and in Kentucky." *See* D.E. 1-3, Ex. 3 to Plaintiffs' Complaint, Ltr. from Gov. Steven L. Beshear to Kentucky County Clerks, dated June 26, 2015 ("Beshear Letter"). Governor Beshear stated that "Kentucky . . . must license and recognize the marriages of same-sex couples," and further instructed that "[n]ow 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." *Id.* Also, according to Governor Beshear, he expects county clerks "to issue marriage licenses to all Kentuckians." *See* D.E. 1-1, Ex. 1 to Plaintiffs' Complaint, at 2 (quoting Governor Beshear). Following Governor Beshear's decree, county clerks across the Commonwealth of Kentucky began issuing same-sex marriage licenses. *See* D.E. 1-1 and 1-2, Exs. 1 and 2 to Plaintiffs' Complaint.

B. Plaintiffs' Allegations.

Plaintiffs allege that they are Kentucky residents who desire a Kentucky marriage license. *See* D.E. 1, Compl., at ¶¶ 1, 4-11. Some individuals desire to marry a person of the opposite sex, *id.* at ¶¶ 17, 27; others desire to marry a person of the same-sex, *id.* at ¶¶ 21, 24. Plaintiffs allege that Kentucky is recognizing their proposed union, including same-sex "marriage" ("SSM") as "marriage," and marriage licenses are being issued throughout Kentucky. *Id.* at ¶ 32. Plaintiffs allege that each couple meets all of the necessary qualifications for obtaining a Kentucky marriage license. *Id.* at ¶¶ 20, 23, 26, 30.

Some Plaintiffs allege that they were unable to obtain a Kentucky marriage license at the Rowan County clerk's office when they physically went to that office to obtain such a license. *Id.* at ¶¶ 18, 22, 25. Others allege that they did not physically go to the Rowan County clerk's office

and instead merely telephoned the county clerk's office to inquire about Kentucky marriage licenses. *Id*. at ¶ 29. In any event, all Plaintiffs allege that they either physically went to the county clerk's office or telephoned the office about Kentucky marriage licenses following the Supreme Court's decision in *Obergefell*. *Id.* at ¶ 18 (June 30, 2015), ¶ 22 (June 30, 2015), ¶ 25 (July 1, 2015), ¶ 29 (June 30, 2015). Plaintiffs allege that the Kentucky Governor sent a letter to all Kentucky County Clerks after the *Obergefell* decision directing them to issue marriage licenses, including SSM licenses. *Id.* at ¶ 32; *see also* D.E. 1-3, Beshear Letter. According to Beshear in a statement recorded in an exhibit to Plaintiffs' Complaint, he ordered clerks "to execute the duties of their offices as prescribed by law and to issue marriage licenses to all Kentuckians." *See* D.E. 1-1, Ex. 1 to Plaintiffs' Complaint, at 2 (quoting Governor Beshear).

Plaintiffs claim that Davis, the duly-elected Rowan County Clerk, and Rowan County are preventing them from obtaining Kentucky marriage licenses. *See* D.E. 1, Compl., at ¶¶ 1, 33. Plaintiffs allege that Davis was unable to issue SSM licenses because her "'deep religious convictions' . . . would not 'allow' her to issue [SSM] licenses." *Id.* at ¶ 16. According to Davis in a statement recorded in an exhibit to Plaintiffs' Complaint, "[m]arriage is ordained by God" to be a union between "a man and a woman." *See* D.E. 1-2, Ex. 2 to Plaintiffs' Complaint, at 2 (quoting Davis). Also, Davis allegedly ceased issuing traditional marriage licenses to prevent any "claims of discrimination." *See* D.E. 1-1, Ex. 1 to Plaintiffs' Complaint, at 2.

Plaintiffs purport to allege claims under the Fourteenth Amendment against Defendant Rowan County and Defendant Davis in her individual and official capacities (Count I). *See* D.E. 1, Compl., at ¶¶ 46-54. Plaintiffs also purport to allege class claims under the Fourteenth and First Amendments against Davis in her official capacity (Counts II, III). *See id.* at ¶¶ 55-65.[1] Plaintiffs

[1] On August 2, 2015, Plaintiffs filed a Motion for Class Certification. *See* D.E. 31. As such, the lack of any further specific discussion on Plaintiffs' class claims herein does not constitute a waiver of any defenses or objections

are seeking declaratory and injunctive relief, as well as damages, including punitive damages, attorneys' fees, and costs against Davis. *See id.* at p. 14, Request for Relief.

C. Post-Complaint Admissions.

Since filing their Complaint, Plaintiffs have also made the following admissions in this open Court, which are relevant to this Court's consideration of the instant motion to dismiss[2]:

- Plaintiffs admitted that they have not even attempted to obtain a license in any county other than Rowan County. *See* D.E. 21, Hr'g Tr. (7/13/15), Miller Direct, at 24:19-20, 28:23-25, and Miller Cross, at 31:2-4; *id.*, Fernandez Direct, at 34:7-10, 37:16-18; *id.*, Spartman Direct, at 41:17-18, 47:1-2, and Spartman Cross, at 48:1-6.
- Plaintiffs admitted (by their actions) that they are willing and able to drive approximately 60 miles. *See generally* D.E. 21. (This is the distance from the Rowan County clerk's office to the Ashland federal courthouse, which was the site for the July 13, 2015 Court hearing in this matter, which Plaintiffs Miller, Fernandez, and Spartman (at least) attended. Notably, more than fifteen (15)

to such claims. Instead, Davis will address the deficiencies in Plaintiffs' class action claims in her opposition to Plaintiffs' Motion for Class Certification, to be raised in a timely manner in accordance with the Federal and Local Rules. Thus, Davis herein asserts and preserves all objections to Plaintiffs' request for class certification.

[2] In deciding a motion to dismiss, this court may consider "exhibits [attached to the complaint], public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein." *See Rondigo, LLC v. Twp. of Richmond*, 641 F.3d 673, 681 (6th Cir. 2011) (quoting *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008)). This Court may also take judicial notice of "matters of public record" without converting a Rule 12(b)(6) motion into one for summary judgment. *Eubank v. Wesseler*, No. 10-210, 2011 WL 3652558, at *4 (E.D. Ky. Aug. 19, 2011) (Bunning, J.) (citing, among others, *Wyser–Pratte Mgmt. Co., Inc., v. Telxon Corp.*, 413 F.3d 553, 560 (6th Cir. 2005)). "Facts judicially noticed from a public record must be 'capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.' *Eubank*, 2011 WL 3652558, at *4 (quoting Fed. R. Evid. 201); *see also Passa v. City of Columbus*, 123 Fed. App'x 694, 697 (6th Cir. 2005) ("[I]n order to preserve a party's right to a fair hearing, a court, on a motion to dismiss, must only take judicial notice of facts which are not subject to reasonable dispute.").

Kentucky county clerk's offices are within 60 miles of the Rowan County clerk's office.)

- Plaintiffs also admitted (again by their actions) that they are willing and able to drive approximately 100 miles. *See generally* D.E. 26. (This is the distance from the Rowan County clerk's office to the Covington federal courthouse, which was the site for the July 20, 2015 Court hearing in this matter, which the same Plaintiffs also attended. Notably, more than sixty (60) county clerk's offices are within 100 miles of the Rowan County clerk's office.)
- Plaintiffs openly conceded that they are aware that they can obtain a license in another Kentucky county, but they are intentionally choosing not to obtain a license in any other county. *See* D.E. 21, Hr'g Tr. (7/13/15), Miller Cross, at 31:10-11; *id.*, Fernandez Cross, at 38:10-17; *id.*, Spartman Direct, 46:23-25, and Spartman Cross, at 48:11-13.
- Plaintiffs admitted that they only attempted to obtain a marriage license from the Rowan County clerk's office after becoming aware of Davis' religious objections to same-sex marriage. *See* D.E. 21, Hr'g Tr. (7/13/15), Miller Direct, at 25:13-15, 26:19-27:7, 27:19-28:4, 28:23-25, and Miller Cross, at 31:2-4, 31:8-11; *id.*, Fernandez Direct, 35:23-36:5; *id.*, Spartman Direct, 43:1-3, 43:18-24, 47:1-2, and Spartman Cross, at 48:1-6.
- Plaintiffs admitted that they asked Rowan County Judge/Executive Walt Blevins to issue a Kentucky marriage license but "he was unable to give us a license because Kim Davis was available in the building," or, simply put, "[h]e could not issue a

marriage license." *See* D.E. 21, Hr'g Tr. (7/13/15), Miller Cross, at 30:2-18; *id.*, Fernandez Direct, 36:19-24; *id.*, Spartman Direct, 46:5-15.

D. Procedural Posture.

As indicated, the foregoing admissions were made at the Court hearings held on July 13, 2015 and July 20, 2015 in connection with Plaintiffs' Motion for Preliminary Injunction. Both of these hearings occurred before Davis had an opportunity to address the pleading deficiencies in Plaintiffs' Complaint. Davis was also ordered to respond to Plaintiffs' Motion for Preliminary Injunction before responding to Plaintiffs' Complaint, *see* D.E. 10, and Davis timely filed that response on July 30, 2015. *See* D.E. 29. Davis was served with Plaintiffs' Complaint on July 14, 2015. *See* D.E. 19. Davis now timely files this Motion to Dismiss.

III. STANDARD OF REVIEW

Under a Rule 12(b)(6) motion to dismiss, "the Court's job is to test the sufficiency of the complaint." *Ashland Hosp. Corp. v. Int'l Bro. of Elec. Workers Local 575*, 807 F. Supp. 2d 633, 638 (E.D. Ky. 2011) (Bunning, J.). Although a Court reviewing a Rule 12(b)(6) motion "must construe the complaint in a light most favorable to the plaintiff, and accept all of [the] factual allegations as true," *Bloch v. Ribar*, 156 F.3d 673, 677 (6th Cir. 1998) (citations omitted), this Court "is not bound to accept as true unwarranted factual inferences, or legal conclusions unsupported by well-pleaded facts." *Ashland Hosp.*, 807 F. Supp. 2d at 638 (internal citations omitted).

To survive a motion to dismiss, Plaintiffs' complaint "does not need detailed factual allegations," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), but it must present "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. Plaintiffs' complaint must therefore provide "more than labels and conclusions [or] a formulaic recitation of the elements of

a cause of action." *Id.* at 555. The "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.* This standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Eubank*, 2011 WL 3652558, at *3; *Sims v. Bracken County Sch. Dist.*, No. 10-33, 2010 WL 4103167, at *4 (E.D. Ky. Oct. 18, 2010) (Bunning, J.).

IV. ARGUMENT

A. Plaintiffs' Official Capacity Claims Against Davis Should Be Dismissed As Duplicative.

Plaintiffs assert all three counts of their Complaint against Davis in her official capacity. *See* D.E. 1, Compl., at pp. 10, 12-13. "Official-capacity suits . . . 'generally represent only another way of pleading an action against an entity of which an officer is an agent.' " *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 n. 44 (1978)). "Suing a municipal officer in his official capacity for a constitutional violation pursuant to 42 U.S.C. § 1983 is the same as suing the municipality itself . . ." *Kraemer v. Luttrell*, 189 Fed. App'x 361, 366 (6th Cir. 2006) (citing *Hafer v. Melo*, 502 U.S. 21, 25 (1991)). "Therefore, when a plaintiff brings § 1983 claims against a municipal entity ***and*** a municipal official in his official capacity, courts will dismiss the official-capacity claims as duplicative." *Horn v. City of Covington*, No. 14-73, 2015 WL 4042154, at *3 (E.D. Ky. July 1, 2015) (Bunning, J.) (emphasis added); *Thorpe ex rel. D.T. v. Breathitt County Bd. of Educ.*, 932 F. Supp. 2d 799, 802 (E.D. Ky. 2013) (Caldwell, J.); *see also Graham*, 473 U.S. at 167 n. 14 ("There is no longer a need to bring official-capacity actions against local government officials, for . . . local government units can be sued directly [under § 1983] for damages and injunctive or declaratory relief.").

In the case at bar, Plaintiffs have alleged § 1983 claims against Davis in her official capacity as Rowan County Clerk, and also the same claims against Rowan County. Because

Plaintiffs bring § 1983 claims "against [Davis] in [her] official capacity as [Rowan County Clerk] and also bring[] § 1983 claims against [Rowan County]," Plaintiffs' "official-capacity claims against [Davis]" should be dismissed. *See Horn*, 2015 WL 4042154, at *3; *see also Thorpe*, 932 F. Supp.2d at 802; *Doe v. Claiborne County, Tenn.*, 103 F.3d 495, 509 (6th Cir. 1996) (affirming dismissal of official-capacity suits); *Baar v. Jefferson County Bd. of Educ.*, 686 F. Supp. 2d 699, 704 (W.D. Ky. 2010) ("In the Eastern and Western Districts of Kentucky, however, judges have adopted the practical approach of dismissing the official capacity claims.").[3]

B. Plaintiffs Have Failed To State Viable Federal Constitutional Claims.

For Plaintiffs' § 1983 claims to succeed against Davis, they must "establish a violation of **some right guaranteed by the United States Constitution or federal statute** by one acting under the color of state law." *Brehm v. Wesseler*, No. 09-60, 2011 WL 1704347, at *4 (E.D. Ky. May 4, 2011) (Bunning, J.) (emphasis added) (citing *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 302 (6th Cir. 2005). This is because "[s]ection 1983 does not confer substantive rights but merely provides a means to vindicate rights conferred by the Constitution or laws of the United States." *Aldini v. Johnson*, 609 F.3d 858, 864 (6th Cir. 2010). Plaintiffs, however, identify no federal constitutional right that has been infringed by Davis. Although Plaintiffs reference multiple federal constitutional provisions, they fail to allege any viable federal constitutional claims in their Complaint.

1. Plaintiffs Fail To Sufficiently Allege Fourteenth Amendment Claims. (Counts I & II).

Critically, Plaintiffs do not allege that the Commonwealth of Kentucky is preventing them from marrying whom they want to marry, or barring them from obtaining Kentucky marriage

[3] Davis' in no way concedes that Plaintiffs' claims have any actual merit or validity against Defendant Rowan County.

licenses. To the contrary, Plaintiffs' Complaint actually concedes that marriage licenses are readily available throughout Kentucky, and have been for more than thirty days as of the date of this filing. *See* D.E. 1, Compl., at ¶ 32. Under Kentucky law, a marriage license "may be issued by any county clerk" so long as "the female" in the proposed union is "eighteen (18) years of age or over or a widow, and the license is issued on her application in person or by writing signed by her." KY. REV. STAT. § 402.080. Thus, under Kentucky law, **individuals who reside in one Kentucky county are not required to obtain their marriage license in that county**. In this matter, the Plaintiffs allegedly reside in Rowan County, but Kentucky law does not mandate that they must obtain a marriage license in their home county. The materials attached to Plaintiffs' own complaint demonstrate that Kentucky marriage licenses, including SSM licenses, are being issued (or will be issued) to individuals throughout Kentucky.

Thus, Plaintiffs do not allege a violation of a fundamental constitutional right to marry. Instead, Plaintiffs allege a violation of a purported federal constitutional right to receive a marriage license signed by a particular individual in a particular county. There is no such right, let alone a clearly established one. In demanding a fundamental right to have a specific individual approve of and participate in their marriage, Plaintiffs overlook clear precedent that not every act, policy, rule, or regulation "which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny." *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). Heightened scrutiny only applies to restrictions on the right to marry that are "direct and substantial." Contrary to Plaintiffs' suggestion, "[m]erely placing a non-oppressive burden on the decision to marry . . . is not sufficient to trigger heightened constitutional scrutiny." *Montgomery v. Carr*, 101 F.3d 1117, 1125 (6th Cir. 1996). Instead, a "direct and substantial" burden requires an "absolute barrier" in which individuals are "absolutely or largely prevented from marrying" who they want to marry or

"absolutely or largely prevented from marrying a large portion of the otherwise eligible population of spouses." *Vaughn v. Lawrenceburg Power Sys.*, 269 F.3d 703, 710 (6th Cir. 2001). The lack of a marriage license from the Rowan County clerk's office "does not change the essential fact" that Plaintiffs are not barred "from getting married, nor did it prevent them from marrying a large portion of population even in [Rowan] County." *Vaughn*, 269 F.3d at 712. No allegation has been made in this case that any absolute barrier exists preventing any Plaintiff from marrying whom they want to marry in Kentucky, and from having that marriage recognized by the Commonwealth of Kentucky.

The right to marry cases relied upon by Plaintiffs (in their brief filed in connection with their Motion for Preliminary Injunction) also do not compel a different conclusion. Critically, the cases of *Loving v. Virginia*, 388 U.S. 1 (1968), *Zablocki*, 434 U.S. 374, *Turner v. Safley*, 482 U.S. 78 (1987), and *Obergefell*, 135 S.Ct. 2584, all involve state-wide bans affecting marriage. *See, e.g.*, *Loving*, 388 U.S. at 11-12 (striking down Virginia ban on inter-racial marriages); *Zablocki*, 434 U.S. at 379, 390-91 (striking down Wisconsin law that required any resident with child support obligations to satisfy such obligations before marrying and to obtain a court order permitting the marriage); *Turner*, 482 U.S. at 81-82, 99 (striking down Missouri prison regulation that represented a near "almost complete ban" on inmate marriage); *Obergefell*, 135 S.Ct. at 2593, 2599-2605 (redefining marriage to include same-sex couples, and striking down Kentucky, Tennessee, Michigan and Ohio marriage laws to the contrary).

Moreover, despite Plaintiffs' constant refrain, this case is neither the same case as *Obergefell* nor controlled by it. Before *Obergefell*, Plaintiffs were "absolutely prevented" from obtaining a Kentucky marriage license if they wanted to marry a person of the same sex. No same-sex couple was able to obtain a Kentucky marriage license in any one of Kentucky's 120 counties.

And even if Plaintiffs had gotten "married" in a different state, their "marriages" would not have been recognized in Kentucky. But now individuals desiring SSM licenses can obtain them because Kentucky is recognizing same-sex "marriage" and nearly all county clerks are issuing SSM licenses. *See* D.E. 1-1 and 1-2, Exs. 1 and 2 to Plaintiffs' Complaint. Nevertheless, Plaintiffs are claiming a violation of the fundamental right to marry unless they (i) obtain a marriage license in their home county and (ii) it is approved by a particular individual. Neither is a right mandated by *Obergefell*, and neither implicates a direct and substantial burden on a fundamental right to marry.

Furthermore, state marriage laws differ across the country, and Kentucky marriage law is far less restrictive than other states, even if Davis is exempted from administering it on the basis of her sincerely held religious beliefs. For instance, some states require prospective couples to obtain a license in the county where the ceremony will occur, *see, e.g.*, MD. CODE ANN., FAM. LAW § 2-401(a), whereas others permit residents to obtain their license in one county and hold their ceremony in another county, *see, e.g.*, KY. REV. STAT. §§ 402.050, 402.080, 402.100; MINN. STAT. § 517.07. Some states require a prospective couple to obtain their license in their home county, *see, e.g.*, MICH. COMP. LAWS § 551.101; OHIO REV. CODE ANN. § 3101.05(a), whereas others allow residents to obtain a license in any county, *see* KY. REV. STAT. § 402.080; TENN. CODE ANN. § 36-3-103. Some states require a prospective couple to wait to receive their license upon application, *see, e.g.*, MICH. COMP. LAWS § 551.103a (3 days); MINN. STAT. § 517.08(a) (5 days), whereas others (*e.g.*, Kentucky, Ohio, Tennessee) have no waiting period. To find that Plaintiffs state a viable federal constitutional claim here—when they can marry whom they want, obtain marriage licenses throughout Kentucky, and have their marriages recognized by the Commonwealth of Kentucky—would turn every commonplace marriage-related law in all fifty states into a possible federal constitutional claim. However, laws regarding "the definition and regulation of marriage"

have "long been regarded as a virtually exclusive province of the States." *United States v. Windsor*, 133 S.Ct. 2675, 2689-91 (2013). Moreover, a mere inconvenience at a governmental office does not constitute an irreparable harm. Otherwise, everyone who has ever visited the local DMV has suffered a potential federal constitutional injury to be litigated in the federal courts pursuant to § 1983. In the case at bar, Plaintiffs are neither absolutely nor largely prevented from marrying whom they want under Kentucky law. Therefore, no viable federal constitutional right under the Fourteenth Amendment has been alleged in their Complaint.

2. Plaintiffs Fail To Sufficiently Allege First Amendment Claims. (Count III)

Plaintiffs also fail to state viable claims under the Establishment Clause of the First Amendment of the United States Constitution. The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const., amend. I. Commonly treated separately in jurisprudence, "[t]he two Religion Clauses 'often exert conflicting pressures,' such that there can often be 'internal tension . . . between the Establishment Clause and the Free Exercise Clause.'" *Conlon v. InterVarsity Christian Fellowship/USA*, 777 F.3d 829, 833 (6th Cir. 2015) (internal citations omitted) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005), and, *Tilton v. Richardson*, 403 U.S. 672, 677 (1971) (plurality)). But the Supreme Court has consistently reaffirmed "that 'there is room for play in the joints between' the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the Establishment Clause." *Cutter*, 544 U.S. at 713 (citing *Locke v. Davey*, 540 U.S. 712, 718 (2004)).

Accordingly, providing accommodations for conscience-based religious objections does not violate the Establishment Clause. *See Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144-45 (1987) ("[G]overnment may (and sometimes must) accommodate religious

practices and . . . it may do so without violating the Establishment Clause."); *see also Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 338 (1987) (there is "ample room for accommodation of religion under the Establishment Clause"). Moreover, "[r]eligious accommodations…need not 'come packaged with benefits to secular entities,'" to survive the Establishment Clause. *Cutter*, 544 U.S. at 718 (citation omitted). After all, "[w]e are a religious people whose institutions presuppose a Supreme Being," *Zorach v. Clauson*, 343 U.S. 306, 313 (1952), and "[t]here is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789." *Lynch v. Donnelly*, 465 U.S. 668, 674 (1984). As the Sixth Circuit has recognized, "[o]ur Nation's history is replete with . . . accommodation of religion." *ACLU v. Mercer County, Ky.*, 432 F.3d 624, 639 (6th Cir. 2005).

As is clear from Plaintiffs' own allegations, the case at bar involves permissible accommodation of religion, not unconstitutional establishment of it. As such, the Establishment Clause claims in this matter need not even be resolved under the much-maligned "*Lemon* test."[4] *See, e.g., Cutter*, 544 U.S. at 718, n. 6 ("*Lemon* stated a three-part test. . . We resolve this case on other grounds."). Indeed, "[w]hat makes accommodation permissible, even praiseworthy, is not that the government is making life easier" for a religious person but rather "it is that the government is accommodating a deeply held belief." *See Bd. of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 715 (1994) (O'Connor, concurring).

[4] In many cases, Establishment Clause claims are evaluated under the three-prong "*Lemon* test" named after the Supreme Court's decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under this test, a challenged activity survives the Establishment Clause if (1) the activity has "a secular legislative purpose," (2) "its principal or primary effect must be one that neither advances nor inhibits religion," and (3) it "must not foster 'an excessive government entanglement with religion.'" *Lemon*, 403 U.S. at 612-13 (citation omitted). The first two prongs of the *Lemon* test have been refined and clarified by the "endorsement test" which considers whether the act has a predominant secular purpose and whether the act has the purpose or effect of endorsing, promoting or disapproving religion. *See Smith v. Jefferson County Bd. of School Comm'rs*, 788 F.3d 580, 587 (6th Cir. 2015) (citations omitted).

Plaintiffs concede in their Complaint that the basis for Davis' inability to issue SSM licenses is her "deep religious convictions." *See* D.E. 1, Compl., at ¶ 16. If Plaintiffs were able to demonstrate an Establishment Clause violation here, "all manner of religious accommodations would fall." *Cutter*, 544 U.S. at 725. Moreover, this Court has already acknowledged that First Amendment religious rights ***of Davis*** are implicated in this case. *See*, *e.g.*, D.E. 21, Hr'g Tr. (7/13/15), at 84:3-4, 85:20-22, 98:19-22, 99:19-21, 103:15-18, 104:8-9.[5] Because this case involves the mere accommodation of Davis' individual religious rights, Plaintiffs fail to plead viable Establishment Clause violations.

C. Plaintiffs' Individual Capacity Claims Against Davis Should Be Dismissed On Qualified Immunity Grounds.

Qualified immunity generally "shields government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Estate of Carter v. Detroit*, 408 F.3d 305, 310–11 (6th Cir. 2005) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). This immunity is granted broadly and "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). "Qualified immunity is 'an immunity from suit rather than a mere defense to liability.'" *Pearson v. Callahan*, 555 U.S. 223, 237 (2009) (citation omitted). "The purpose of the doctrine is to ensure that insubstantial claims against government officials are resolved at the earliest possible stage in litigation." *Rondigo*, 641 F.3d at 681 (citing *Pearson*, 555 U.S. at 231), thereby saving the official from the burdens of discovery and the costs of trial, *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *see also Sims*, 2010 WL 4103167, at *4. Qualified immunity is also intended to serve the public

[5] These rights and protections are further detailed in Davis' opposition to Plaintiffs' Motion for Preliminary Injunction. *See generally* D.E. 29.

interest "by permitting officials to take action with independence and without fear of consequences." *Crocket v. Cumberland Coll.*, 316 F.3d 571, 579 (6th Cir. 2003) (internal quotations omitted).

In reviewing qualified immunity at this stage, this Court determines whether an official is entitled to qualified immunity under a two-step inquiry: (1) whether a constitutional right has been violated and (2) if so, whether the right was clearly established and one that a reasonable official should have known. *See Campbell v. City of Springboro, Ohio*, 700 F.3d 779, 786 (6th Cir. 2012); *Horn*, 2015 WL 4042154, at *5; *see also Saucier v. Katz*, 533 U.S. 194, 201 (2001). In connection with this second inquiry, Sixth Circuit Courts consider whether what the official allegedly did was objectively unreasonable in light of the clearly established constitutional right. *See, e.g., Holzemer v. City of Memphis*, 621 F.3d 512, 519 (6th Cir. 2010); *see also Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "Unless the plaintiff's allegations state a claim of violation of **clearly established law**, a defendant pleading qualified immunity is entitled to dismissal before commencement of discovery." *Mitchell*, 472 U.S. at 526 (emphasis added).

In the case at bar, Plaintiffs have failed to allege facts sufficient to overcome the application of the doctrine of qualified immunity. As discussed above in Section IV.B, *supra*, and incorporated by reference here, Plaintiffs have failed to state a viable federal constitutional claim. In that same vein, they have failed to sufficiently allege the violation of a federal constitutional right, a prerequisite for overcoming a qualified immunity defense. Indeed, there is no constitutional right to have a particular person authorize a SSM license and affix their imprimatur to that permanent public record, especially if that person holds deep religious convictions prohibiting her from participating in and approving of SSM.

But even if Plaintiffs had sufficiently alleged the violation of a federal constitutional right, they have not demonstrated a "clearly established" constitutional right. This "right 'must have been clearly established **in a . . . particularized . . . sense**: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" *Kennedy v. City of Villa Hills, Ky.*, 635 F.3d 210, 214 (6th Cir. 2011) (emphasis added) (quoting *Anderson*, 483 U.S. at 640) (internal quotations omitted); *see also Eubank*, 2011 WL 3652558, at *10. The official's "unlawfulness" must be "apparent" in "the light of pre-existing law." *Anderson*, 483 U.S. at 640.

In deciding whether a constitutional right is clearly established, the Sixth Circuit "'look[s] first to decisions of the Supreme Court, then to decisions of this court and other courts within our circuit, and finally to decisions of other circuits.'" *Walton v. City of Southfield*, 995 F.2d 1331, 1336 (6th Cir. 1993) (quoting *Daugherty v. Campbell*, 935 F.2d 780, 784 (6th Cir. 1991); *see also O'Malley v. City of Flint*, 652 F.3d 662, 667-68 (6th Cir. 2011). "This standard requires the courts to examine the asserted right **at a relatively high level of specificity**[,]" and "on a fact-specific, case-by-case basis[.]" *Cope v. Heltsley*, 128 F.3d 452, 458–59 (6th Cir. 1997) (emphasis added) (citations and internal quotation marks omitted). Where a case arises in an area "in which the result depends very much on the facts of each case," and no case "squarely governs the case here," no clearly established right is demonstrated. *See Brosseau v. Haugen*, 543 U.S. 194, 201 (2004) (per curiam).

The relevant constitutional law in this matter is not whether the Commonwealth of Kentucky is required to issue and recognize SSM as a matter of clearly established law. The Kentucky Governor has already publicly declared that Kentucky will issue SSM licenses and recognize SSM licenses issued by other states. *See* D.E. 1, Compl., at ¶ 32; *see also* D.E. 1-3,

Beshear Letter. Instead, the particular inquiry governing this specific matter is whether each and every county clerk must authorize and approve SSM without any accommodation for their sincerely-held religious beliefs. This issue has not been specifically litigated in Kentucky, let alone decided by the Sixth Circuit or the Supreme Court (whether in its recent *Obergefell* decision or some other case), and therefore the law cannot be "clearly established." Indeed, this Court, citing to the dissenting opinion of Justice Thomas in *Obergefell*, has recognized that the case at bar is "just the first" of "many situations" where "there may be a conflict going forward" between the First and Fourteenth Amendments. *See* D.E. 21, Hr'g Tr. (7/13/15), at 85:20-22. Certainly then, this case is not "squarely governed" by any single (or set) of cases.

Moreover, in this matter, to the extent Plaintiffs point to any "pre-existing law" that was clearly established, *Anderson*, 483 U.S. at 640, to overcome Davis' qualified immunity, they will be limited exclusively to the sudden redefinition of marriage on June 26, 2015 in the *Obergefell* decision. But **in *Obergefell*, the Court unanimously agreed that First Amendment protections remain despite same-sex "marriage."** Specifically, dissenting justices in *Obergefell* recognized that "[m]any good and decent people oppose same-sex marriage as a tenet of faith, and their freedom to exercise religion" is specifically "spelled out" in the First Amendment of the Constitution. *Obergefell*, 135 S.Ct. at 2625 (Roberts, C.J., dissenting). Continuing, these Justices noted that "[r]espect for sincere religious conviction has led voters and legislators in every State that has adopted same-sex marriage democratically to include accommodations for religious practice." *Id.*; *see also id.* at 2638 (explaining the historical significance of "religious liberty") (Thomas, J., dissenting). **The majority opinion also recognized that religious freedoms continue unabated even as they redefined marriage**:

> Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere

> conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and **persons** are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.

Obergefell, 135 S.Ct. at 2607 (Kennedy, J., majority) (emphasis added).

Not only that, the nature of the religious objection in the context of marriage is even more firmly established in history because the "meaning of marriage" as a union between one man and one woman "has persisted in every culture," "has formed the basis of human society for millennia," and has singularly "prevailed in the United States throughout our history." *Obergefell*, 135 S. Ct. at 2612-13 (Roberts, C.J., dissenting); *see also id.* at 2641 ("For millennia, marriage was inextricably linked to the one thing that only an opposite-sex couple can do: procreate.") (Alito, J., dissenting). In fact, the majority in *Obergefell* conceded that the institution of marriage as exclusively a union between a man and a woman "has existed for millennia and across civilizations" and this view "long has been held—**and continues to be held—in good faith by reasonable and sincere people here and throughout the world**." *Obergefell*, 135 S. Ct. at 2594 (Kennedy, J., majority) (emphasis added). Thus, although the traditional view of marriage was discarded in *Obergefell*, that long-held view of marriage provides the historical underpinnings for a religious exemption and accommodation from the redefinition of marriage. In light of the foregoing, Plaintiffs have offered no evidence or factual allegations that Davis acted objectively unreasonable.

Furthermore, similar to any other case involving religious conscience claims and religious accommodation concerns, the facts of each case are critical, and no less here. In this matter, Plaintiffs are not required by state law to obtain marriage licenses in their home county. *See* KY. REV. STAT. § 402.080, and Plaintiffs have intentionally bypassed numerous other counties where

they could have obtained marriage licenses. *See* Section II.C, *supra*. Also, Davis is one of only two or three (out of 120 County Clerks across the Commonwealth of Kentucky) who has expressly raised and consistently maintained a conscience objection to issuing SSM licenses following *Obergefell*. *See* D.E. 1-1 and 1-2, Exs. 1 and 2 to Plaintiffs' Complaint. Finally, Plaintiffs openly concede that Davis holds a "deep religious conviction" against SSM, *see* D.E. 1, Compl., at ¶ 16, and yet, rather than obtaining a license elsewhere, they insist on having Davis approve, endorse, and authorize their proposed union with her name and imprimatur.

In sum, in light of the sudden wake and changing legal landscape engendered by the Supreme Court's ruling in *Obergefell*, the enumerated United States and Kentucky Constitutional protections for conscience, religious freedom, and speech, the long-standing historical definition of marriage in Kentucky that comports with Davis' sincerely-held religious beliefs, the undisputed conviction with which Davis holds her religious beliefs, and the obvious constitutional conflict presented by the case at bar, the doctrine of qualified immunity protects Davis from any civil damages in her individual capacity. Therefore, any such claims against Davis must be dismissed.

D. Plaintiffs Have Failed To Join Required Parties To This Litigation.

Federal Rule of Civil Procedure 12(b)(7) permits dismissal of an action based upon a failure to join a party under Rule 19. *See* Fed. R. Civ. P. 12(b)(7). "If a person has not been joined as required, the court must order that the person be made a party." Fed. R. Civ. P. 19(a)(2). This case cannot proceed without the Kentucky Governor (Steve Beshear) and KDLA Commissioner (Wayne Onkst), and therefore must be dismissed unless these persons are joined in their official capacities to this litigation. Rule 19 "establishes a three-step analysis for determining whether a case should proceed in the absence of a particular party." *PaineWebber, Inc. v. Cohen*, 276 F.3d 197, 200 (6th Cir. 2001); *see also Glancy v. Taubman Ctrs. Inc.*, 373 F.3d 656, 666 (6th Cir. 2004); *Hall v. Allen*, No. 14-116, 2014 WL 6882264, at *3 (E.D. Ky. Dec. 4, 2014) (Thapar, J.).

First, the Court must determine whether party is necessary to the litigation under Rule 19(a). *PaineWebber*, 276 F.3d at 200; *Glancy*, 373 F.3d at 666. A party's presence in an action is necessary or "required" under Rule 19 if "in that person's absence, the court cannot accord complete relief among existing parties" or "that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 19(a)(1); *Glancy*, 373 F.3d at 666.

Second, this Court considers whether joinder of that person will deprive this Court of jurisdiction. *PaineWebber*, 276 F.3d at 200; *Glancy*, 373 F.3d at 666. Third, if joinder is not feasible because it will eliminate the Court's jurisdiction, this Court must consider Rule 19(b) factors to "determine whether the court should "in equity and good conscience" dismiss the case because the absentee is indispensable." *Glancy*, 373 F.3d at 666 (citing Fed. R. Civ. P. 19(b)). In this action, because joinder of the Kentucky Governor and KDLA Commissioner will not deprive this Court of its "ability to hear the case," *Glancy*, 373 F.3d at 666, the second (jurisdiction) and third (indispensability) factors need not be considered. *See Keweenaw Bay Indian Community v. State of Michigan*, 11 F.3d 1341, 1345 (6th Cir. 1993). Accordingly, the only remaining analysis necessary at this junction is whether the Kentucky Governor and KDLA Commissioner are "required" parties within one of the provisions of Rule 19(a).

In the case at bar, this Court cannot accord complete relief among the existing parties without the Kentucky Governor and KDLA Commissioner joined to this action. Plaintiffs are demanding that Davis personally approve and authorize with her name and imprimatur ***Kentucky*** marriage licenses without considering all of Kentucky marriage law, including the Kentucky

Religious Freedom Restoration Act ("Kentucky RFRA"), codified at KY. REV. STAT. § 446.350, and the enumerated United States and Kentucky Constitutional protections for conscience, religious liberty, and speech. Davis has expressly requested religious accommodation from the Kentucky Governor's mandate and directive to all "Kentucky County Clerks" to issue SSM licenses. Without the Kentucky Governor and KDLA Commissioner joined to this action, this Court cannot accord complete relief among the existing parties.

Additionally, the Kentucky Governor and KDLA Commissioner have an interest in the subject matter of this action and disposing of this action in their absence will impair or impede their ability to protect their interest. First, the Kentucky Governor and KDLA Commissioner (who oversees the department responsible for designing the prescribed marriage license form in Kentucky, *see* KY. REV. STAT. §§ 402.100, 402.110) have a clear and unmistakable interest in Kentucky marriage law. Second, the Kentucky Governor has an obligation to ensure that Kentuckians' consciences and religious liberties are protected, including those of Davis, as set forth in the United States and Kentucky Constitutions, the Kentucky RFRA, and other civil rights legislation. Third, the Kentucky Governor has an interest in protecting the Commonwealth of Kentucky from the possibility of an adverse judgment for which it may be responsible. At present, Defendant Rowan County is alleging that Davis, as Rowan County Clerk, is a state (rather than municipal) actor with respect to Kentucky marriage licenses. *See, e.g.*, D.E. 28 at 5 ("[C]ounty clerks in Kentucky act for the state with respect to the issuance of marriage licenses"); *id.* at 6 ("[C]ounty clerks' obligations with respect to marriage licenses are subject to state, and not county,

control," and "[A]ll procedures relating to marriage licenses are governed solely by the state."). This contention certainly heightens the Commonwealth's interest in participating in this litigation.[6]

Plaintiffs' failure to join the Kentucky Governor and KDLA Commissioner to this litigation also leaves Davis subject to a substantial risk of incurring inconsistent obligations. Without joining the Kentucky Governor and KDLA Commissioner, Davis may be affirmatively enjoined to issue a Kentucky marriage license in this matter while simultaneously receiving her own injunction against the Kentucky Governor and KDLA Commissioner in an entirely separate matter.[7]

[6] Notably, Defendant Rowan County also raised an affirmative defense in its Answer that "Plaintiffs have failed to join an indispensable party to this litigation in contravention of Federal Rule of Civil Procedure 19." *See* D.E. 27, Ninth Defense, at 7.

[7] For multiple reasons, including the possibility of inconsistent obligations, and their liability to Davis in connection with Plaintiffs' claims, Davis will follow this instant Motion to Dismiss with a Third-Party Complaint naming Governor Beshear and Commissioner Onskt as third-party defendants for any claims against Davis that survive the pleading stage. This act should not be construed as a waiver of any arguments, defenses, or objections raised herein, or to be raised by Davis in response to Plaintiffs' Motion for Class Certification. Instead, Davis is promptly filing the third-party complaint at this juncture to further the purpose of Federal Rule of Civil Procedure 14—avoiding "duplicative actions" and permitting "additional parties whose rights may be affected by the decision in the original action to be joined so as to expedite the final determination of the rights and liabilities of all the interested parties in one suit." *See Am. Zurich Ins. Co. v. Cooper Tire & Rubber Co.*, 512 F.3d 800, 805 (6th Cir. 2008).

V. CONCLUSION

For all the foregoing reasons, Davis' Motion to Dismiss Plaintiffs' Complaint should be granted.

DATED: August 4, 2015

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed via the Court's ECF filing system and therefore service will be effectuated by the Court's electronic notification system upon all counsel or parties of record:

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
ASHLAND DIVISION

APRIL MILLER, ET AL.,	:	**CIVIL ACTION**
	:	
Plaintiffs,	:	**0:15-CV-00044-DLB**
	:	
v.	:	**DISTRICT JUDGE**
	:	**DAVID L. BUNNING**
KIM DAVIS, ET AL.,	:	
	:	
Defendants.	:	

[PROPOSED] ORDER

Having reviewed Defendant Kim Davis' Motion to Dismiss Plaintiffs' Complaint, any response thereto, and for good cause shown, IT IS HEREBY ORDERED that Defendant Kim Davis' Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs' Complaint is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that judgment shall be entered in favor of Kim Davis on all claims asserted against her by Plaintiffs in their Complaint.

_____
HON. DAVID L. BUNNING
DISTRICT JUDGE