

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

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

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|--|---|--|
| KIM DAVIS, | : | |
| | : | |
| Third-Party Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| STEVEN L. BESHEAR, in his official capacity as Governor of Kentucky, and WAYNE ONKST, in his official capacity as State Librarian and Commissioner, Kentucky Department for Libraries and Archives, | : | |
| | : | |
| Third-Party Defendants. | : | |

**REPLY BRIEF IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE
RESPONSE TO PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

Defendant/Third-Party Plaintiff Kim Davis (“Davis”), by and through her undersigned counsel, hereby submits this reply brief in support of her motion to extend the time for filing any responses to Plaintiffs’ Motion for Class Certification:

1. On August 11, 2015, Davis electronically filed a motion for extension of time to file a response to Plaintiffs’ Motion for Class Certification. *See* D.E. 42. Defendant Rowan County agreed to the relief requested in that motion. At that time, Plaintiffs indicated opposition to the

Davis' motion for extension of time but had no objection to an extension of time for responses until September 18, 2015.

2. Under a Local Rule 7.1(b) motion for extension of time, “[a] memorandum opposing the motion *must be filed* within seven (7) days of service of the motion.” E.D. Ky. L.R. 7.1(b) (emphasis added). Accordingly, under the Local Rules of this Court and Federal Rule of Civil Procedure 6(d), any memorandum by Plaintiffs opposing Davis' request (which also had the agreement of Defendant Rowan County) must have been filed, at the latest, within ten (10) days of Davis' motion for extension of time (or Friday, August 21, 2015).

3. Despite previously indicating opposition to Davis' request, Plaintiffs have filed no timely opposition, as required if they actually opposed the motion. Plaintiffs' failure to file a timely written opposition constitutes a waiver of any opposition to Davis' motion for extension of time. Accordingly, this Court should grant Davis' unopposed motion for extension of time to file any responses to Plaintiffs' Motion for Class Certification.

4. The extension of time to respond is further warranted based upon Davis' immediate appeal of this Court's August 12, 2015 order granting Plaintiffs' Motion for Preliminary Injunction. *See* D.E. 44. This Court has temporarily stayed that order. *See* D.E. 52, 55. Davis has also filed an emergency motion for a stay of this Court's August 12, 2015 order pending her appeal to the Sixth Circuit. The Sixth Circuit has set a briefing schedule by which Davis' opening brief as appellant is currently due by October 2, 2015, with Plaintiffs' response brief as appellees due by November 4, 2015.

5. With the August 12, 2015 order temporarily stayed, Davis' appeal now pending in the Sixth Circuit, and additional motions still undecided by this Court, including, *inter alia*, Davis' Motion to Dismiss Plaintiffs' Complaint (D.E. 32), and Davis' Motion for Preliminary Injunction

(D.E. 39), responding to Plaintiffs' Motion for Class Certification remains premature at this point and will needlessly exact discovery burdens on the parties and the Court.

6. Accordingly, this Court should grant Davis **unopposed** motion for extension of time to respond to Plaintiffs' Motion for Class Certification and enter an order extending the time for any responses to Plaintiffs' Motion for Class Certification, in the form of the proposed order filed on August 11, 2015.

DATED: August 24, 2015

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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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I also hereby certify that two (2) true and correct copies of the foregoing will be sent via U.S.P.S. first class mail to the Attorney General of Kentucky on behalf of Third-Party Defendants Steven L. Beshear, Governor of Kentucky, and Wayne Onkst, Commissioner of the Kentucky Department for Libraries and Archives, at the following location:

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DATED: August 24, 2015

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