

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' RESPONSE OPPOSING MOTION TO EXTEND  
TEMPORARY STAY OF INJUNCTION ORDER**

This Court previously denied Defendant Kim Davis' request for a stay of the August 12 ,2015 preliminary injunction ruling, but in doing so stayed its own denial of the stay request pending further review by the Sixth Circuit Court of Appeals. [RE #52] Then, on August 19, 2015, the Court amended its earlier ruling by setting an expiration date on the temporary stay of August 31, 2015 "absent an Order to the contrary" by the Court of Appeals. [RE #55.]

Davis then sought a stay of the preliminary injunction ruling with the Sixth Circuit Court of Appeals *as well as* a temporary stay pending a further stay application with the United States Supreme Court. [Exh. 1: Davis' Reply In Support of Emergency Motion for Stay, 10 n.3 ("In any event, and out of abundance of caution, if this Court denies a stay pending appeal, Davis further asks this Court to grant a temporary stay for Davis to submit an emergency application for a stay to the Supreme Court.")] In rejecting Davis' stay request, the Sixth Circuit noted that "it cannot be defensibly argued that the holder of the Rowan County Clerk's office, apart from who personally occupies that

office, may decline to act in conformity with the United States Constitution as interpreted by a dispositive holding of the United States Supreme Court.” [Exh. 2: Miller v. Davis, No. 15-5880 (6th Cir. Aug. 26, 2015).] The unanimous panel further noted that “[t]here is thus little or no likelihood that the Clerk in her official capacity will prevail on appeal.” *Id.*

Davis now seeks an extension on the temporary stay, arguing that this Court should grant the same deference - in the form of a stay - that it did to the Sixth Circuit. [re #62.] Of course, Davis makes this argument in a two page motion she filed *two days after* the Sixth Circuit issued its ruling denying both her stay request and temporary stay request. Because Davis has presented nothing to suggest that the Supreme Court’s even more stringent standard for granting a stay<sup>1</sup> is likely to result in a different outcome from that of the Sixth Circuit, Plaintiffs ask that the motion be denied.

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<sup>1</sup> Three conditions must be met before the Court issues a stay: “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). However, the three conditions “*necessary* for issuance of a stay are not necessarily *sufficient*.” *Barnes v. E-Sys, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1304 (1991) (Scalia, J., in chambers) (emphasis in original).

Respectfully submitted,

s/ William E. Sharp

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**CERTIFICATE OF SERVICE**

I certify that on August 28, 2015, I filed this motion and accompanying memorandum 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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