Case No. 15-5961

UNITED STATES COURT OF APPEALS
for the
SIXTH CIRCUIT

APRIL MILLER, PH.D.; KAREN ANN ROBERTS; SHANTEL BURKE; STEPHEN NAPIER; JODY FERNANDEZ; KEVIN HOLLOWAY; L. AARON SKAGGS; BARRY SPARTMAN

Plaintiffs-Appellees,

v.

KIM DAVIS

Defendant-Appellant/Third-Party Plaintiff,

v.

STEVEN L. BESHEAR; WAYNE ONKST

Third-Party Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

PLAINTIFFS-APPELLEES' RESPONSE TO KIM DAVIS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

(*CONTINUED ON NEXT PAGE*)

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Pursuant to Federal Rule of Appellate Procedure 27(a)(3), Plaintiffs-Appellees, April Miller, Karen Roberts, Shantel Burke, Stephen Napier, Jody Fernandez, Kevin Holloway, L. Aaron Skaggs and Barry Spartman (collectively referred to as Plaintiffs), by counsel, submit their response opposing Defendant-Appellant/Third Party Plaintiff Kim Davis' emergency motion requesting a preliminary injunction against Third Party Defendants-Appellees Steven L. Beshear, in his official capacity as Governor of Kentucky, and Wayne Onkst, Commissioner of Kentucky's Department of Libraries and Archives.

Davis' motion seeks to re-litigate the district court's August 12, 2015 preliminary injunction in favor of Plaintiffs – a ruling that the district court, this Court, and the U.S. Supreme Court declined to stay pending Davis' appeal (No. 15-5880). For the same reasons this Court denied Davis' motion for a stay of the August 12, 2015 preliminary injunction and for the reasons that follow, this Court should deny Davis' emergency motion for a preliminary injunction pending appeal.

FACTS

On June 27, 2015 — one day after the U.S. Supreme Court's ruling in *Obergefell v. Hodges*, 135 S. Ct. 1039 (2015) — Rowan County Clerk Kim Davis decided that her office would no longer issue marriage licenses

because she opposes marriage for same-sex couples due to her personal, religious beliefs. [Page ID #278: 7/20/15 Hrg. Transcript (RE #26).] Rather than issue marriage licenses to same-sex couples, Davis adopted a "no marriage license" policy that bars *all* qualified applicants from obtaining marriage licenses in Rowan County even though Kentucky law specifically imposes upon County Clerks the obligation to issue such licenses. [*Id.*] *See also* KRS § 402.080. Following Davis' adoption of the "no marriage license" policy, Plaintiffs — two same-sex and two opposite-sex couples who reside in Rowan County, Kentucky, and who intend to marry — were denied marriage licenses even though they were otherwise legally qualified to marry. [Page ID #123-25; #133-34; #140-42: 7/13/15 Hrg. Transcript (RE #21).] Plaintiffs filed a putative class-action suit challenging the policy under the First and Fourteenth Amendments, and they brought official-capacity claims against Davis seeking preliminary and permanent injunctive relief barring future enforcement of the policy. [Page ID #1: Complaint (RE #1); Page ID #34: Motion for Preliminary Injunction (RE #2).]

After an evidentiary hearing and full briefing by the parties, the District Court entered a preliminary injunction on August 12, 2015, barring Davis, in her official capacity, from enforcing the "no marriage license" policy against Plaintiffs. [Page ID #1173: Memo. Op. and Order (RE #43).]

Defendant timely filed a notice of appeal from that ruling [Page ID #1174: Notice of Appeal (RE #44)], and she also filed a motion with the District Court requesting a stay of its preliminary injunction ruling pending appeal. [Page ID #1207: Stay Motion (RE #45).]

The District Court denied Davis' motion to stay, but the court also stayed its denial of the motion pending review by this Court. [Page ID #1264: Order (RE #52).] Davis then requested a stay of the preliminary injunction from this Court, and it, too, was denied. Davis finally filed an emergency application for a stay of the preliminary injunction ruling with the U. S. Supreme Court, and that application was likewise denied.

Following the U.S. Supreme Court's denial of Davis' emergency stay application, Plaintiffs Miller and Roberts went to the Rowan County Clerk's office on September 1, 2015, for the purpose of obtaining their marriage license. Unfortunately, they were again denied by a deputy clerk who asserted that no marriage licenses would be issued "pending appeal" in this case. The same day, Plaintiffs filed a Motion to Hold Davis in Contempt [RE #67.] Plaintiffs also filed a motion to clarify that the Court's August 12, 2015, preliminary injunction applied not only to the four named Plaintiff couples in this action, but also to requests by other individuals who are legally eligible to marry in Kentucky. [RE #68.]

At a contempt hearing held on September 3, 2015, the District Court ruled that Davis was in civil contempt for her failure to follow the Court's August 12, 2015, Order by continuing to deny marriage licenses to Rowan County citizens and for directing her deputies to do likewise. After hearing testimony and determining that fines would be inadequate to compel Davis' compliance with the preliminary injunction, the Court ordered that she be "remanded to the custody of the United States Marshal pending compliance of the Court's Order of August 12, 2015, or until such time as the Court vacates the contempt Order." (RE #75).

At the September 3, 2015, hearing, five Rowan County Deputy Clerks affirmed to the Court that they would issue marriage licenses in compliance with the Court's August 12, 2015, Order.

On September 8, 2015, after receiving a status report from Plaintiffs (RE # 88), the District Court issued an Order noting that "Plaintiffs have obtained marriage licenses from the Rowan County Clerk's Office," and concluding that "the Rowan County Clerk's Office is fulfilling its obligation to issue marriage licenses to all legally eligible couples, consistent with the U.S. Supreme Court's holding in *Obergefell* and this Court's August 12, 2015 Order." (RE #98). The Court thus stated that "the prior contempt

sanction against Defendant Davis is hereby lifted" and ordered her release from the custody of the U.S. Marshal.

Davis now seeks an emergency preliminary injunction in connection with her third-party complaint against Governor Beshear and Commissioner Onskt while she appeals the district court's ruling granting a preliminary injunction to Plaintiffs. The third-party complaint alleges that the Kentucky governor is responsible for the Rowan County clerk's duty to issue marriage licenses in light of *Obergefell*. Davis argues that, absent an injunction against the Third-Party Defendants pending appeal, her rights will be violated. Her motion is based on the same arguments she (unsuccessfully) asserted in objecting to Plaintiffs' preliminary injunction and that she later (unsuccessfully) asserted in seeking a stay of that preliminary injunction. Plaintiffs now respond.

LEGAL STANDARD

This Court may grant preliminary injunctions pending appeal "to prevent irreparable harm to the party requesting such relief during the pendency of the appeal." *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 572 (6th Cir. 2002). In considering such requests, the Court "is to engage in the same analysis that it does in reviewing the grant or

denial of a motion for a preliminary injunction." *Id.* (citing *Walker v. Lockhart*, 678 F.2d 68, 70 (8th Cir.1982)).

Thus, the consideration of Davis' motion for an emergency preliminary injunction focuses on: "(1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of an injunction upon the public interest." *Abney v. Amgen, Inc.*, 443 F.3d 540, 546 (6th Cir. 2006) (internal quotations omitted) (quoting *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nasvhille & Davidson Co.*, 274 F.3d 377, 400 (6th Cir. 2001), *cert. denied*, 535 U.S. 1073 (2002)). These considerations "are factors to be balanced, not prerequisites that must be met." *Jones v. City of Monroei*, 341 F.3d 474, 476 (6th Cir. 2003) (citing *In re Delorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985)). As discussed below, *all* of the factors weigh in favor of denying Davis' motion for an emergency preliminary injunction.

ARGUMENT

I. DAVIS IS UNLIKELY TO SUCCEED ON THE MERITS OF HER CLAIMS.

A. Davis is unlikely to establish that performing the administrative task of issuing marriage licenses unlawfully burdens her free exercise of religion.

Davis' principal argument rests on her contention that her religious beliefs are substantially burdened because she is required, in her official capacity as the County Clerk, to issue marriage licenses to same-sex couples. Her third-party complaint alleges that this requirement emanates from Governor Beshear's directive that county clerks comply with state law in issuing marriage licenses. However, as this Court noted in previously denying Davis' request to stay Plaintiffs' preliminary injunction, "[t]here is thus little or no likelihood that the Clerk in her official capacity will prevail on appeal." [*Miller v. Davis*, No. 15-5880 (6th Cir. Aug. 26, 2015).] The unanimous panel that denied Davis' stay request further observed 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." [*Id.*]

Nothing about Davis' present emergency preliminary injunction motion compels a different conclusion. Here, Davis claims that the burden upon her religious beliefs flows from having to comply with Governor Beshear's "mandate" that she "personally authorize" same-sex marriage licenses. [Davis' Emergency Motion for Injunction Pending Appeal, No. 15-5961, at 3.] However, even a cursory review of Governor Beshear's letter

makes clear that he simply directed county clerks to comply with state law and the Supreme Court's holding in *Obergefell*. Nothing in that letter requires Davis, in her official capacity, to perform any duties not otherwise required of her office under Kentucky and federal law. [*Id*., Exh. C: Governor Beshear's June 26, 2015 letter (Page ID #782).] Davis' true objection is to Kentucky state law and the U.S. Constitution as well as the district court's already-issued preliminary injunction entered on Plaintiffs' behalf. That fact is evident from the relief Davis seeks here in connection with her motion for an emergency preliminary injunction, which in essence requests a preliminary injunction exempting her from complying with the August 12, 2015 preliminary injunction. [*Compare* Davis' Emergency Motion for Injunction Pending Appeal, No. 15-5961, at 20 (requesting injunction "preliminary exempting her from authorizing marriage licenses") *with* Page ID #1173: Memo. Op and Order (RE #43) (enjoining Davis, "in her official capacity as Rowan County Clerk, . . . from applying her 'no marriage licenses' policy to future marriage license requests submitted by Plaintiffs"); Page ID #1557: Order (RE #74) (granting Plaintiffs' motion to modify preliminary injunction to enjoin "Davis, in her official capacity, . . . from applying her 'no marriage licenses' policy to future marriage license

requests submitted by Plaintiffs or by other individuals who are legally eligible to marry in Kentucky.").]

However, Davis is not relieved of her obligation to perform neutral and generally applicable duties in the performance of her government employment because she objects, on religious grounds, to doing so. Because Kentucky requires individuals to obtain marriage licenses in order to marry, it logically follows that the government, when acting as employer, enjoys more latitude to impose incidental burdens upon its employees' free exercise rights in order to ensure that this essential government service is provided to the public. "[W]hen a government employee asserts that his constitutional rights have been infringed, the court must strike a balance between the employee's interests as a citizen and 'the interest of the [government] as an employer, in promoting the efficiency of the public services it performs through its employees.'" *Baz v. Walters*, 782 F.2d 701, 708 (7th Cir. 1986) (quoting *Pickering v. Board of Education,* 391 U.S. 563, 568 (1968)); *see also Endres v. Ind. State Police*, 349 F.3d 922, 927 (7th Cir. 2003) (reclassification of police officer, over officer's religiously-based objection, to Gaming Commission Agent and subsequent termination of employment for insubordination, did not "violate[] the free exercise clause of the first amendment").

Moreover, even if Davis' free exercise claim were analyzed under the analytical framework used when the government is acting as a sovereign and not as employer, she is unlikely to prevail on the merits of her claim because the Free Exercise Clauses of the U.S. and Kentucky Constitutions do not entitle her to refuse to issue marriage licenses to otherwise qualified applicants.

In *Employment Division v. Smith*, the Supreme Court held that the federal Free Exercise Clause is not offended by a neutral law of general applicability. 494 U.S. 872, 885 (1990). Thus, laws that are neutral and generally applicable need only be rationally related to a legitimate government interest. This standard likewise applies to Davis' argument under the Kentucky Constitution. *See Gingerich v. Commonwealth*, 382 S.W.3d 835 (Ky. 2012) (free exercise rights under Ky. Constitution coextensive with those under the First Amendment). Here, Kentucky's administrative scheme requires all county clerks to issue marriage licenses. It is undeniably neutral, as is the form required to do so, because it is intended to ensure that all qualified couples can exercise the fundamental right to marry. It is also generally applicable because it does not target religiously motivated conduct. That Davis' religious beliefs happen to be the basis for her refusal to perform the administrative tasks associated with her

job does not mean that her religious beliefs are somehow "targeted" by the laws mandating those tasks. Under the deferential rational basis standard, requiring Davis to carry out her job duties when acting in her official capacity does not violate her free exercise rights.

Kentucky's Religious Freedom Restoration Act does not change the result.[1] Kentucky has not just a legitimate interest, but a compelling one, in ensuring the freedom to marry for all qualified couples. As an initial matter, Kentucky's administrative scheme does not substantially burden Davis' religious exercise because she is not required to support, endorse, or participate in any wedding. But, even if issuing marriage licenses were deemed to substantially burden Davis' religious beliefs *and* the Court applied strict scrutiny to that requirement, it would also satisfy heightened review.

First, Kentucky has compelling interests in ensuring that qualified individuals may exercise their fundamental right to marry and in the uniform issuance and recording of marriage licenses and marriage-related data. *See Braunfeld v. Brown*, 366 U.S. 599, 603 (1961) (state's interest in "improving

[1] In addition to reasons set forth, Davis' request for injunctive relief under Kentucky's RFRA statute also fail because the Eleventh Amendment bars federal courts from enjoining state actors to comply with state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

the health, safety, morals and general well-being of [] citizens" warranted denying Jewish storeowners religious exemption from Sunday closing law); *United States v. Lee*, 455 U.S. 252, 260 (1982) ("broad public interest in maintaining a sound tax system"); *Bob Jones Univ. v. United States*, 461 U.S. 574, 603-04 (1983) ("[G]overnment interest [in eradicating racial discrimination] substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs."); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (a state's "commitment to eliminating discrimination" is a "goal . . . [that] plainly serves compelling state interests of the highest order"); KRS § 213.116 (mandating "collection, indexing, tabulation, and registration of data relating to marriages, divorces, and annulments" by Cabinet for health and Family Services); *see also Romer v. Evans*, 517 U.S. 620, 628 (1996) (state and local governments have the power to enact statutory schemes to prohibit discrimination on the basis of sexual orientation).

Moreover, the uniform system Kentucky has in place for ensuring that individuals satisfy the state's requirements for marriage would likewise satisfy the "least restrictive means" analysis because it ensures that all Kentuckians have equal access to the public officials responsible for issuing and recording those licenses free from discrimination. As the Supreme Court

has recognized, an assertion of entitlement to religious freedom does not justify exemptions that adversely impact others even under the strict scrutiny standard applied prior to *Smith*. *See, e.g.*, *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (noting that in analyzing religious exemptions, "courts must take adequate account of the burdens a requested accommodation may impose on non-beneficiaries");[2] *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n.18 (1989) (invalidating sales-tax exemption for religious periodicals in part because exemption would have "burden[ed] non-beneficiaries by increasing their tax bills"); *Thornton v. Caldor*, 472 U.S. 703, 710 (1985) ("The First Amendment gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities.") (internal quotation marks and citation omitted); *Sherbert v. Verner*, 374 U.S. 398, 409 (1963) (exempting claimant from state unemployment benefits policy but noting that "the recognition of the appellant's right to unemployment benefits under the state statute [does not] serve to abridge any other person's religious liberties."); *Barnette*, 319 U.S.

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[2] *Cutter* was decided under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(1)(1), which prohibits government-imposed substantial burdens on religious exercise unless strict scrutiny is satisfied, just as the Supreme Court's pre-*Smith* free exercise cases did (and just as RFRA does today).

at 630 (excusing students from reciting Pledge of Allegiance, but noting that "the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so").

B. The administrative act of issuing, or allowing others to issue, marriage licenses does not implicate the compelled speech doctrine.

Davis is also unlikely to succeed regarding her asserted free speech claim, *i.e.*, that having her name, as the Rowan County Clerk, appear on the license as the issuing authority compels her to communicate a message of endorsement of marriage for same-sex couples (or any other couples). [Davis' Emergency Motion for Injunction Pending Appeal, No. 15-5961, at 17-18.] "[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). As in *Garcetti*, the speech at issue here "owes its existence to a public employee's professional responsibilities" in the performance of her job duties. Thus, a restriction upon that speech "does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created." *Id*. at 421-22.

Similarly, this case does not implicate the compelled speech doctrine. County clerks are paid to carry out their official duties on behalf of the government, and their official acts are not expressions of their own viewpoint. The act of issuing a marriage license that includes Davis' name, in her official capacity as County Clerk, does not communicate any message from Davis, let alone her personal endorsement of anyone's marriage. Nor does it compel her "in effect 'to profess any statement of belief or to engage in any ceremony of assent'" to marriage for same-sex couples. *Troster v. Pennsylvania State Dep't of Corr.*, 65 F.3d 1086, 1091 (3d Cir. 1995) (quoting *West Virginia State Bd. of Education v. Barnette,* 319 U.S. 624, 634 (1943)). When Davis issues a marriage license, her doing so does not convey a message to the applicants that Davis personally shares in their joy or otherwise supports their intimate relationship. As the Supreme Court has recognized, even "high school students can appreciate the difference between speech a school sponsors and speech the school permits because legally required to do so." *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 65 (2006) (citing *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226 (1990) (plurality)). This distinction between government messages that are necessary for the delivery of governmental services versus the private speech of individuals

who are employed as government officials is equally applicable here. Thus, Davis' claim that the administrative task of affixing her name, as the County Clerk, to marriage licenses is akin to "forcing a student to pledge allegiance, or forcing a Jehovah's Witness to display the motto 'Live Free or Die,' [] trivializes the freedom protected in *Barnette* and *Wooley*" and should be rejected. *Id*. at 62.

Finally, Davis remains free to express her views about marriage for same-sex couples, as she has done publicly throughout the pendency of this case. What she may not do is voluntarily assume public office and then use her government position to deny others access to public services to which they are entitled. Thus, requiring Davis to perform her job duties as a government official does not violate her right to free speech.

II. DENYING THE REQUESTED EMERGENCY PRELIMINARY INJUNCTION WOULD NOT RESULT IN IRREPARABLE INJURY TO DEFENDANT.

Plaintiffs do not dispute that Davis opposes same-sex marriage due to her personal religious beliefs, or that those beliefs are sincerely held. However, the administrative acts necessary for her office to issue marriage licenses, including marriage licenses to same-sex couples, do not impose a substantial burden upon her religious freedom. For example, courts have frequently rejected free exercise claims on the basis that the government-

compelled action did not impose a substantial burden upon the claimants' free exercise rights even under the strict scrutiny standard applied prior to *Smith*. *See, e.g.*, *Jimmy Swaggart Ministries v. Bd. of Equalization of California*, 493 U.S. 378 (1990) (collection and payment of sales and use tax did not substantially burden free exercise rights); *Bowen v. Roy*, 476 U.S. 693 (1986) (requirement that applicants possess a social security number in order to qualify for federal aid programs not a substantial burden upon free exercise rights); *Tony and Susan Alamo Foundation v. Sec'y of Labor*, 471 U.S. 290 (1985) (application of labor laws to religious foundation's commercial activities did not substantially burden free exercise rights); *Bd. of Ed. of Central Sch. Dist. No. 1 v. Allen*, 392 U.S. 236 (1968) (no substantial burden on exercise of religion from non-coercive government action requiring free book loans to all public and private schools for elementary and secondary students).

Here, as in those instances, the burden upon Davis, in her official capacity, to perform (or allow her subordinates to perform) the administrative tasks associated with issuing marriage licenses does not rise to the level of a substantial burden upon her religious belief. *See, e.g., Little Sisters of the Poor v. Burwell*, --- F.3d ---, 2015 WL 4232096 at *30 (10th Cir. July 14, 2015) ("because the [Affordable Care Act's opt-out provision]

does not involve them in providing, paying for, facilitating, or causing contraceptive coverage . . . Plaintiffs are not substantially burdened solely by the *de minimis* administrative tasks this involves."), *petition for cert. docketed*, (U.S. July 23, 2015) (No. 15-105). Thus, denying the requested emergency preliminary injunction would not impose irreparable harm. Moreover, as noted above, *see supra* § I.A., even if any such burden existed here, it would be fully justified by the government's compelling interests in guaranteeing qualified individuals the fundamental right to marry and in the uniform issuance of marriage licenses.

III. THE REQUESTED EMERGENCY PRELIMINARY INJUNCTION WOULD, IF GRANTED, WOULD RESULT IN ONGOING, IRREPARABLE HARM TO PLAINTIFFS.

Davis, in seeking an emergency preliminary injunction, seeks an exemption from the already-granted preliminary injunction entered on Plaintiffs' (and others') behalf. For the same reasons that Plaintiffs would have suffered irreparable injury absent their preliminary injunction, those who are covered by the preliminary injunction but have not yet obtained a marriage license will be irreparably harmed were Davis granted an exemption from having to comply with it. Specifically, the requested emergency preliminary injunction, if granted, would have the effect of re-instituting Davis' "no marriage license" policy thus directly and

substantially burdening individuals' fundamental right to marry. And, as noted before, the ongoing constitutional violations resulting from this policy are manifest. Prior to *Obergefell*, the Rowan County Clerk's office issued approximately two hundred marriage licenses per year thus enabling roughly four hundred people, annually, to exercise their fundamental right to marry. [Page ID #243: 7/20/15 Hrg. Transcript (RE #26) (212 licenses issued in 2014); *id*. (99 licenses issued in first half of 2015).] The requested emergency preliminary injunction would, if granted, impose a direct legal obstacle upon individuals' right to marry by forcing them to choose between traveling to another county to obtain a license or forgo their right altogether. As Plaintiffs stated in support of their Motion for Preliminary Injunction, both the Supreme Court and the Sixth Circuit have held that the infringement of protected freedoms constitutes an irreparable injury sufficient to justify the grant of a preliminary injunction. [Page ID #44-45: Plaintiffs' Memo. (RE #2-1).] "[W]hen reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is *mandated*." *ACLU v. McCreary County*, 354 F.3d 438, 445 (6th Cir. 2003), *aff'd*, *McCreary County v. ACLU*, 545 U.S. 844 (2005) (emphasis added); *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001).

IV. THE PUBLIC INTEREST FAVORS DENYING THE REQUESTED STAY.

Denying Davis' requested emergency preliminary injunction also serves the public interest, in that in ensures that qualified individuals remain able to seek (and obtain) marriage licenses in Rowan County during the pendency of Davis' appeals. *See Fed. Trade Comm'n v. E.M.A. Nationwide, Inc.*, No. 13-4169, 2014 WL 4401247, at *12 (6th Cir. Sept. 8, 2014) ("The public interest is furthered where individuals' injuries are remedied in a timely manner.").

CONCLUSION

Because all of the relevant factors weigh in favor of denying Davis' requested emergency preliminary injunction, including that Davis is unlikely to succeed on the merits of her claims and that she will not suffer a legally cognizable irreparable injury absent the injunction, Plaintiffs respectfully request that the emergency motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of **APPELLEES' RESPONSE OPPOSING EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** to be served September 8, 2015, by operation of this Court's electronic filing system, on the following:

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