Nos. 15-5880, 15-5961, 15-5978

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,

Third-Party Plaintiff-Defendant-Appellant,

STEVEN L. BESHEAR; WAYNE ONKST, in their official capacities,

Third-Party Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Kentucky, No. 0:15-cv-00044-DLB
The Honorable David L. Bunning, Presiding

PLAINTIFFS-APPELLEES' RESPONSE OPPOSING RENEWED MOTION OF KIM DAVIS TO STAY DISTRICT COURT'S SEPTEMBER 3, 2015 INJUNCTION ORDER PENDING APPEAL

(*continued on next page*)

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Pursuant to Rule 27(a)(3) of the Federal Rules of Appellate Procedure, Plaintiffs-Appellees April Miller, Karen Roberts, Shantel Burke, Stephen Napier, Jody Fernandez, Kevin Holloway, L. Aaron Skaggs and Barry Spartman (collectively, "Plaintiffs"), by counsel, submit their response opposing the renewed motion of Defendant-Appellant Kim Davis to stay the District Court's September 3, 2015 order ("September 3 Order") modifying the August 12, 2015 preliminary injunction ("Preliminary Injunction") by precluding Davis from applying her "no marriage licenses" policy to all eligible couples.

Davis' present motion does not seek a stay of the Preliminary Injunction. Nor could it, given that Davis has already asked three courts – the District Court, this Court, and the Supreme Court – to excuse her from performing her official duties, and all three courts declined to make an exception for Davis. Davis' present motion is limited to the argument that the District Court acted without jurisdiction when it modified the Preliminary Injunction pending appeal. Davis is wrong. The District Court retained jurisdiction under Rule 62(c) of the Federal Rules of Civil Procedure to modify the Preliminary Injunction pending appeal, and the modification left unchanged the core question that this Court will decide when it considers the merits of the Preliminary Injunction. That question was, and remains, whether Davis, in her official capacity as Rowan County Clerk, may deny eligible couples access to marriage licenses because of her personal religious beliefs.

Under these circumstances, the District Court had jurisdiction to enter the September 3 Order.

Davis' motion for a stay should be denied. If, however, this Court concludes that the September 3 Order could not properly be entered pending appeal of the Preliminary Injunction, Plaintiffs respectfully request that this Court treat the September 3 Order as an indicative ruling under Rule 62.1 of the Federal Rules of Civil Procedure and remand for the limited purpose of allowing the District Court to enter an order as indicated.

FACTS

The parties detailed the facts of this case when they litigated Davis' initial emergency motion for a stay. [*See* RE #15-1 (15-5880): Emergency Mot. for Immediate Consideration & Mot. to Stay Dist. Ct.'s Aug. 12, 2015 Order Pending Appeal; RE #25 (15-5880): Appellees' Resp. Opposing Mot. to Stay.] Rather than reassert those facts, Plaintiffs incorporate by reference their earlier statement of facts and include here only those additional facts that will aid the Court in its resolution of Davis' present stay motion.

After this Court denied Davis' initial emergency motion for a stay of the Preliminary Injunction, Davis sought an emergency stay of the Preliminary Injunction from the Supreme Court. In a one-line order, the Supreme Court denied that request without asking for a response from Plaintiffs and without any apparent

dissent. *Davis v. Miller*, No. 15A250, -- S.Ct. --, 2015 WL 5097125, at *1 (U.S. Aug. 31, 2015).

Rather than comply with the Preliminary Injunction, however, Davis chose to disregard it. The morning after the Supreme Court denied her stay application, Davis directed her employees to continue enforcing her "no marriage licenses" policy. [RE #78 (0:15-cv-00044): 9/3/15 Hr'g Tr., PageID #1621, 1631.] That decision resulted in Plaintiffs Miller and Roberts again being denied a marriage license on September 1, 2015. [*Id*. at PageID #1638-39.] Left with no other recourse, Plaintiffs filed a motion asking the District Court to hold Davis in contempt for her continued refusal to comply with the Preliminary Injunction. [RE #67 (0:15-cv-00044): Pls.' Mot. to Hold Kim Davis in Contempt of Ct., PageID #1477.] Plaintiffs also filed a Rule 62(c) motion to clarify or modify the Preliminary Injunction to bar Davis from enforcing her "no marriage licenses" policy against any eligible applicants, not just the named Plaintiff couples. [RE #68 (0:15-cv-00044): Pls.' Mot. Pursuant to Rule 62(c) to Clarify Prelim. Inj. Pending Appeal, PageID #1488.]

At the contempt hearing, the District Court afforded Davis' counsel an opportunity to respond to Plaintiffs' Rule 62(c) motion. [RE #78 (0:15-cv-00044): 9/3/15 Hr'g Tr., PageID #1571-80.] After hearing argument from Davis' counsel, the District Court granted Plaintiffs' motion and entered the September 3 Order

modifying the Preliminary Injunction. [RE #74 (0:15-cv-00044): Order, PageID #1557.] In doing so, the District Court noted that Plaintiffs filed this case as a class action and explained that, even though it had stayed the class certification issue, allowing the Preliminary Injunction "to apply to some, but not others, simply doesn't make practical sense." [RE #78 (0:15-cv-00044): 9/3/15 Hr'g Tr., PageID #1581.] The District Court also noted that, after Plaintiffs here filed suit, two related cases were filed by couples seeking to marry. [*Id*. at PageID #1573.] Those cases raise identical legal issues, and the reasoning behind the Preliminary Injunction applies with equal force to the plaintiff couples in those cases. [*Id*. at PageID #1576-77.] Thus, the District Court's September 3 Order modified the Preliminary Injunction to bar Davis, in her official capacity, from enforcing her "no marriage licenses" policy against any applicants who are legally eligible to marry. [*Id*.] Following issuance of the September 3 Order, several of the named Plaintiff couples sought and received marriage licenses. [RE #84 (0:15-cv-00044): Status Report, PageID #1798.] The plaintiff couples in the two related cases also obtained marriage licenses following the September 3 Order. [RE #113-1 (0:15-cv-00044): Def./Third-Party Pl. Kim Davis' Mem. of Law in Supp. of Mot. for Immediate Consideration & Mot. to Stay Sept. 3, 2015 Inj. Order Pending Appeal, PageID #2217.]

Davis did not thereafter seek a stay of the September 3 Order in the District Court. Rather, she filed a motion in this Court asking for an emergency stay. This Court denied Davis' motion because she had failed to seek a stay pending appeal in the District Court as required by Rule 8(a)(1) of the Federal Rules of Appellate Procedure. [RE #50-1 (15-5880): Order.] Davis then filed an emergency motion in the District Court to stay the September 3 Order pending appeal and that motion, too, was denied. [RE #121 (0:15-cv-00044): Mem. Order.] The District Court found that entry of the September 3 Order was necessary to preserve the status quo created by the Preliminary Injunction, which enjoined Davis from applying her "no marriage licenses" policy in light of the District Court's ruling that found the policy violated the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). [*Id.* at PageID #2331-32.] The District Court reasoned that it would be "inconsistent with basic principles of justice and fairness" to enjoin Davis from applying her unconstitutional "no marriage licenses" policy only to some couples while leaving other eligible couples at Davis' mercy. [*Id.* at 2332.]

More than a week after the District Court denied Davis' emergency motion for a stay, Davis filed the present motion renewing her request for a stay of the September 3 Order. For the reasons stated below, Davis' latest stay motion likewise should be denied.

LEGAL STANDARD

In evaluating whether to grant a requested stay, courts must consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Ohio State Conference of N.A.A.C.P. v. Husted*, 769 F.3d 385, 387 (6th Cir. 2014) (internal quotation marks and citations omitted). Of these, the "'first two factors . . . are the most critical.'" *Id*. (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). As discussed below, *all* of the factors weigh in favor of denying the requested stay.

ARGUMENT

I. BECAUSE THE DISTRICT COURT RETAINED JURISDICTION TO ENTER ITS SEPTEMBER 3 ORDER, DAVIS IS UNLIKELY TO SUCCEED ON APPEAL.

Rule 62(c) of the Federal Rules of Civil Procedure provides that a district court retains jurisdiction to modify a preliminary injunction pending an appeal. Specifically, Rule 62(c) provides:

> While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

Fed. R. Civ. P. 62(c). Thus, Rule 62(c) creates an exception to the general rule that an appeal divests the district court of jurisdiction. *N.L.R.B. v. Cincinnati Bronze*,

Inc., 829 F.2d 585, 588 (6th Cir. 1987) ("[T]he rule depriving a district court of jurisdiction over matters pending on appeal 'is neither a creature of statute nor . . . absolute in character.'" (quoting *Island Creek Coal Sales Co. v. City of Gainesville*, 764 F.2d 437, 439 (6th Cir. 1985)). "The district court retains jurisdiction during the pendency of an appeal to act to preserve the status quo." *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) (citing *Newton v. Consol. Gas Co.*, 258 U.S. 165, 177 (1922)).

As noted by this Court, sister circuits have variously analyzed Rule 62(c), generally applying one of two standards for determining whether a particular modification is authorized by the rule. *Basicomputer Corp. v. Scott*, 973 F.2d 507, 513 (6th Cir. 1992). Specifically, some circuits construe Rule 62(c) to permit only those modifications that "preserve the status quo." *George S. Hofmeister Family Trust v. Trans Indus. of Ind., Inc.*, No. 06-cv-13984-DT, 2007 WL 128932, at *2 (E.D. Mich. Jan. 12, 2007) (citing *Coastal Corp. v. Tex. E. Corp.*, 869 F.2d 817 (5th Cir. 1989); *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389 (9th Cir. 1984); *Ideal Toy Corp. v. Sayco Doll Corp.*, 302 F.2d 623, 625 (2d Cir. 1962)). Other circuits, however, construe Rule 62(c) to permit additional modifications after an appeal is filed "when the district court's action 'preserve[s] the integrity of the proceeding in the court of appeals.'" *George S. Hofmeister Family Trust*, 2007 WL 128932, at *2 (quoting *Ortho Pharm. Corp. v. Amgen, Inc.*, 887 F.2d 460, 464 (3rd Cir. 1989)).

While this Court has not adopted or rejected either approach, *Basicomputer*, 973 F.2d at 513, the Court need not reach that question in the present appeal because the September 3 Order satisfies both standards.

A district court's jurisdiction to amend an injunction to preserve the status quo pending appeal includes the power to modify an order in response to a party's attempts to circumvent it. *See Vasile v. Dean Witter Reynolds, Inc.*, 205 F.3d 1327 (table), 2000 WL 236473, at *2 (2d Cir. 2000); *Shell Offshore Inc. v. Greenpeace, Inc.*, No. 3:12-cv-00042-SLG, 2012 WL 1931537, at *13-15 (D. Alaska May 29, 2012), *aff'd*, 709 F.3d 1281 (9th Cir. 2013). For example, in *Vasile*, the district court enjoined a vexatious litigant from initiating new civil actions in a particular federal judicial district against the defendants in the case. 2000 WL 236473, at *1. While the injunction was pending on appeal, however, the litigant continued to harass the defendants and their counsel by filing actions in state court and submitting grievances to executive agencies. *Id.* The district court granted the defendants' motion to expand the original injunction to enjoin the litigant from filing *any* action in *any* forum against any of the defendants *or their professional associates*. *Id.* The Second Circuit affirmed the grant of the expanded injunction under Rule 62(c), finding that the "amended injunction became essential to preserve the status quo in light of [the litigant's] continued harassment." *Id.* at *2.

Similarly, in *Shell Offshore*, the district court's original preliminary injunction was applicable only to the defendant's tortious conduct in United States territorial waters or ports. 2012 WL 1931537, at *13. While the defendant's appeal of the preliminary injunction was pending, the plaintiff filed a motion for additional preliminary injunctive relief seeking to expand the terms of the original injunction to prohibit similar conduct outside of the United States. *Id.* The district court found that modification of the injunction was warranted to preserve the status quo. *Id.* at *15.

As the above examples illustrate, the relevant question for purposes of Rule 62(c) is whether the amended injunction preserves the status quo, not whether it can be described as "enforcing," "modifying," or "expanding" the original order. Here, the relevant status quo for purposes of Rule 62(c) is the state of affairs after the Preliminary Injunction issued – *i.e.*, Davis was precluded from applying her "no marriage licenses" policy because of her personal religious beliefs. Just as it became necessary in *Vasile* to preclude the plaintiff from filing vexatious litigation in other forums and against other individuals, and just as it became necessary in *Shell Oil* to preclude the defendant from committing tortious conduct in other jurisdictions, here the September 3 Order became necessary to preclude Davis from applying her "no marriage licenses" policy to other eligible couples after Davis testified that she had directed her deputy clerks to continue applying the "no

marriage licenses policy" in disregard of the orders of the District Court, this Court, and the Supreme Court. [RE #78 (0:15-cv-00044): 9/3/15 Hr'g Tr., PageID #1621, 1623.] The District Court was within its power to prevent Davis from circumventing the purpose of the Preliminary Injunction by applying her "no marriage licenses" policy – a policy the District Court had already found likely to be unconstitutional – to eligible couples other than the named Plaintiff couples in an effort to preserve the status quo.

Modification of a preliminary injunction to preserve the status quo is appropriate as long as the amended injunction "left unchanged the core questions before the appellate panel" as they existed after the district court's grant of the original injunction. *Nat. Res. Def. Council*, 242 F.3d at 1167; *George S. Hofmeister Family Trust*, 2007 WL 128932, at *2 n.1 (noting that "the relevant status quo for purposes of Rule 62(c)" is "the new status quo . . . that the court's grant of the injunction creates"). In other words, "[m]aintaining the status quo means that a controversy will still exist once the appeal is heard. [Conversely, a]ny action on the district court's part which has the effect of divesting the court of appeals of its jurisdiction over the matter, by eliminating the controversy prior to the hearing on the appeal is inappropriate." *S & S Sales Corp. v. Marvin Lumber & Cedar Co.*, 457 F. Supp. 2d 903, 906 (E.D. Wis. 2006) (quoting 12 *Moore's Federal Practice* § 62.06[1] (3d ed. 2006)).

The September 3 Order modified the Preliminary Injunction only to the extent that it prohibited Davis from applying her "no marriage licenses" policy to all eligible couples. That limited modification did not materially alter the status quo of the case on appeal to this Court. Indeed, the September 3 Order left unchanged the core question raised by Davis' appeal of the Preliminary Injunction: whether Davis, in her official capacity as Rowan County Clerk, may deny eligible couples access to marriage licenses in Rowan County because of her personal religious objection to the Supreme Court's decision in *Obergefell*. The September 3 Order did not alter the legal issues at stake or deprive this Court of the opportunity to address them. Consequently, the September 3 Order preserved the status quo of the case on appeal to this Court and was within the District Court's jurisdiction under Rule 62(c).

Because the September 3 Order satisfies the narrower "preserve the status quo" standard, it also satisfies the more expansive "preserve the integrity of the proceedings" standard. *See George S. Hofmeister Family Trust*, 2007 WL 128932, at *2 (noting that the "preserve the integrity of the proceedings" standard "go[es] beyond the status quo rule" to allow "substantive modification imposing more requirements in an injunction order pending appeal"). Given Davis' stated refusal to comply with the Preliminary Injunction, the September 3 Order was necessary

to preserve the integrity of the proceedings by avoiding the unnecessary multiplication of litigation, including appellate litigation, that would result from her continuing to enforce her "no marriage licenses" policy against those who are legally eligible to marry. Thus, under either analytical framework, Rule 62(c) provides ample justification (and jurisdiction) for the September 3 Order modifying the Preliminary Injunction.

Davis' argument that the District Court lacked authority to modify the Preliminary Injunction because she had already appealed that ruling ignores Rule 62(c), and the cases on which she relies fail even to mention it. [RE #43 (15-5880): Davis' Emergency Mot. to Stay, 12-13 (citing various cases that do not discuss or analyze Rule 62(c)).][1]

[1] Moreover, even though the District Court previously stayed the class certification issue, the District Court was well within its authority to enjoin Davis from enforcing her "no marriage licenses" policy to all eligible couples, regardless of whether or not those couples are named Plaintiffs in this case. "District courts have the power to order injunctive relief covering potential class members prior to class certification" pursuant to their '"general equity powers.'" *Lee v. Orr*, No. 13-cv-8719, 2013 WL 6490577, at *2 (N.D. Ill. Dec. 10, 2013) (quoting 3 Newberg on Class Actions § 9:45 (4th ed. 2002)). Indeed, "'[i]n the civil rights field, it is common to find an immediate need for preliminary injunctive relief . . . without a formal class ruling.'" *Ill. League of Advocates for Developmentally Disabled v. Ill. Dep't of Human Servs.*, No. 13 C 1300, 2013 WL 3287145, at *3 (N.D. Ill. June 28, 2013) (quoting 3 Newberg on Class Actions § 9:45). Federal district courts thus routinely enjoin state officials from enforcing unconstitutional policies across the board, even where class certification has not been sought. *See, e.g.*, *Burns v. Hickenlooper*, No. 14-cv-01817-RM-KLM, 2014 WL 3634834, at *5 (D. Colo. July 23, 2014) (granting preliminary injunction enjoining state officials from

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II. DENYING THE REQUESTED STAY WOULD NOT RESULT IN IRREPARABLE INJURY TO DAVIS.

Even if Davis had established a strong likelihood of success on the merits, which she has not, she still would not be entitled to a stay absent a showing of irreparable injury. *See, e.g.*, *Long Beach Fed. Savings & Loan Ass'n v. Fed. Home Loan Bank of S.F.*, 76 S. Ct. 32, 33 (1955) (Douglas, Cir. J.). As Davis herself acknowledges, "the harm must be 'both certain and immediate, rather than speculative or theoretical.'" [RE #57-1 (15-5880): Renewed Mot. of Appellant Kim Davis to Stay Dist. Ct.'s Sept. 3, 2015 Inj. Order Pending Appeal, 18 n.20 (quoting *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrong*, 945 F.3d 150, 154 (6th Cir. 1991)).] But any harm to Davis is wholly speculative. Davis relies on the possibility that she could be subject to civil sanctions *if* the

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denying marriage licenses to same-sex couples, or denying recognition of otherwise valid out-of-state marriages entered into by same-sex couples, not only to named plaintiff couples); *De Leon v. Perry*, 975 F. Supp. 2d 632, 666 (W.D. Tex. 2014) (same); *see also Evans v. Utah*, 21 F. Supp. 3d 1192, 1215 (D. Utah 2014) (granting preliminary injunction enjoining state officials from applying state's marriage bans retroactively to same-sex couples, not only to named plaintiff couples).

In addition, because the District Court has multiple similar cases on its docket, "the interest of efficiency and economy compel entry" of class-wide preliminary injunctive relief at this stage. *Cf. Lee*, 2013 WL 6490577, at *2. That plaintiffs in the other cases apparently were able to obtain marriage licenses reinforces, rather than undermines, this conclusion because they were able to do so only after issuance of the September 3 Order, not before.

District Court grants Plaintiffs' pending motion to enforce the September 3 Order and a subsequent order entered on September 8, 2015, and *if* the District Court orders sanction as a result. But any purported harm is speculative at this point: Briefing is still open on Plaintiff's motion to enforce, and the District Court has not ruled on the motion, let alone ordered any sanctions that would impose the type of irreparable injury necessary to warrant a stay.

In any event, to the extent that Davis is facing potential civil sanctions, any "harm" would result from her own choice to disobey federal courts orders, not from the orders themselves. And the threat of civil sanctions for willful violations of the District Court's valid orders does not constitute "irreparable injury" that would justify a stay:

> The issue on a motion for a stay is whether compliance with the order sought to be stayed would result in irreparable injury, *not whether sanctions imposed for a contempt of court would cause irreparable injury*. . . . It would surely be anomalous to permit the contumacious appellant to satisfy the irreparable injury component by pointing to the consequences of his own contempt . . . .

In re Frankel, 192 B.R. 623, 630 (Bankr. S.D.N.Y. 1996) (emphasis added); *see also Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1480 (9th Cir. 1992) ("It is well established that even the assertion of constitutional rights may be burdened by requiring those who assert them to risk contempt.").

III. A STAY, IF GRANTED, WOULD RESULT IN ONGOING, IRREPARABLE HARM TO MEMBERS OF THE PUTATIVE CLASS.

If the September 3 Order were stayed, Davis' policy of refusing to issue licenses to qualified applicants – *i.e.*, members of the putative class of plaintiffs – would directly and substantially burden their fundamental right to marry, in that it would preclude them from obtaining marriage licenses in Rowan County even though such licenses are a legal prerequisite for marriage in Kentucky. KRS § 402.080. As previously noted, the Rowan County Clerk's office issued approximately 200 marriage licenses per year prior to the *Obergefell* decision, thus enabling roughly 400 people, annually, to exercise their fundamental right to marry. [RE #26 (0:15-cv-00044): 7/20/15 Hr'g Tr., PageID #243 (212 licenses issued in 2014); *id*. (99 licenses issued in first half of 2015).] If the requested stay were granted, no one would be permitted to obtain a marriage license in Rowan County during the pendency of Davis' appeal even though this Court has previously concluded that "[t]here is thus little or no likelihood that the Clerk in her official capacity will prevail on appeal." [RE #28-1 (15-5880): Order.]

IV. THE PUBLIC INTEREST FAVORS DENYING THE REQUESTED STAY.

The public has an interest in treating all families equally under the Constitution. *Cf. Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) ("The public's interest in equality of treatment of persons deprived from important constitutional

rights . . . also supports dissolution of the stay of the district court's order."). The public interest thus also supports denying the requested stay and allowing the September 3 Order to take effect.

V. IN THE ALTERNATIVE, THIS COURT SHOULD TREAT THE SEPTEMBER 3 ORDER AS AN INDICATIVE RULING.

Rule 62.1 of the Federal Rules of Civil Procedure allows a district court to enter an indicative ruling on a motion for relief that is barred by a pending appeal to indicate how the court would rule if it had jurisdiction to decide the motion. Rule 62.1 provides in relevant part: "If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may . . . state . . . that it would grant the motion if the court of appeals remands for that purpose." Fed. R. Civ. P. 62.1(a)(3). This Court, in turn, may remand for the purpose of allowing the district court to grant the motion. *See* Fed. R. Civ. P. 62.1(c); Fed. R. App. P. 12.1(b); *United States v. Cardoza*, 790 F.3d 247, 248-49 (1st Cir. 2015).

For the reasons stated above, the District Court had jurisdiction under Rule 62(c) to enter the September 3 Order. If, however, this Court concludes that the September 3 Order could not properly be entered pending appeal of the Preliminary Injunction, Plaintiffs respectfully request that this Court treat the September 3 Order as an indicative ruling and remand for the limited purpose of allowing the District Court to enter an order as indicated while retaining

jurisdiction to proceed with the appeal of the Preliminary Injunction. See Fed. R. App. P. 12.1 advisory committee's note ("The court of appeals may . . . choose to remand for the sole purpose of ruling on the motion while retaining jurisdiction to proceed with the appeal after the district court rules on the motion . . . ."); *cf. Cardoza*, 790 F.3d at 248 (treating district court's order as indicative ruling and remanding for entry of an order as indicated).

CONCLUSION

Because the District Court had jurisdiction to enter the September 3 Order, Plaintiffs respectfully request that the motion for a stay be denied or, in the alternative, that this Court treat it as an indicative ruling and remand for the limited purpose of entry of an order as indicated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of **APPELLEES' RESPONSE OPPOSING RENEWED MOTION OF KIM DAVIS TO STAY DISTRICT COURT'S SEPTEMBER 3, 2015 INJUNCTION ORDER PENDING APPEAL** to be served October 13, 2015, by operation of this Court's electronic filing system, on the following:

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