

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' MOTION FOR
AWARD OF ATTORNEYS' FEES AND COSTS**

Pursuant to 42 U.S.C. § 1988, Plaintiffs, by counsel, move for an award of attorneys' fees and costs in the amount of \$233,058.08. This amount includes \$231,050.00 for the attorneys' fees generated from July 1, 2015 through September 14, 2016, and \$2,008.08 for the costs incurred during that time.

In support of their request, Plaintiffs tender the accompanying memorandum of law, supporting exhibits, and proposed order.

Respectfully submitted,

s/ William E. Sharp

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CERTIFICATE OF SERVICE

I certify that on September 19, 2016, I filed this motion and accompanying proposed order 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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MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR AWARD OF ATTORNEYS’ FEES AND COSTS

Plaintiffs, by counsel, submit this memorandum in support of their motion for an award of attorneys’ fees and costs in the above-styled action. The requested fees and costs are attributable to work spent preparing, filing, and litigating this matter, and for the present fees motion. The accompanying declarations establish the attorneys’ time, requested hourly rates, and the amount of costs incurred.

Procedural History

On June 27, 2015—one day after the U.S. Supreme Court’s ruling in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)—Rowan County Clerk Kim Davis decided that her office would no longer issue marriage licenses because of her personal, religious opposition to marriage for same-sex couples. [RE #26: 7/20/15 Hr’g Tr.] Rather than issue licenses to same-sex couples, Davis adopted a “no marriage licenses” policy that barred *all* qualified applicants from obtaining licenses in Rowan County. After Davis adopted this policy, her office enforced it by denying marriage licenses to Plaintiffs—two same-sex and two opposite-sex couples who reside in Rowan County and who were otherwise legally entitled to wed. [RE #21: 7/13/15 Hr’g Tr.]

After being denied marriage licenses, Plaintiffs filed a putative class-action suit challenging the “no marriage licenses” policy under the First and Fourteenth Amendments. Plaintiffs also brought official-capacity claims against Davis seeking preliminary and permanent injunctive relief barring future enforcement of the policy as well as individual-capacity damages claims against Davis and Rowan County for the license denials. [RE #1: Compl.; RE #2: Mot. for Prelim. Inj.]

On August 12, 2015, this Court, following an evidentiary hearing and full briefing by the parties, granted Plaintiffs’ request for preliminary injunctive relief. The court barred Davis, in her official capacity, from enforcing the “no marriage licenses” policy against Plaintiffs. [RE #43: Memo. Op. & Order.] Davis appealed from that ruling [RE #44: Notice of Appeal], and she sought a stay of the injunction pending appeal. [RE #45: Stay Mot.]¹

This Court denied Davis’ stay motion, but also stayed its denial of the motion pending review by the Sixth Circuit Court of Appeals. [RE #52: Order.] Then, on August 19, 2015, this Court amended its earlier ruling by clarifying that the “temporary stay” of the preliminary injunction would expire on August 31, 2015, absent further order from the Court of Appeals. [RE #55: Order.] Davis then filed a motion to stay the preliminary injunction with the Court of Appeals, but that stay request was denied. [*Miller v. Davis*, No. 15-5880, 2015 WL 10692640 (6th Cir. Aug. 26, 2015).] In denying Davis’ stay request, a unanimous panel of the Court of Appeals explained:

The request for a stay pending appeal relates solely to an injunction against Davis in her official capacity. The injunction operates not against Davis personally, but against the holder of her office of Rowan County Clerk. In light of the binding holding of *Obergefell*, it cannot be defensibly argued that the holder of the Rowan

¹ In addition to the trial and appellate litigation related to Plaintiffs’ requested preliminary injunction, the parties also engaged in simultaneous litigation in this Court and the Court of Appeals regarding Davis’ third-party complaint against then-Governor Steve Beshear and Wayne Onkst, then the Librarian and Commissioner for the Department for Libraries and Archives. [RE #34: Verified Third-Party Compl. of Defendant Kim Davis.]

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. There is thus little or no likelihood that the Clerk in her official capacity will prevail on appeal.

[*Id.* at 2, *1 (emphasis added).]

Davis then sought an emergency stay of the preliminary injunction from the Supreme Court. But, in a one-line order, the Supreme Court denied that request without asking for a response from Plaintiffs and without any published dissent. *Davis v. Miller*, 136 S. Ct. 23 (2015).

Having exhausted all attempts to stay the preliminary injunction ruling, Davis then proceeded to willfully disregard this Court's ruling by directing her employees to continue enforcing the "no marriage licenses" policy. [RE #78: 9/3/15 Hr'g Tr.] That decision resulted in Plaintiffs April Miller and Karen Roberts again being denied a marriage license on September 1, 2015. [*Id.*] Left with no other recourse, Plaintiffs moved to hold Davis in civil contempt for her refusal to comply with the preliminary injunction. [RE #67: Mot. to Compel.] Plaintiffs also filed a Rule 62(c) motion to modify the preliminary injunction so that Davis would be barred from enforcing her "no marriage licenses" policy against *any* eligible applicants, not just the named Plaintiffs. [RE #68: Mot. to Amend/Correct.] On September 1, 2015, the same day Plaintiffs filed their motions, this Court held a telephonic conference and scheduled a hearing on Plaintiffs' contempt motion for September 3, 2015. [RE #69: Min. Entry Order.]

At the September 3 hearing, this Court granted Plaintiffs' motion under Rule 62(c) and entered an order ("September 3 Order") modifying the preliminary injunction. [RE #74: Order.] In doing so, this Court explained that, even though briefing on Plaintiffs' still-pending class certification motion had been stayed and Davis had appealed the preliminary injunction ruling, it maintained jurisdiction to grant the requested modification. The Court reasoned that allowing the preliminary injunction "to apply to some, but not others" would not "make practical sense." [RE

#78: 9/3/15 Hr’g Tr.] The Court also noted that, after Plaintiffs filed this suit, two related cases were filed by couples whom Davis also denied marriage licenses. [*Id.*] The Court concluded that those cases raised identical legal issues, and that the reasoning behind the preliminary injunction applied with equal force to the plaintiffs in those cases. [*Id.*] Thus, the Court modified the September 3 Order by preliminarily enjoining Davis, in her official capacity, from enforcing her “no marriage licenses” policy against *any* applicants who were otherwise legally eligible to marry. [*Id.*]

On September 3, this Court also found Davis in civil contempt for her continued refusal to comply (or to allow her subordinates to comply) with the preliminary injunction, and the Court remanded her to the custody of the U.S. Marshal. [RE #75: Minutes Order.] Prior to the conclusion of the day’s proceedings, and after Davis’ deputy clerks agreed to comply with the preliminary injunction by not enforcing Davis’ “no marriage license” policy, the Court afforded Davis an opportunity to purge herself of contempt by agreeing not to interfere with the deputy clerks’ compliance with the preliminary injunction. [RE #78: 9/3/15 Hr’g Tr.] Davis’ counsel met with her during a court recess to discuss the matter and subsequently informed the Court that she would not agree to do so. [*Id.*]

While Davis remained in custody on the civil contempt ruling, several of the named Plaintiff couples sought and received marriage licenses [RE #84: Status Report], as did plaintiffs from the related cases. [RE #113-1: Def./Third-Party Pl. Kim Davis’ Mem. of Law in Support of Mot. for Immediate Consideration & Mot. to Stay Sept. 3, 2015 Inj. Order, 13 n.7.] This Court then lifted the contempt sanction and released Davis from custody in light of the deputies’

compliance with the preliminary injunction.² The court further ordered that Davis “**shall not interfere** in any way, directly or indirectly, with the efforts of her deputy clerks to issue marriage licenses to all legally eligible couples.” [RE #89: Order (emphasis in original).]

Davis sought an emergency stay of the September 3 Order with the Court of Appeals, but that motion was denied because Davis failed to first seek a stay with this Court as required by FRCP 8(a)(1). [RE #43: Appellant Davis’ Emergency Mot. to Stay District Ct.’s Sept. 3, 2015 Inj. Order Pending Appeal (15-5880); RE #50-1: Order (15-5880).] Davis then sought emergency relief with this Court to stay the September 3 Order, but that motion, too, was denied. [RE #121: Order.] In denying the requested stay, this Court found that the September 3 Order was necessary to preserve the status quo created by the preliminary injunction, which enjoined Davis from enforcing her “no marriage licenses” policy—a policy the Court found violated the Supreme Court’s *Obergefell* decision by imposing an unlawful burden on the fundamental right to marry. [*Id.*] The Court also concluded 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.*]

More than a week after this Court denied Davis’ emergency motion for a stay, Davis again moved the Court of Appeals for a stay of the September 3 Order. [RE #57-1: Renewed Mot. of Appellant to Stay Sept. 3, 2015 Inj. Order Pending Appeal (15-5880).] That stay request was again denied. [RE #62-1: Order (15-5880).]

² Earlier on September 8, prior to her release, Davis filed an emergency motion with the Court of Appeals to stay the contempt sanction, but that motion was denied as moot because Davis had already been released from custody by the time the motion was fully submitted. [RE #39-1: Order (15-5978).]

During the pendency of Davis' three separate appeals in this litigation, the Kentucky General Assembly enacted SB 216 amending Kentucky's marriage licensing requirements. Among its provisions, SB 216 eliminated the requirement that certain information appear on Kentucky marriage licenses, including: 1) an authorizing statement providing that the license is issued in the name of the county clerk; 2) the signature of the county clerk or deputy clerk from the county in which the license was issued; 3) a statement on the marriage certificate signed by the county clerk or deputy clerk from the county in which the marriage license was issued; and 4) any reference on the marriage certificate that the license was issued under the authority of a county clerk.

As a result of these changes, Davis filed, and the Court of Appeals granted, a motion to dismiss her appeals for lack of jurisdiction. [RE #95 (15-5880); RE #101: Order (15-5880).] The Court of Appeals also ordered the preliminary injunction ruling and subsequent modification of that ruling vacated, but it declined to likewise order the contempt ruling vacated. [RE #101: Order (15-5880).] On remand, this Court vacated the preliminary injunction rulings consistent with the appellate decision but also *sua sponte* dismissed Plaintiffs' remaining damages claims as well the related actions. [RE #181.] Plaintiffs now timely move for an award of attorneys' fees and costs as prevailing parties in the above litigation.

Argument

I. PLAINTIFFS ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES AS PREVAILING PARTIES IN THIS ACTION.

A plaintiff qualifies as a "prevailing party," and is thus entitled to recover attorneys' fees under the Civil Rights Attorney's Fees Act of 1976, 42 U.S.C. § 1988, where she succeeds "on any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit." *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 789 (1989)

(internal quotation marks and citation omitted). “The touchstone of the prevailing party inquiry . . . [is] the material alteration of the [parties’] legal relationship . . . in a manner which Congress sought to promote in the fee statute.” *Id.* at 792-93.

“A material alteration [in the parties’ legal relationship] requires that [t]he plaintiff [] obtain an enforceable judgment against the defendant from whom fees are sought, or comparable relief through a consent decree or settlement.” *DiLaura v. Twp. of Ann Arbor*, 471 F.3d 666, 670 (6th Cir. 2006) (quoting *Farrar v. Hobby*, 506 U.S. 103, 111 (1992)). This change in the parties’ legal relationship must be court-ordered, and it must directly benefit the plaintiff “at the time of the judgment or settlement.” *Id.* (internal quotation marks omitted); *Buckhannon Bd. & Care Home Inc. v. W. Va. Dep’t of Health & Human Servs.*, 532 U.S. 598, 605 (2001).

Here, the merits-based preliminary injunction barring Davis, in her official capacity, from enforcing the “no marriage licenses” policy is sufficient to confer prevailing party status on Plaintiffs notwithstanding that the ruling was later vacated due to mootness. The Sixth Circuit has held that a merits-based preliminary injunction that directly benefits the plaintiff, but is later vacated because of mootness, may nonetheless constitute a material change in the parties’ legal relationship sufficient to confer prevailing party status. *McQueary v. Conway*, 614 F.3d 591, 599-601 (6th Cir. 2010).

In order to determine whether a merits-based preliminary injunction is sufficient to confer prevailing party status, courts in this circuit must conduct a “contextual and case-specific inquiry” that examines, *inter alia*, the nature of the relief obtained. *Id.* at 601. When properly applied here, the contextual and case-specific inquiry supports Plaintiffs’ prevailing party status because: 1) Plaintiffs obtained a merits-based preliminary injunction; 2) the preliminary injunction materially altered the parties’ legal relationship and conferred a direct and irrevocable benefit to Plaintiffs;

and 3) the preliminary injunction was vacated *only* because of mootness resulting from a change in the law, *not* because of a subsequent merits-based decision.

First, it cannot be reasonably disputed that this Court granted Plaintiffs’ requested preliminary injunctive relief *on the merits of their claims*. Specifically, this Court applied heightened scrutiny to analyze the challenged “no marriage licenses” policy because the policy directly and significantly interfered with individuals’ fundamental right to marry. [RE #43: Mem. Op. & Order at 11-12.]

It does not seem unreasonable for Plaintiffs, as Rowan County voters, to expect their elected official to perform her statutorily assigned duties. And yet, that is precisely what Davis is refusing to do. Much like the statues at issue in *Loving* [*v. Virginia*, 388 U.S. 1 (1968)] and *Zablocki* [*v. Redhail*, 434 U.S. 374 (1978)], Davis’ “no marriage licenses” policy significantly discourages many Rowan County residents from exercising their right to marry and effectively disqualifies others from doing so.

[*Id.* at 14.]

The Court further found that the “no marriage license” policy did not serve a compelling governmental interest and, instead, actually *undermined* the state’s countervailing (and compelling) interests in preventing Establishment Clause violations and in upholding the rule of law. [*Id.* at 15.] Thus, the Court held that Plaintiffs were likely to succeed on the merits of their claims and would suffer irreparable harm absent the injunction. [*Id.* at 15-16.] The Court also examined, and rejected, each of the purported harms Davis alleged would result if an injunction were granted. [*Id.* at 18; 21 (Davis unlikely to prevail on free exercise claims); *id.* at 21-24 (Davis unlikely to prevail on free speech claim); *id.* at 25-27 (Davis unlikely to prevail under Religious Test Clause and Kentucky Religious Freedom Restoration Act).]³

³ Further reinforcing the merits-based nature of the ruling, a unanimous panel of the Court of Appeals denied Davis’ attempt to stay the preliminary injunction ruling and, in doing so, concluded that “it cannot be defensibly argued that the holder of the Rowan County Clerk’s office, apart from

And once issued, the court-ordered preliminary injunction materially altered the parties' legal relationship in that it compelled Davis, in her official capacity, to refrain from enforcing her "no marriage licenses" policy as to the Plaintiffs. Then, following the September 3 modification, the Court further barred her enforcement of the policy as to *all* eligible applicants. The material alteration in the parties' legal relationship is also evident by the fact that Davis, unsatisfied with the adverse ruling, persisted in refusing to comply with the ruling even after she sought (unsuccessfully) to stay its enforcement with the Supreme Court. *Davis v. Miller*, 136 S. Ct. 23 (2015). Because Davis persisted in refusing to comply (or allow her subordinates to comply) with the preliminary injunction ruling, this Court properly found her in civil contempt. [RE #75.] Only upon Davis' incarceration for civil contempt did her subordinates comply with the preliminary injunction ruling by issuing marriage licenses to several Plaintiffs in this case and in the related actions. [RE #84); RE #113-1: Def./Third-Party Pl. Kim Davis' Mem. of Law in Support of Mot. for Immediate Consideration & Mot. to Stay Sept. 3, 2015 Inj. Order Pending Appeal.]

In addition to being a court-ordered material change in the parties' legal relationship, the preliminary injunction also provided a direct and lasting benefit to Plaintiffs in the form of marriage licenses that were then used by two of the Plaintiff couples to marry.⁴ This is the relief requested by Plaintiffs in their Complaint, and that is the measure of whether one obtains a direct

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." The panel further concluded that "[t]here is thus little or no likelihood that [Davis] in her official capacity will prevail on appeal." [*Miller v. Davis*, No. 15-5880, 2015 WL 10692640 (6th Cir. Aug. 26, 2015).]

⁴ Plaintiffs Miller and Roberts obtained their marriage license on September 4, 2015, and were married on September 10, 2015; and Plaintiffs Skaggs and Spartman obtained their marriage license on September 4, 2015, and were married on September 9, 2015. [See attached Plaintiffs' Exhibits 1 and 2, respectively.] Plaintiffs Fernandez and Holloway obtained a marriage licenses on September 8, 2015, but, for personal reasons, decided to marry in 2016, which required them to obtain a new marriage license.

benefit from the ruling. *McQueary*, 614 F.3d at 602 (“In considering whether a claimant directly benefitted from litigation, we usually measure the plaintiff’s gain based on the relief requested in his complaint”); *id.* at 601 (holding that merits-based preliminary injunction barring enforcement of various restrictions on funeral protest activities conferred direct benefit on plaintiff who sought to engage in those prohibited, and enjoined, activities). Just as with individuals seeking injunctive relief to engage in specific protest activities, Plaintiffs here successfully attained a merits-based preliminary injunction barring enforcement of a policy that blocked them from obtaining a marriage license. Once enjoined, Plaintiffs were not only able to obtain their marriage licenses, but were able to wed, thus further solidifying the irrevocable nature of the benefit obtained. *See id.* at 599 (agreeing with cases in which preliminary injunction winners are prevailing parties) (citing *Young v. City of Chicago*, 202 F.3d 1000 (7th Cir. 2000); *Watson v. Cty. of Riverside*, 300 F.3d 1092 (9th Cir. 2002); *Thomas v. Nat’l Sci. Found.*, 330 F.3d 486 (D.C. Cir. 2003)).

Short of obtaining a final judgment, Plaintiffs could attain no more success than they achieved here: 1) a merits-based ruling enjoining the official-capacity enforcement of the challenged “no marriage licenses” policy; and 2) Defendant’s court-ordered (as opposed to voluntary) compliance with the preliminary injunction ruling thereby, resulting in Plaintiffs’ attainment of a direct and irrevocable benefit in the form of marriage licenses that enabled them to marry.

Moreover, the fact that the preliminary injunction was later vacated does not divest Plaintiffs of their prevailing party status. Specifically, the preliminary injunction rulings were vacated, not because of a merits-based decision, but because action by the Kentucky General Assembly rendered Davis’ appeals moot. As recognized by *McQueary*, a preliminary injunction

later vacated for reasons unrelated to its merits may nonetheless be sufficient to confer prevailing party status, particularly where, as here, it conferred a direct and lasting benefit to Plaintiffs that materially altered the parties' legal relationship. Other circuits have similarly held that merits-based preliminary injunctions that are subsequently rendered moot may nonetheless confer prevailing party status. *See, e.g., Rogers Grp., Inc. v. City of Fayetteville, Ark.*, 683 F.3d 903, 910 (8th Cir. 2012) (upholding award of attorneys' fees based on preliminary injunction success later rendered moot); *Kan. Judicial Watch v. Stout*, 653 F.3d 1230, 1240-41 (10th Cir. 2011) (recognizing prevailing party status where plaintiffs "obtained a preliminary injunction that provided some of the relief sought in the complaint, represented an unambiguous indication of probable success on the merits, and was dissolved only after the actions of third parties mooted the case"); *Dearmore v. City of Garland*, 519 F.3d 517, 521 (5th Cir. 2008) (holding that plaintiffs were entitled to attorneys' fees based on preliminary injunction in which the district court made an "unambiguous indication of probable success on the merits," despite city's decision to subsequently amend the challenged ordinance, thereby mooting the case); *but see Smyth v. Rivero*, 282 F.3d 268, 276-77 (4th Cir. 2002) (holding that preliminary injunctions insufficient to confer prevailing party status).

The Tenth Circuit's post-*McQueary* decision in *Kansas Judicial Watch* is particularly instructive. There, the plaintiffs challenged certain portions of the Kansas Code of Judicial Conduct on free speech grounds, and they sought a declaratory judgment as well as preliminary and permanent injunctive relief to bar enforcement of those provisions. 653 F.3d at 1232-33. The district court awarded the plaintiffs a merits-based preliminary injunction, but the defendant appealed that adverse ruling. *Id.* at 1234 (noting that district court conducted a "painstaking examination of the merits prong of the preliminary-injunction standard"). While the preliminary

injunction ruling was on appeal, the Kansas Supreme Court amended the challenged Code provisions, causing the Tenth Circuit to vacate the preliminary injunction, dismiss the appeal as moot, and remand for entry of dismissal. *Id.* (citing *Kansas Judicial Review v. Stout*, 562 F.3d 1240, 1249 (10th Cir. 2009)).

On remand, the district court dismissed the case and denied plaintiffs' request for attorneys' fees because, in its view, the preliminary injunction did not "materially alter" the parties' legal relationship due to plaintiffs' failure to achieve their "primary relief," *i.e.*, final declaratory relief that the rules were invalid both on their face and as-applied. *Kan. Judicial Review*, 653 F.3d at 1239-40. In the subsequent appeal of that prevailing party decision, however, the Tenth Circuit reversed. The Tenth Circuit considered whether the preliminary injunction provided "relief on the merits," *i.e.*, whether the preliminary injunction "afford[ed] relief sought in the plaintiff's complaint," and whether it "represent[ed] an unambiguous indication of probable success on the merits," a necessary element for prevailing party status (as opposed to a mere status quo injunction). *Id.* at 1238. In concluding that it did, the court stated:

Appellants sought two basic types of relief in their complaint: (1) a declaration that the Pledges, Commits, and Solicitation clauses were unconstitutional; and (2) preliminary and permanent injunctions that would prohibit the Commission from enforcing the canons against judicial candidates who responded to KJR's questionnaire. *The preliminary injunction issued by the district court provided the second form of relief as long as it was in effect.* That is, the preliminary injunction prohibited enforcement of the challenged canons and allowed Appellants to engage in their speech activities without fear of a disciplinary action during the pendency of the case.

Id. at 1239 (emphasis added). Because the preliminary injunction also represented "an unambiguous indication of probable success on the merits" (that was not later undone by an adverse ruling on the merits), the Tenth Circuit held that it sufficed to confer prevailing party status notwithstanding that the preliminary injunction was later vacated. *Id.* at 1239-40 (emphasizing

“the critical distinction between preliminary injunctions vacated on mootness grounds and preliminary injunctions vacated as a result of an adverse decision on the merits”).

As in *Kansas Judicial Watch*, Plaintiffs here sought, *inter alia*, both declaratory and injunctive relief in their complaint, and they attained a merits-based preliminary injunction barring Davis, in her official capacity, from enforcing the “no marriage licenses” policy. [RE #1: Complaint, at 14.] In spite of Davis’ willful refusal to comply with the ruling after exhausting all attempts to stay its enforcement, Plaintiffs nonetheless secured the direct and irrevocable benefit they sought—issuance of a marriage license and thus the ability to wed—once Davis was found in civil contempt and no longer able to bar her subordinates from complying with the ruling. Thus, *Kansas Judicial Watch* makes clear that the preliminary injunction ruling was sufficiently “enduring” to support Plaintiffs’ status as prevailing parties in this litigation.

Kansas Judicial Watch is also instructive in that it establishes that prevailing party status is not confined to situations in which mootness is caused by the mere passage of time. There, the preliminary injunction barred defendants’ ability to enforce the challenged provisions during the pendency of the case. *Id.* And, as here, the plaintiffs’ claims were not rendered moot by the mere passage of time, but rather by the affirmative repeal by a third party of the challenged provisions after the entry of the merits-based preliminary injunction barring their enforcement. *Id.* at 1234, 1240. By holding that the preliminary injunction success supported prevailing party status despite the subsequent repeal, the Tenth Circuit implicitly rejected the contention that *only* preliminary injunction winners whose claims are rendered moot by the “passage of time” can attain prevailing party status.

Because Plaintiffs obtained a merits-based preliminary injunction that granted them a direct and lasting benefit that materially altered the parties' relationship, and that was later undone solely due to mootness unrelated to the merits of their claims, Plaintiffs are thus prevailing parties.

II. PLAINTIFFS' REQUESTED ATTORNEYS' FEES ARE REASONABLE.

Once a civil rights plaintiff attains prevailing party status, the plaintiff "should ordinarily recover an attorney's fee from the defendant." *Fox v. Vice*, 563 U.S. 826, 833 (2011) (internal quotation marks and citation omitted). In awarding attorneys' fees, the "primary concern . . . is that the fee awarded be reasonable, that is, one that is adequately compensatory to attract competent counsel." *Adcock-Ladd v. Sec'y of Treasury*, 227 F.3d 343, 349 (6th Cir. 2000) (internal quotation marks and citation omitted).

The amount of fees to be recovered is based on "the fee applicant's lodestar, which is the proven number of hours reasonably expended on the case by an attorney, multiplied by his court-ascertained reasonable hourly rate." *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 821 (6th Cir. 2013) (internal quotation marks and citation omitted). A fee determined by the lodestar method is entitled to a "strong presumption" that it "represents the reasonable fee." *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (internal quotation marks and citation omitted). Here, several attorneys for the Plaintiffs invested a total of 608.8 hours in the prosecution (and defense) of the merits-based preliminary injunction at all three levels of the federal judiciary and in multiple appeals. Because both the hours expended in this case (and the requested hourly rates) are reasonable, the Court should award Plaintiffs their full lodestar amount as set forth below.

A. The Hours Expended By Counsel For The Plaintiffs Are Reasonable.

A successful civil rights plaintiff is entitled to recover attorneys' fees for hours she establishes, via time records and declarations, that were "actually and reasonably expended in the

prosecution of the litigation.” *Imwalle v. Reliance Med. Prods., Inc.*, 515 F.3d 531, 553 (6th Cir. 2008 (internal quotation marks and citations omitted)).

In this case, Plaintiffs’ counsel include the following: William E. Sharp, Dan Canon, Laura Landenwich, L. Joe Dunman, Ria Tabacco Mar, James Esseks, Daniel Mach and Heather L. Weaver. Attached are counsels’ declarations containing their time entries in this case. [*See attached* Exh. 4: Sharp Decl.; Exh. 5: Canon Decl.; Exh. 6: Esseks Decl.; Exh. 8: Mach Decl.] As evidenced by those declarations, each attorney provides sufficient detail regarding the duration of time spent working on (and the specific nature of) various tasks throughout this litigation to enable this court to determine that the hours “were actually and reasonably expended” in prosecuting this case.

Specifically, the attached declarations establish that the hours contributed by counsel for the Plaintiffs are as follows: William Sharp (230.5 hours); Dan Canon (134 hours); Laura Landenwich (38.6 hours); L. Joe Dunman (30.4 hours); Ria Tabacco Mar (66.3 hours); James Esseks (21.1 hours); Dan Mach (26.4 hours); and Heather Weaver (70.4 hours). This investment of time by multiple attorneys is consistent with the able prosecution of a civil rights action, particularly one as procedurally complex as this one in which multiple appeals were involved and where litigation occurred on multiple fronts (and in more than one federal court) simultaneously.

Moreover, the utilization of multiple counsel in complex litigation “is a common practice, primarily because it results in a more efficient distribution of work. It allows more experienced, accomplished, and expensive attorneys to handle more complicated matters and less experienced, accomplished, and expensive counsel to handle less complicated ones.” *Gautreaux v. Chicago Hous. Auth.*, 491 F.3d 649, 661 (7th Cir. 2007) (internal citation omitted). And it this allocation of personnel resources that allowed Plaintiffs to litigate this case effectively and efficiently as

reflected by the billing records attached. To the extent that there is overlap in the hours expended by counsel, it was only when necessary in light of the compressed timeframes in which litigation events occurred. And “duplicative” billing, where two attorneys are billing for the same telephone conversation or meeting, is both necessary and reasonable in this instance because consultation among counsel resulted in a more efficient division of labor. *See Haile v. Holder*, 384 Fed. Appx. 501, 503 (7th Cir. 2010) (“The practice of law often, indeed usually, involves significant periods of consultation among counsel.” (internal quotation marks and citation omitted)). Additionally, Plaintiffs have not sought reimbursement for over 70 hours contributed by experienced Supreme Court litigators at the ACLU. [Exh. 6: Esseks Decl., at ¶ 17.]

Further, the time entries contain sufficient detail to identify the specific tasks for which each attorney’s time was devoted. Because these tasks were reasonably spent in furtherance of this litigation (or in preparation for this litigation), and because counsel efficiently divided tasks thereby effectively eliminating unnecessary duplication of efforts, any reduction in hours is unwarranted. *See Webb v. Bd. of Educ. of Dyer Co., Tenn.*, 471 U.S. 234, 243 (1985) (“Of course, some of the services performed before a lawsuit is formally commenced by the filing of a complaint are performed ‘on the litigation.’ Most obvious examples are the drafting of the initial pleadings and the work associated with the development of the theory of the case.”).

B. Counsel’s Requested Hourly Rates Are Reasonable.

The second step in calculating the lodestar amount is multiplying the number of compensable hours by the attorney’s hourly rate. *Waldo*, 726 F.3d at 821. In doing so, district courts enjoy “broad discretion” to determine the reasonableness of claimed hourly rates. *Wayne v. Vill. of Sebring*, 36 F.3d 517, 533 (6th Cir. 1994). Courts must evaluate the hourly rates within “the prevailing market rate in the relevant community” — here, the Eastern District of Kentucky

for many of Plaintiffs' counsel and other jurisdictions for other of Plaintiffs' counsel. *Adcock–Ladd*, 227 F.3d at 350 (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). For local counsel, the “prevailing market rate is that rate which lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record.” *Waldo*, 726 F.3d at 821-22 (internal quotation marks and citation omitted).

As for the hourly rates for ACLU attorneys located outside Kentucky, local hourly rates should not apply because those attorneys were included only after the Plaintiffs obtained the merits-based preliminary injunction and Davis' litigation strategy required the participation of additional counsel. “Where a fee applicant seeks to recover fees for an out-of-town specialist, the district court must determine (1) whether hiring the out-of-town specialist was reasonable in the first instance, and (2) whether the rates sought by the out-of-town specialist are reasonable for an attorney of his or her degree of skill, experience, and reputation.” *Ne. Ohio Coalition for the Homeless v. Husted*, ___ F.3d ___, Nos. 14-4083/ 4084/ 4132/ 4133/ 15-3295/ 3296/ 3380/ 3381, 2016 WL 4073489, at *20 (6th Cir. Aug. 1 2016) (internal quotation marks and citation omitted). As noted above, the multiplication of the litigation by Davis in terms of the arguments advanced, the sheer number of filings, and in the procedural complexity of the litigation in which three separate appeals were generated and third-party claims advanced, rendered imminently reasonable the inclusion of outside counsel who, like the ACLU counsel, were sufficiently experienced in civil rights litigation to ably, and efficiently, assist with the litigation tasks demanded of this case.

Accordingly, Plaintiffs request that the out-of-state ACLU counsel be compensated using rates that are more aligned with the rates in their legal markets— New York City and Washington D.C., as discussed further below. Specifically, Plaintiffs request the following hourly rates: William Sharp (\$350); Dan Canon (\$300); Laura Landenwich (\$300); Joe Dunman (\$250); Ria

Tabacco Mar (\$350); James Esseks (\$700); Daniel Mach (\$675); and Heather L Weaver (\$500). Given each counsel's respective qualifications, these hourly rates are consistent with those charged by attorneys in the relevant jurisdictions with comparable skill and experience. [See Exh. 3: Belzley; Exh. 4: Sharp Decl.; Exh. 5: Canon Decl.; Exh. 6: Esseks Decl.; Exh. 7: Clark Decl.; Exh. 8: Mach Decl.]

1. Local Counsel

The requested hourly rate of \$350 for William Sharp is reasonable. Mr. Sharp possesses more than sixteen years' litigation experience, almost ten of which have been with the ACLU of Kentucky where his practice has been devoted almost exclusively to federal civil rights litigation. [Exh. 4: Sharp Decl., at ¶ 6] In 2014 (the most recent contested fee decision in which a court assessed Mr. Sharp's hourly rate), the court awarded Sharp his requested hourly rate of \$275 for successfully prosecuting a voting rights case on behalf of his clients. [*Id.* at ¶ 10(a).] And in 2011, a court awarded Mr. Sharp his requested hourly rate of \$200 for appellate work spent successfully opposing certiorari in the U.S. Supreme Court, but noted that "[t]he court would not be surprised if a large firm in Kentucky *were to charge more than twice Sharp's rate for an attorney with the same amount of experience to litigate the same matter.*" *ACLU of Ky. v. McCreary Cnty*, Civil Action No. 99-507-JBC (E.D. Ky. May 17, 2011) (emphasis added). Similarly, Louisville-based attorney Greg Belzley makes clear in his declaration that his familiarity with fees charged by attorneys in the Eastern District of Kentucky leads him to conclude that Sharp's requested hourly rate of \$350 is comparable to that charged by attorneys with similar skill and experience. [See generally Exh. 3: Belzley Decl.]

Attorney Daniel Canon has been practicing law for nine years and is a dedicated civil rights lawyer who has represented plaintiffs in a wide variety of claims under 42 U.S.C. § 1983, and

constitutional actions generally, including inmates' rights cases and class action claims. [Exh. 5: Canon Decl. ¶ 9.] He is consistently recognized by peer groups as a top attorney in the Louisville area in the area of individual/constitutional rights, with experience that includes cases heard by the United States Supreme Court and the Supreme Court of Kentucky. [*Id.* ¶¶ 9-10.]⁵

Attorney Laura Landenwich has also been practicing law for nine years. She is admitted to practice in Kentucky and Indiana state courts, all Kentucky federal courts, the U.S. District Court for the Southern District of Indiana, the Sixth Circuit Court of Appeals, and the United States Supreme Court. [Exh. 5: Canon Decl. ¶ 12.] Ms. Landenwich has focused her practice in the area of civil rights and employment litigation. She has represented plaintiffs in civil rights cases at both the trial and appellate court level, most recently at the United States Supreme Court. [*Id.*] She has been named a Kentucky "Super Lawyer" for 2014-16 and received the "Top Lawyer" recognition by Louisville Magazine based upon peer vote. [*Id.*]

L. Joe Dunman graduated from the University of Louisville, Louis D. Brandeis School of Law in 2012. Mr. Dunman is admitted to practice before all Kentucky state courts, the U.S. District Court for the Western District of Kentucky, and the Sixth Circuit Court of Appeals. [Exh. 5: Canon Decl. ¶ 14.] He has briefed several cases before the Kentucky Court of Appeals, the Kentucky Supreme Court, and the Sixth Circuit Court of Appeals. [*Id.*] He is also an adjunct professor of constitutional rights at Bellarmine University. [*Id.*]

⁵ See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Bourke v. Beshear*, 996 F. Supp. 2d 542 (W.D. Ky. 2014); *Sietsema v. Adams* Nos. 2013-CA-001159-MR, 2013-CA-001461-MR, 2015 Ky. App. LEXIS 116 (Ct. App. Aug. 14, 2015); *Admin. Office of the Courts v. Vidaud*, 2015 Ky. App. LEXIS 44 (Ky. Ct. App. Apr. 3, 2015); *Allen v. Commonwealth*, 395 S.W.3d 451 (Ky. 2013); *King v. Taylor*, 694 F.3d 650 (6th Cir. 2012); *Martin v. O'Daniel*, 2011 Ky. App. Unpub. LEXIS 429 (Ky. Ct. App. May 20, 2011); *McKinney v. City of Paducah*, 2014 Ky. App. Unpub. LEXIS 138 (Ky. Ct. App. Feb. 14, 2014).

2. Out-Of-State Counsel

The hourly rates sought for out-of-town specialists from the ACLU also are reasonable. Lawyers from the ACLU's national offices in New York City and Washington, D.C. contributed invaluable experience, resources, and insight. The United States District Court for the Western District of Kentucky recently approved out-of-town rates for ACLU lawyers (including one of the lawyers associated with this case) in the Kentucky marriage litigation, finding that the requested rates were "reasonable for attorneys in the relevant market." *Bourke v. Beshear*, No. 3:13-CV-00750-CRS, 2016 WL 164626, at *6 (W.D. Ky. Jan. 13, 2016).

Specifically, James Esseks has been the director of the ACLU's LGBT & HIV Project since 2010. [Exh. 6: Esseks Decl. ¶ 6.] He was the litigation director of the Project from 2001 to 2010. [*Id.*] His practice is based in New York, but the scope of his work is national. [*Id.* ¶¶ 7-12.] He was co-counsel in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which established the freedom to marry for same-sex couples nationwide, and in *Bourke v. Beshear* and *Love v. Beshear*, the Kentucky marriage cases, which were consolidated with *Obergefell* in the Supreme Court. *Id.* ¶ 8.] In addition, he has been co-counsel in dozens of other marriage cases in state and federal courts throughout the country. [*Id.* ¶¶ 7-12.] He graduated from Harvard Law School and clerked for a federal district judge in the Southern District of New York, as well as a federal circuit judge in the Ninth Circuit. [*Id.* ¶¶ 2-4.] He worked for a private firm in New York prior to joining the ACLU. [*Id.* ¶ 5.] His claimed rate of \$700 per hour is commensurate with practitioners of similar skill and experience in the New York City market and was approved earlier this year by the United States District Court for the Western District of Kentucky in the Kentucky marriage litigation. *Bourke*, 2016 WL 164626, at *5-*6 (finding that \$700 per hour is a reasonable rate for attorneys of Esseks's

skill and experience in the New York City market for work done in a Kentucky case). The reasonableness of his rate is further justified by the declaration of Anne L. Clark, a partner with the firm Vladeck, Raskin & Clark, P.C., in New York City, attached as Exhibit 7.

Ria Tabacco Mar is a staff attorney with the ACLU's LGBT & HIV Project. [Exh. 6: Esseks Decl. ¶ 22.] She is a graduate of Harvard College and New York University School of Law. [*Id.* ¶ 19.] Ms. Mar served as a judicial law clerk for the Honorable Julia Smith Gibbons, United States Circuit Judge for the Sixth Circuit, from 2008 to 2009, and for the Honorable Victor Marrero, United States District Judge for the Southern District of New York, from 2010 to 2011. [*Id.* ¶ 20.] She has practiced law since 2008 and has developed an expertise in federal constitutional law and LGBT rights. [*Id.* ¶¶ 20-22.] Her requested rate of \$350 per hour is commensurate with rates recently awarded by the United States District Court for the Western District of Kentucky for the work of other staff attorneys in the ACLU's LGBT & HIV Project with skills and experience similar to that of Ms. Mar. *See Bourke*, 2016 WL 164626, at *5 -*6 (awarding \$400 per hour for 2005 law graduate and \$325 per hour for 2010 law graduate as reasonable rates in the New York City market for work done in a Kentucky case); *see also* Exh. 7: Clark Decl., at ¶ 9 (lawyers in the New York market with Ms. Mar's skills and experience command at least \$375 per hour).

The hourly rates requested for Mr. Mach (\$675) and Ms. Weaver (\$500) are consistent with the hourly rates awarded to the out-of-town ACLU attorneys in *Bourke*, and in fact, are lower than the hourly rates established in the adjusted "*Laffey Matrix*"—an attorneys' fee schedule that "sets out a general guideline for awarding attorneys' fees based on experience" in fee-shifting civil rights cases involving complex litigation in the D.C. area. *Salazar ex rel. Salazar v. District of Columbia*, 809 F.3d 58, 62 (D.C. Cir. 2015). In *Salazar*, the Court of Appeals agreed that the "Legal Services Index ("LSI") *Laffey Matrix*," an updated version of the *Laffey Matrix* that adjusts

the hourly rate for attorneys based on inflation, was a proper basis on which to award attorneys' fees in a § 1983 class action. *Id.* at 63-66. Indeed, as the court noted, "the LSI-adjusted matrix is probably a conservative estimate of the actual cost of legal services in this area." *Id.* at 48 (internal quotation marks and citation omitted). *See also Makray v. Perez*, 159 F.Supp.3d 25 (D.D.C. 2016) (discussing at length the LSI *Laffey* Matrix, and awarding hourly rate in sex discrimination case based on LSI *Laffey* Matrix); *Electronic Privacy Info. Ctr. v. Dep't of Homeland Sec.*, ___ F. Supp. 3d ___, No. 13-260 (JEB), 2016 WL 3919810 (D.D.C. July 18, 2016) (noting that "[t]he parties agree that the LSI *Laffey* Matrix acts as a starting point"); *cf.* D.C. Code Ann. §§32-1308(b)(1) (providing that attorneys' fees in civil actions alleging violations of the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, must be "computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services. The court shall use the rates in effect at the time the determination is made.").

Under the LSI *Laffey* Matrix, an attorney who is 20 or more years out of law school, such as Mr. Mach, would be entitled to an hourly rate of \$797 for work performed between June 1, 2015, and May 31, 2016, and an hourly rate of \$826 for work performed after June 1, 2016. *Compare* (*Salazar*, 809 F.3d 58, Joint Appendix at 1248, *available online* at http://tpmlaw.com/global_pictures/Joint_Appendix__Volume_III_.PDF (LSI *Laffey* Matrix with setting hourly rate at \$753 for work performed between June 1, 2012, and May 31, 2013, by attorneys with 20-plus years of experience), *with Adjustments to the 1988-1989 Laffey Matrix Rates Using the Legal Services Index*, Terris, Prevlik & Millian, LLP, at 4, *available online* at [http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_\(00042285-5xC4E0D\).PDF](http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_(00042285-5xC4E0D).PDF) (showing most recent LSI *Laffey* Matrix update setting hourly rate for

attorneys with 20-plus years of experience at \$797 for work performed between June 1, 2015, and May 31, 2016, and \$826 for work performed after June 1, 2016). But, here Mr. Mach is asking only for \$675—an hourly rate that is more-than-justified by his extensive experience in First Amendment litigation.

Mr. Mach received his J.D., *magna cum laude*, from the New York University School of Law (Order of the Coif) in 1996. [Exh. 8: Mach Decl. ¶ 2.]. He then served as a law clerk to the Honorable Barry T. Moskowitz of the U.S. District Court for the Southern District of California. [*Id.* ¶ 9.] As a partner in the Washington, D.C. office of Jenner & Block, he specialized in First Amendment and appellate law as a member of the firm’s Appellate and Supreme Court, and Media and First Amendment practices. [*Id.* ¶ 8.] In that position, he served as direct counsel in a wide variety of cases in state courts, federal district courts, federal courts of appeals, and several constitutional cases before the U.S. Supreme Court, including *Vieth v. Jubelirer*, 541 U.S. 267 (2004); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *United States v. American Library Ass’n*, 539 U.S. 194 (2003). [*Id.*]

Mr. Mach joined the ACLU’s Program on Freedom of Religion and Belief in 2006. Today, as the director of PFRB, he litigates and coordinates a wide range of religious liberty cases nationwide in both state and federal courts, and at the trial, appellate, and Supreme Court levels. [*Id.* ¶¶ 4-5.] These cases are primarily brought under the Establishment Clause and the Free Exercise Clause of the First Amendment to the U.S. Constitution, as well as numerous federal and state religious freedom statutes.). [*Id.* ¶ 5 (listing examples of the numerous religious freedom cases litigated by Mr. Mach)]. He also serves as an adjunct professor of law at the George Washington University School of Law, focusing on constitutional law and religious liberty,

testifies before governmental agencies, and writes and speaks widely about religious freedom issues. [*Id.* ¶¶ 6-7.]

Under the most recently updated LSI *Laffey* Matrix, Ms. Weaver would command as much as \$662 per hour for work performed between June 1, 2015, and May 31, 2016, and as much \$686 per hour for work performed after June 1, 2016. *See Adjustments to the 1988-1989 Laffey Matrix Rates Using the Legal Services Index*, Terris, Prevlik & Millian, LLP, at 4, available online at [http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_\(00042285-5xC4E0D\).PDF](http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_(00042285-5xC4E0D).PDF) (showing most recent *Laffey* Matrix with Legal Services Index Update setting hourly rate for attorneys who graduated between with 11-19 years ago). Here, Plaintiffs seek only \$500 as her hourly rate, a rate that is justified by Ms. Weaver's decade-plus of experience in litigating religious-freedom cases.

Ms. Weaver is a senior staff attorney with PFRB. She received her J.D. from the University of California, Berkeley, Boalt Hall, in 2003, where she was a Notes and Comments Editor for the California Law Review. [Exh. 8: Mach Decl. ¶ 13.]. After working as a litigation associate for a San Francisco law firm from 2003-2005, Ms. Weaver joined Americans United for Separation of Church and State, where she litigated religious-freedom case until 2008. [Exh. 8: Mach Decl. ¶ 15]. In 2008, Ms. Weaver joined the ACLU. Like Mr. Mach, Ms. Weaver has developed a special expertise in constitutional litigation pertaining to religious-freedom rights, including litigation involving claims for religious discrimination and for religious exemptions and accommodations. [*Id.* (collecting various cases litigated by Ms. Weaver).] Ms. Weaver is also a recognized expert in her field, writing and speaking widely on matters of religious liberty and the law. [Exh. 8: Mach Decl. ¶ 17.]

C. Computation of Fees.

Multiplying counsels' hourly rates by the respective number of hours each contributed to this litigation, the lodestar computation in this case is as follows:

| <i>Attorney</i> | <i>Rate</i> | <i>Hours</i> | <i>Lodestar</i> |
|------------------|-------------|--------------|--------------------|
| William Sharp | \$350 | 230.5 | \$80,675.00 |
| Dan Canon | \$300 | 134 | \$40,200.00 |
| Laura Landenwich | \$300 | 38.6 | \$11,580.00 |
| L. Joe Dunman | \$250 | 30.4 | \$7,600.00 |
| Ria Tabacco Mar | \$350 | 66.3 | \$23,205.00 |
| James Esseks | \$700 | 21.1 | \$14,770.00 |
| Dan Mach | \$675 | 26.4 | \$17,820.00 |
| Heather Weaver | \$500 | 70.4 | \$35,200.00 |
| | | <i>Total</i> | <hr/> \$231,050.00 |

III. THE PLAINTIFFS ARE ENTITLED TO RECOVER THE FULL AMOUNT OF THEIR COSTS.**A. The Plaintiffs Are Entitled To Their Reasonable Out-Of-Pocket Expenses Under 42 U.S.C. § 1988.**

In addition to reasonable attorneys' fees, prevailing civil rights plaintiffs may also recover their costs under 42 U.S.C. § 1988. "The award of statutory costs is a matter for the district court, in its best judgment as to what was reasonable and necessary, and the appellate courts will not normally interfere with the exercise of that discretion." *Waldo*, 726 F.3d at 827 (internal quotation marks omitted). Reasonable costs include those that are "incurred by the attorney which are normally charged to a fee-paying client." *Id.* (internal quotation marks omitted).

Here, the costs associated with the litigation are detailed in the declarations of William Sharp. [Exh. 4.] Those costs include:

| | | |
|--------------|--|--------------------|
| 7/1/15 | Travel to Rowan Co. - client meeting | \$75.71 |
| 7/1/15 | Return travel from Rowan Co. | \$75.71 |
| 7/2/15 | Case filing fee | \$400.00 |
| 7/12/15 | Lodging (2 rooms) in Ashland, KY for hearing | \$292.00 |
| 7/13/15 | Per diem in Ashland, KY | \$24.00 |
| 7/16/15 | Transcript of Proceedings | \$100.80 |
| 7/19/15 | Lodging (2 rooms) in Covington, KY for hearing | \$322.78 |
| 7/29/15 | Transcript of Proceedings | \$73.80 |
| 8/26/15 | Telephone conference transcript | \$9.00 |
| 9/2/15 | Travel to Ashland, KY for hearing | \$106.78 |
| 9/2/15 | Lodging (1 room) in Ashland, KY | \$106.40 |
| 9/3/15 | Return travel from Ashland, KY | \$106.78 |
| 9/9/15 | Transcript of Proceedings | \$162.90 |
| 9/25/15 | Travel to Rowan Co. - client/witness meetings | \$75.71 |
| 9/25/15 | Return travel from Rowan Co. | \$75.71 |
| Total | | \$ 2,008.08 |

Because these above-listed costs are reasonably incurred and normally charged to fee-paying clients, the Plaintiffs' motion to recover these costs should be granted.

Conclusion

Plaintiffs are "prevailing parties" in this litigation, and as such are entitled to recover their reasonable attorneys' fees and costs. As noted above, the attached declarations establish with sufficient particularity the claimed hours and the reasonableness of their requested hourly rates. Because the Plaintiffs obtained a direct benefit from the court-ordered preliminary injunction that materially altered the parties' legal relationship, and because the claimed hours and hourly rates

are reasonable, the Court should award them their attorneys' fees and costs in full. It should therefore award \$ 231,050.00 in attorneys' fees and \$ 2,008.08 in costs, pursuant to 42 U.S.C. § 1988, for a total award of \$233,058.08 for all work performed from July 1, 2015 through September 14, 2016.

Respectfully submitted,

s/ William E. Sharp

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* Admitted *pro hac*
vice

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on September 19, 2016, I filed this motion and accompanying proposed order 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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Claire E. Parsons
Cecil Watkins
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cparsons@aswdlaw.com
cwatkins@prosecutors.ky.gov

Counsel for Rowan County

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Roger Gannam
acdonahue@donahuelawgroup.com
rgannam@lc.org

Counsel for Kim Davis

s/ Heather L. Weaver

Counsel for Plaintiffs

EXPIRATION: 10/03/15

60

Marriage License

Valid ONLY in the
Commonwealth of Kentucky

ROWAN COUNTY
ML111 PG60

To Any Person or Religious Society Qualified to Perform Marriages per KRS 402.050: You are hereby authorized to join together in the state of matrimony, according to the laws of the Commonwealth of Kentucky

First Party Full Name LARRY AARON SKAGGS
Current Residence [REDACTED]
Second Party Full Name BARRY WALTER SPARTMAN
Current Residence [REDACTED]

First Party

Second Party

| | | |
|--|--------------------------------|--------------------------------|
| Date of Birth (Age) | <u>[REDACTED]</u> | <u>[REDACTED]</u> |
| Place of Birth | <u>ASHLAND, KY</u> | <u>PIKEVILLE, KY</u> |
| Mother's Full Name (Including Maiden) | <u>JANET FAYE SMITH</u> | <u>MAUDIE EVELYN ADKINS</u> |
| Father's Full Name | <u>LARRY DAYTON SKAGGS</u> | <u>CHARLES EDWARD SPARTMAN</u> |
| Condition (Single, widowed, divorced, annulled) | <u>Single</u> | <u>Single</u> |
| No. of Previous Marriages | <u>[REDACTED]</u> | <u>[REDACTED]</u> |
| Occupation | <u>ADVANCED MR APPLICATION</u> | <u>LIBRARY SPECIALIST</u> |
| Race | <u>W</u> | <u>W</u> |
| Relationship to other party | <u>NONE</u> | <u>NONE</u> |

We hereby certify the above information is true to the best of our knowledge.

[Signature] First Party Signature [Signature] Second Party Signature

Issued this 4 (mo.) / 4 (day) / 2015 (year) in the office of ROWAN COUNTY (name) , ROWAN COUNTY (county)

County Clerk, MOREHEAD (city) , Kentucky by BRIAN MASON (recorder's name) , DEPUTY CLERK (title)

Note: License valid for 30 days only, including the date it is issued, per KRS 402.1051

Marriage License

(type or print with black ink ball-point pen only)

I do certify that: Larry Aaron Skaggs and Barry Walter Spartman
were united in marriage on the 9th day of September , at University Boulevard
Kentucky, under the authority of the above license and in the presence of (Please PRINT witnesses' names) (Rowan Co)
April D. Miller and Karen Roberts

Given under my hand this 9th day of September , 2015 .
[Signature] (Signature of person performing ceremony) , officiant (title) , of the Universal Life Church (church, religion, or civil authority)

Note: Persons failing to return this Certificate to the Clerk of the County in which it was issued within one month shall be guilty of a violation per KRS 402.990(11).

Recorded this Sept 10 (mo.) / 10 (day) / 2015 (year) in the office of Rowan Co (clerk's name) , Rowan (county name)

County Clerk, in Marriage Book 111 , page 60 .
[Signature] (recorder's name) , Deputy (recorder's title) Clerk

STATE OF KENTUCKY - ROWAN COUNTY
I, Kim Davis, County Clerk in and for said county and state
do hereby certify that the foregoing instrument of writing is a
certified copy of Marriage as shown by the
records of my said office in ML Book No. 111 on
Page No. 60 of the Rowan County Records.
Given under my hand and seal of office this the 5 day
of October 2015
[Signature]
Kim Davis, Clerk

**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

DECLARATION OF GREGORY A. BELZLEY

Gregory A. Belzley makes the following declaration under 28 U.S.C. § 1746:

1. My name is Gegory A. Belzley. I am currently a partner at BelzleyBathurst Attorneys in Prospect, Kentucky. I have previously been a partner in the Louisville law firms of Woodward, Hobson & Fulton, Brown Todd & Heyburn (later Frost Brown Todd), and Dinsmore & Shohl. In 2009, I started my own practice concentrating in the area of civil rights in general, and inmates' rights, police misconduct, and abuse of power, in particular.

2. I graduated from the University of Texas School of Law with honors in 1980 and have been engaged in the practice of law continuously since that time. I am a member in good standing of the Bars of Texas and Kentucky, and am admitted to practice before the federal courts of Texas and Kentucky, the United States Circuit Courts of Appeal for the First, Fifth and Sixth Circuits, and the United States Supreme Court. In the course of my legal career, I have been involved in virtually all types of civil litigation, and have worked with lawyers throughout the country. I have participated and been consulted in complex litigation, and have twice had verdicts that received national attention.

3. I have been engaged in inmates' rights litigation at least part-time since 1986, and full-time since 2009. I am experienced in civil rights litigation, and have been lead counsel in five (5) prior civil rights class actions, one (1) that is ongoing, and three (3) in which the court has not yet granted certification.

4. I am a frequent writer and lecturer on Fourth, Eighth and Fourteenth Amendment Rights and class actions. I have given numerous seminars (including three nationwide internet-based seminars) on jail litigation. I was an instructor at the American Bar Association Torts and Insurance Practice Section Trial Academy in Reno, Nevada in 2004, and in May 2008, co-chaired and instructed at the KJA Trial College at the University of Kentucky. In 2014, I spoke on a damages panel at the Loyola Prisoners' Advocates Conference in New Orleans, and am scheduled to speak on a medical panel at another Inmates' Rights Litigation Conference at the University of California Los Angeles on September 24, 2016.

5. I have reviewed the materials submitted by William E. Sharp, Daniel J. Canon, Laura Landenwich, L. Joe Dunman, Ria T. Mar, James Esseks, Dan Mach and Heather Weaver (collectively "the Attorneys") in support of their request for an award of attorneys' fees and costs in this matter. I am familiar with the Attorneys' work in this case and the result they achieved.

In addition:

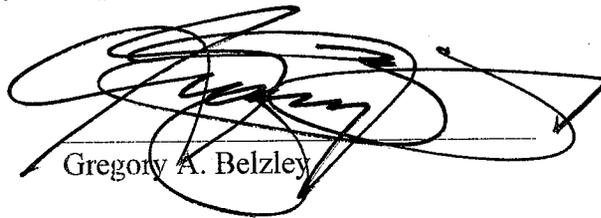
- Given my experience as a partner in major Louisville law firms, and my connections with law firms and civil rights practitioners across the country, I am familiar not only with rates charged locally by attorneys with the experience of the petitioners in this case, but rates charged by lawyers in other major markets, such as Chicago, Los Angeles, Houston, Atlanta, New York City, and Washington, DC.
- I was local counsel for the plaintiffs in *Adams, et al. v. Commonwealth of Kentucky, et al.*, Case No. 3:14-cv-001 (E.D.Ky. at Frankfort), class action litigation in which, a year ago, the plaintiffs secured accommodations for prisoners in Kentucky penal institutions who are either deaf or hard-of-hearing. In that case, I co-counseled with the Washington Lawyers' Committee for Civil Rights & Urban Affairs and the Washington, DC office of

Weil, Gotshal & Manges, LLP, and became familiar with the then-prevailing rates customarily charged by both non-profit civil rights counsel and law firms in the DC area.

- Finally, as a civil rights lawyer myself, I understand not only the risks inherent in such litigation, but the emotional toll of representing plaintiffs in litigation that may be unpopular with the public at large. As a friend of Mr. Canon, Ms. Landenwich, and Mr. Dunman, I am personally familiar with the personal threats they received (and continue to receive) as a consequence of their involvement in high-profile litigation that was deeply unpopular with some parts of Kentucky's citizenry, despite the clarity of the constitutional rights in issue.

6. Having reviewed petitioners' rates, and based upon the experience I have detailed above, it is my opinion that petitioners' rates are fair and reasonable in the markets in which they practice, and given their relative expertise.

Declared under penalty of perjury on September 19, 2016.



Gregory A. Belzley

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

DECLARATION OF WILLIAM E. SHARP

William E. Sharp makes the following declaration under 28 U.S.C. § 1746:

1. My name is William E. Sharp. I am co-counsel for the Plaintiffs in this case.
2. I received my undergraduate degree from Transylvania University in 1992 and my law degree from Washington & Lee University School of Law in 1999. I have been admitted to practice law in Kentucky since October, 1999 and I have actively practiced law in Kentucky since April, 2000.
3. I am a member in good standing of the Kentucky Bar Association. I am admitted to practice law in the United States District Courts for the Eastern and Western Districts of Kentucky, the United States Court of Appeals for the Sixth Circuit, and the United States Supreme Court.
4. From 2000 to 2006, I practiced law as a criminal defense trial attorney in the Louisville Metro Public Defender's Adult Trial Division. In that capacity, I represented adult indigent clients accused of misdemeanor and felony crimes in Jefferson County District and Circuit courts. I acted as lead counsel in approximately twenty felony jury trials in various

Divisions of Jefferson Circuit Court. I also served as a Deputy Division Chief and ultimately as a Division Chief in the Adult Trial Division where I supervised, trained, and evaluated junior staff attorneys.

5. From 2006 to 2007, I served as the Directing Attorney of the Department of Public Advocacy's Elizabethtown office where I represented adult indigent clients accused of criminal offenses in Hardin, Hart, Grayson, Meade and Larue counties. In addition, I supervised the daily operations of the office and its personnel. I acted as lead counsel in one felony jury trial in Hardin Circuit Court.

6. I have been continuously employed by the American Civil Liberties Union of Kentucky since May, 2007, first as a staff attorney and now as the Legal Director. In those capacities, I have actively participated in ongoing federal civil rights litigation by conducting depositions, researching issues relating to constitutional law and civil litigation, drafting legal memoranda, pleadings, and appellate briefs, conducting oral arguments in state and federal appellate courts, and conducting factual investigations into allegations of civil rights violations throughout the Commonwealth.

7. I have lectured at various events on issues relating to constitutional law and individual liberties. I also served as a trainer of junior personnel on a variety of criminal defense topics such as eyewitness identification, cross-examination, witness preparation, Fourth Amendment jurisprudence, jury selection, expert witnesses and case investigation.

8. I am a past chair of the Louisville Bar Association's Criminal Law and Public Interest Sections, and a past member of the Brandeis Inn of Court. I am a graduate of the Louisville Bar Association's Leadership Academy.

9. I maintained contemporaneous records of work I performed on this case. Those records show I spent 230.5 hours on the case through September 14, 2016. I have attached to my declaration an itemized statement of those hours and costs. This statement accurately reflects my work in this case.

10. I have sought, and received, attorney fees under federal fee-shifting statutes in other cases. Hourly rates obtained in contested fee cases include:

a) In the Eastern District of Kentucky (*Brown, et al. v. LRC, et al.*, Case No. 2:13cv068) (memorandum opinion and order, July 28, 2014) (contested fee decision accepting Magistrate's finding that hourly rate of \$275 for Sharp reasonable in voting rights case).

b) In the Eastern District of Kentucky (*ACLU of Kentucky, et al. v. McCreary County, Kentucky, et al.*, 6:99-CV-507-JBC (memorandum opinion and order, May 17, 2011) (contested fee decision awarding Sharp \$200 per hour and noting that more than twice that hourly rate likely within the range of reasonable fees charged in Eastern District of Kentucky for attorneys with comparable skill and experience).

c) In the Western District of Kentucky (*Alexander M. Say v. John Adams, et al.*, 3:07-CV-377-R) (memorandum opinion and order, March 25, 2009) (contested fee decision awarding Sharp \$180 per hour)

d) In the Eastern District of Kentucky (*ACLU of Kentucky, et al. v. McCreary County, Kentucky, et al.*, 6:99-CV-507-JBC (memorandum opinion and order, March 16, 2009) (contested fee decision awarding Sharp \$180 per hour); and

e) In the Western District of Kentucky (*ACLU of Kentucky, et al. v. Grayson County, Kentucky, et al.*, 4:01-CV-202-JHM (memorandum opinion and order, November 26,

2008) (contested fee decision awarding me \$180 per hour) *rev'd on other grounds* 591 F.3d 837
(6th Cir. 2010).

Declared under penalty of perjury on September 14, 2016.

/s/ William E. Sharp

William E. Sharp

Legal Director

ACLU of Kentucky

315 Guthrie Street, Suite 300

Louisville, Kentucky 40202

(502) 581-9746

(502) 589-9687 (fax)

sharp@aclu-ky.org

Co-Counsel for Plaintiffs

Miller v. Davis
W.Sharp time

| Date | Time | Description |
|-----------|------|---|
| 7/1/2015 | 5.00 | Travel to Rowan Co.; mtg.; return travel from Rowan Co. |
| 7/1/2015 | 1.00 | Draft/edit complaint |
| 7/1/2015 | 2.50 | Draft/edit complaint/PI motion |
| 7/1/2015 | 2.00 | Draft/edit complaint/PI motion |
| 7/1/2015 | 1.50 | Draft/edit complaint/PI motion |
| 7/1/2015 | 0.10 | Email to coop. attys |
| 7/2/2015 | 0.50 | Draft/edit class cert. papers |
| 7/2/2015 | 1.00 | Draft/edit class cert. papers |
| 7/2/2015 | 0.50 | Conf. call w/ co-counsel |
| 7/2/2015 | 1.00 | Edit PI papers |
| 7/2/2015 | 0.50 | Edit complaint |
| 7/2/2015 | 0.20 | convert/file papers |
| 7/11/2015 | 1.00 | PI hrg. Prep |
| 7/11/2015 | 0.50 | PI hrg. Prep |
| 7/11/2015 | 1.00 | PI hrg. Prep |
| 7/11/2015 | 0.50 | PI hrg. Prep |
| 7/12/2015 | 1.20 | Client mtg. - Fernandez/Holloway |
| 7/12/2015 | 0.90 | Client mtg. - Miller/Roberts |
| 7/12/2015 | 0.90 | Client mtg. - Spartment/Skaggs |
| 7/12/2015 | 1.00 | PI hrg. Prep; exhibits; argument; research |
| 7/12/2015 | 0.70 | PI hrg. Prep |
| 7/12/2015 | 1.00 | PI hrg. Prep |
| 7/12/2015 | 3.50 | Travel to Ashland, KY |
| 7/13/2015 | 1.20 | PI hrg. Prep |
| 7/13/2015 | 0.70 | PI hrg. Prep |
| 7/13/2015 | 0.50 | PI hrg. Prep |
| 7/13/2015 | 0.50 | PI hrg. Prep |
| 7/13/2015 | 0.70 | mtg. w/ clients |
| 7/13/2015 | 2.50 | Hrg/mtg with opposing counsel and judge |
| 7/13/2015 | 0.50 | Mtg. w/ clients |
| 7/13/2015 | 3.00 | Return travel from Ashland, KY |
| 7/14/2015 | 0.10 | email w/ co-counsel |
| 7/15/2015 | 0.10 | email w/ co-counsel |
| 7/16/2015 | 0.10 | Conf. w/ J. Mando re: hrg. |
| 7/17/2015 | 0.80 | Mtg. w/ co-counsel re: PI hrg/litigation plan |
| 7/19/2015 | 1.50 | Travel to Covington, KY |
| 7/20/2015 | 1.50 | Prep for PI hrg. |
| 7/20/2015 | 1.00 | Prep for PI hrg.; discussion w/ co-counsel |
| 7/20/2015 | 2.50 | PI hrg/client mtg. |
| 7/20/2015 | 1.50 | Return travel from Covington, KY |
| 7/21/2015 | 0.10 | Review RE#25 |
| 7/23/2015 | 0.50 | Review xcript |
| 7/23/2015 | 0.10 | Submitted check for copy of xcript |
| 7/27/2015 | 0.10 | emailed xcript to co-counsel |
| 7/27/2015 | 0.10 | submitted check req. for service of process |
| 7/29/2015 | 0.20 | Review RE #27 |
| 7/29/2015 | 0.10 | Emailed co-counsel re: class cert./ case status |
| 7/30/2015 | 0.70 | Review Cty. Response to PI motion |
| 7/30/2015 | 1.00 | Review Davis Response to PI motion |
| 7/30/2015 | 0.20 | Client call |
| 7/31/2015 | 0.50 | Draft reply |
| 7/31/2015 | 1.00 | Draft reply |
| 7/31/2015 | 0.10 | Review RE #30 |
| 7/31/2015 | 1.30 | Draft outline of section re: RE #30 |
| 7/31/2015 | 1.20 | Draft reply/legal research |
| 7/31/2015 | 0.70 | Draft reply/legal research |
| 7/31/2015 | 0.50 | Draft reply/legal research |
| 7/31/2015 | 0.10 | Email draft to co-counsel |
| 7/31/2015 | 1.00 | Draft reply |
| 8/2/2015 | 1.50 | Review/draft/edit class cert. papers; file class cert. papers |
| 8/3/2015 | 1.00 | Draft reply; legal research |
| 8/3/2015 | 1.50 | Draft reply; legal research |
| 8/4/2015 | 1.50 | Draft reply |
| 8/4/2015 | 1.00 | Draft reply |

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| 8/4/2015 | 1.20 | Draft reply |
| 8/4/2015 | 2.50 | Draft reply |
| 8/4/2015 | 1.20 | Draft reply |
| 8/5/2015 | 0.20 | Draft reply |
| 8/5/2015 | 0.50 | Conf. call w/ nat'l ACLU |
| 8/5/2015 | 0.70 | Draft/edit PI reply |
| 8/5/2015 | 2.20 | Draft/edit PI reply |
| 8/6/2015 | 1.00 | Draft/edit PI reply |
| 8/6/2015 | 1.00 | Draft/edit PI reply |
| 8/6/2015 | 1.00 | Draft/edit PI reply |
| 8/6/2015 | 0.20 | File reply |
| 8/9/2015 | 2.00 | Prep for hrg. |
| 8/9/2015 | 1.70 | Prep for hrg. |
| 8/10/2015 | 1.00 | Prep for hrg./legal research |
| 8/10/2015 | 1.00 | Prep for hrg./legal research |
| 8/10/2015 | 0.20 | Hrg. |
| 8/11/2015 | 0.50 | Review pleadings; 3rd party compl; mtd; 3rd party PI |
| 8/11/2015 | 0.10 | Review mot. Ext. br. Schedule |
| 8/11/2015 | 0.20 | conf. call w/ co-counsel re: motions/duties |
| 8/12/2015 | 0.20 | review opinion |
| 8/12/2015 | 0.10 | review notice of appeal |
| 8/13/2015 | 0.20 | review motion/memo stay PI |
| 8/13/2015 | 0.30 | call w/ co-counsel |
| 8/13/2015 | 0.60 | call w/ clients |
| 8/13/2015 | 0.10 | draft stay response |
| 8/13/2015 | 0.10 | download/review 6CA filing |
| 8/13/2015 | 0.10 | client call |
| 8/13/2015 | 0.50 | draft stay response/draft decl. |
| 8/13/2015 | 0.60 | draft stay response/draft decl. |
| 8/13/2015 | 0.50 | edit response/file |
| 8/15/2015 | 0.10 | review stay reply |
| 8/17/2015 | 0.10 | review schedules 6CA mediation |
| 8/17/2015 | 0.10 | download/file Cty. Suppl. Memo |
| 8/17/2015 | 0.10 | download/file 6CA case op. ltr |
| 8/17/2015 | 0.20 | download/fill out 6CA forms |
| 8/17/2015 | 0.20 | call 6CA clerk; file docs |
| 8/17/2015 | 0.20 | review stay ruling; confer with co-counsel |
| 8/19/2015 | 0.50 | conf. call w/ co-counsel re: stay/6CA stay |
| 8/19/2015 | 0.20 | legal research re: stay |
| 8/19/2015 | 0.10 | review Davis mot. Stay |
| 8/19/2015 | 1.00 | Draft 6CA response |
| 8/19/2015 | 1.00 | Draft 6CA response |
| 8/19/2015 | 1.20 | Draft 6CA response |
| 8/20/2015 | 0.50 | Draft 6CA response |
| 8/20/2015 | 1.00 | Draft 6CA response |
| 8/22/2015 | 1.50 | Draft / edit 6CA response |
| 8/22/2015 | 1.00 | Draft / edit 6CA response |
| 8/22/2015 | 0.50 | Draft / edit 6CA response / email to co-counsel |
| 8/23/2015 | 1.50 | Draft / edit 6CA response |
| 8/23/2015 | 0.50 | edit/file 6CA response |
| 8/24/2015 | 0.20 | review/file RE 56; review/file 6CA amicus filing |
| 8/25/2016 | 0.10 | prepare/submit 6CA mediation form |
| 8/25/2016 | 0.50 | research SCOTUS stay requests |
| 8/25/2016 | 0.10 | review/file RE 57 and RE 58 |
| 8/26/2015 | 0.10 | Review 6CA order denying |
| 8/26/2015 | 0.70 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/26/2015 | 0.50 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/26/2015 | 0.70 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/26/2015 | 1.50 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/26/2015 | 0.70 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/26/2015 | 0.70 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/27/2015 | 1.00 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/27/2015 | 1.00 | draft/research/edits SCOTUS response to anticipaed stay request; email to co-counsel |
| 8/27/2015 | 0.50 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/27/2015 | 1.20 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/27/2015 | 1.00 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/27/2015 | 0.70 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/27/2015 | 0.70 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/28/2015 | 1.00 | draft/research/edits SCOTUS response to anticipaed stay request |

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| 8/28/2015 | 0.70 | draft/research/edits SCOTUS response to anticipaed stay request |
| 8/28/2015 | 0.70 | Review Davis mot. Stay RE 62; draft/file response; call opp. Counsel re: SCOTUS stay |
| 8/28/2015 | 0.50 | Review LC stay petition |
| 8/28/2015 | 0.10 | Review LC reply to stay RE 64; review d.ct. Order denying RE65 |
| 8/28/2015 | 1.00 | draft/edit stay response (SCOTUS) |
| 8/28/2015 | 1.00 | draft/edit stay response (SCOTUS) |
| 8/28/2015 | 0.20 | Respond to SCOTUS clerk; email draft to co-counsel |
| 8/30/2015 | 0.50 | Edit stay response |
| 8/30/2015 | 0.10 | Email clients regarding status |
| 8/31/2015 | 0.10 | Review v/m of opposing counsel |
| 8/31/2015 | 1.00 | Tel. conf. w/ co-counsel/clients |
| 8/31/2015 | 0.10 | Review notice of Appeal |
| 8/31/2015 | 0.10 | Review SCOTUS denial |
| 8/31/2015 | 0.10 | Email clients |
| 9/1/2015 | 0.20 | Tel. call w/ client |
| 9/1/2015 | 0.50 | Draft mot. Contempt/declaration |
| 9/1/2015 | 0.50 | conf. call w/ clients |
| 9/1/2015 | 1.20 | draft/edit contempt motion/file |
| 9/1/2015 | 0.10 | tel. conf. w/ court; schedule hrg. |
| 9/1/2015 | 0.50 | Tel. conf. w/ co-counsel re: hrg. |
| 9/1/2015 | 0.50 | download/complete 6CA forms (5961) |
| 9/1/2015 | 0.50 | legal research re: contempt |
| 9/2/2015 | 0.10 | download/file D's 6CA papers |
| 9/2/2015 | 1.50 | legal research re: contempt; prepare for hrg. |
| 9/2/2015 | 0.50 | conf. call w/ co-counsel re: hrg. |
| 9/2/2015 | 0.50 | legal research/hrq. Prep |
| 9/2/2015 | 1.00 | conf. call with co-counsel re: hrg duties |
| 9/2/2015 | 4.00 | Travel to Ashland, KY for hrg. |
| 9/3/2015 | 2.00 | Hrg. Prep |
| 9/3/2015 | 1.50 | Hrg. prep |
| 9/3/2015 | 1.00 | Hrg. prep |
| 9/3/2015 | 2.00 | Hrg. |
| 9/3/2015 | 2.00 | Hrg. |
| 9/3/2015 | 0.50 | Hrg. |
| 9/3/2015 | 3.00 | Return travel from Ashland, KY |
| 9/4/2015 | 0.10 | Review ct. order RE75 and RE76 |
| 9/6/2015 | 0.20 | email co-counsel re: licenses/contempt appeal |
| 9/8/2015 | 0.10 | Call w/ 6CA re: resp. deadline |
| 9/8/2015 | 0.50 | call w/ co-counsel |
| 9/8/2015 | 1.20 | draft/edit response to emer. Pi motion 6CA |
| 9/8/2015 | 0.10 | review ct. order RE 89 |
| 9/8/2015 | 1.20 | draft/edit 6CA reesponse to emer. Pi |
| 9/8/2015 | 1.00 | 6CA mediation call |
| 9/8/2015 | 0.70 | draft/edit 6CA response to emer. Pi; file |
| 9/9/2015 | 0.50 | review PHV motion/attachments/file |
| 9/10/2015 | 0.50 | email clients |
| 9/10/2015 | 0.50 | review Davis reply for emer. Inj. |
| 9/11/2015 | 0.50 | review Davis mot. Stay #2 (5880) |
| 9/11/2015 | 0.50 | legal research re: jdx. |
| 9/11/2015 | 0.10 | call w/ 6CA clerk re: response deadline |
| 9/11/2015 | 1.20 | Legal research re: stay response #2 |
| 9/13/2015 | 3.00 | Draft/edit 6CA stay response |
| 9/14/2015 | 1.00 | conf. call w/ co-counsel |
| 9/14/2015 | 1.00 | draft/edit 6CA stay response |
| 9/14/2015 | 1.00 | draft/edit 6CA stay response |
| 9/14/2015 | 1.70 | draft/edit 6CA stay response |
| 9/15/2015 | 0.70 | conf.c all w/ co-counsel re: stay response |
| 9/15/2015 | 0.70 | draft/edit 6CA stay response |
| 9/15/2015 | 2.00 | draft/edit 6CA stay response |
| 9/15/2015 | 0.10 | file 6CA stay response |
| 9/15/2015 | 0.10 | file PHV motion - Esseks |
| 9/15/2015 | 0.10 | review 6CA order (5961) |
| 9/15/2015 | 0.70 | review draft mot |
| 9/16/2015 | 0.70 | review draft mot |
| 9/17/2015 | 1.50 | 6Ca mediation call |
| 9/17/2015 | 0.10 | review 6CA op |
| 9/18/2015 | 0.10 | review Davis emer. Mot. Stay (d.ct.) |
| 9/18/2015 | 0.50 | edit class cert. motion |
| 9/18/2015 | 0.70 | edit response in 15-5978 |

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| 9/18/2015 | 0.10 | review notice - B. Mason |
| 9/18/2015 | 0.50 | edit 6CA response 15-5978 |
| 9/20/2015 | 0.70 | edit motion enforce/clarify |
| 9/21/2015 | 1.20 | conf. call w/ co-counsel |
| 9/21/2015 | 1.00 | edit motion enforce; legal research |
| 9/21/2015 | 0.70 | edit/draft motion |
| 9/21/2015 | 0.10 | review dep. Clerks updates |
| 9/22/2015 | 0.10 | email clients |
| 9/23/2015 | 0.10 | review d.ct. order denying motion stay 9/3 order |
| 9/24/2015 | 0.10 | review Davis resp. to CW MTD |
| 9/25/2015 | 6.00 | Travel to/from Rowan Co. to meet with clients |
| 9/28/2015 | 0.10 | review opp. Counsel request to consolidate |
| 9/29/2015 | 0.10 | email response to opp. Counsel re: consolidation |
| 9/29/2015 | 0.10 | review Davis mot. Consolidate appeals |
| 9/29/2015 | 0.10 | Review CW reply in support of mtd |
| 10/1/2015 | 0.10 | review 6CA order consolidating; briefing ltr. |
| 10/18/2015 | 1.00 | review pleadings RE132, 133, 135; RE 58(5880); calendar events; email co-counsel |
| 10/19/2015 | 0.80 | conf. call w/ co-counsel re: replies; 6CA; arguments; email opp. Counsel |
| 10/20/2015 | 0.10 | edit mot. Ext. time; file motion |
| 10/21/2015 | 0.70 | draft/edit reply in support of motion reopen class cert.; research |
| 10/21/2015 | 0.50 | draft/edit reply in support of motion reopen class cert.; research |
| 10/21/2015 | 4.20 | draft/edit reply in support of motion reopen class cert.; research |
| 10/22/2015 | 1.00 | draft/edit reply in support of motion reopen class cert.; research |
| 10/22/2015 | 1.50 | draft/edit reply in support of motion reopen class cert.; research |
| 10/27/2015 | 1.50 | draft 6ca response |
| 10/28/2015 | 0.10 | review 6ca order denying mot. Stay contempt |
| 11/3/2015 | 0.50 | print/review Davis 6ca brief |
| 11/3/2015 | 0.70 | review Davis 6ca brief |
| 11/16/2015 | 0.80 | conf. call re: reply |
| 11/17/2015 | 1.00 | draft 6ca response; legal research |
| 11/17/2015 | 0.50 | draft 6ca response; legal research |
| 11/18/2015 | 0.50 | draft 6ca response |
| 11/19/2015 | 1.00 | draft 6ca response |
| 11/19/2015 | 1.00 | draft 6ca response |
| 11/23/2015 | 1.00 | draft motion ext. br. Deadline |
| 11/23/2015 | 0.20 | draft/file motion ext. br. Deadline |
| 11/24/2015 | 0.70 | draft 6CA response |
| 11/28/2015 | 0.70 | draft 6CA response |
| 11/28/2015 | 1.20 | draft 6CA response |
| 11/28/2015 | 1.00 | draft 6CA response |
| 11/29/2015 | 2.00 | draft 6CA response |
| 11/29/2015 | 1.00 | draft 6CA response |
| 11/29/2015 | 1.50 | draft 6CA response |
| 11/29/2015 | 1.00 | draft 6CA response |
| 11/30/2015 | 1.50 | draft 6CA response |
| 12/1/2015 | 1.00 | draft 6CA response |
| 12/2/2015 | 1.50 | draft 6CA response |
| 12/2/2015 | 1.00 | draft 6CA response |
| 12/2/2015 | 1.50 | draft 6CA response |
| 12/2/2015 | 1.50 | draft 6CA response |
| 12/2/2015 | 1.50 | draft 6CA response |
| 12/3/2015 | 1.50 | draft 6CA response |
| 12/3/2015 | 1.00 | draft 6CA response |
| 12/4/2015 | 1.00 | draft 6CA response |
| 12/4/2015 | 1.50 | draft 6CA response |
| 12/9/2015 | 1.00 | draft/edit 6CA response |
| 12/11/2015 | 1.00 | draft 6CA response |
| 12/11/2015 | 1.00 | draft 6CA response |
| 12/13/2015 | 0.50 | draft 6CA response |
| 12/13/2015 | 1.50 | draft 6CA response |
| 12/14/2015 | 1.00 | draft 6CA response |
| 12/15/2015 | 1.00 | draft/edit 6CA response |
| 12/15/2015 | 1.00 | draft/edit 6CA response |
| 12/15/2015 | 0.70 | draft/edit 6CA response |
| 12/15/2015 | 1.00 | draft/edit 6CA response |
| 12/16/2015 | 1.00 | edit 6CA brief |
| 12/16/2015 | 1.50 | edit 6ca brief; file |
| 1/12/2016 | 0.30 | review/edit/email response to Davis suppl. Auth. |
| 2/9/2016 | 0.10 | review order denying mot. Enforce |
| 2/16/2016 | 0.10 | review dep. Clerk update |

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|-----------|--------|---|
| 4/19/2016 | 0.10 | review d.ct. order dm CW |
| 6/2/2016 | 0.10 | calendar oral argument date |
| 6/2/2016 | 0.10 | email clients re: status |
| 6/2/2016 | 0.10 | download/complete 6CA oral ack; file |
| 6/16/2016 | 0.50 | draft 28(j) ltr.; email co-counsel |
| 6/17/2016 | 0.20 | edit 28(j) ltr.; email co-counsel |
| 6/17/2016 | 0.10 | file 289j) ltr. |
| 6/23/2016 | 0.10 | review ltr. Re: Davis motion dismiss 6CA |
| 9/14/2016 | 1.50 | draft fees motion; edit; email co-counsel |
| | 230.50 | |

Miller v. Davis

Costs

| Date | Description | Amount |
|-------------|---|-------------------|
| 7/1/2015 | Travel to Rowan Co. - client mtg. | \$75.71 |
| 7/1/2015 | Return travel from Rowan Co. | \$75.71 |
| 7/2/2015 | Case filing fee | \$400.00 |
| 7/12/2015 | Lodging (2 rooms) in Ashland, KY for hrg. | \$292.00 |
| 7/13/2015 | Per diem in Ashland, KY | \$24.00 |
| 7/16/2015 | Transcript of Proceedings | \$100.80 |
| 7/19/2015 | Lodging (2 rooms) in Ashland, KY for hrg. | \$322.78 |
| 7/29/2015 | Transcript of Proceedings | \$73.80 |
| 8/26/2015 | Telephone conference transcript | \$9.00 |
| 9/2/2015 | Travel to Ashland, KY for hrg. | \$106.78 |
| 9/2/2015 | Lodging (1 rrom) in Ashland, KY | \$106.40 |
| 9/3/2015 | Return travel from Ashland, KY | \$106.78 |
| 9/9/2015 | Transcript of Proceedings | \$162.90 |
| 9/25/2015 | Travel to Rowan Co. - client/witness mtg. | \$75.71 |
| 9/25/2015 | Return travel from Rowan Co. | \$75.71 |
| | Total | \$2,008.08 |

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

DECLARATION OF DANIEL J. CANON

DANIEL J. CANON, pursuant to 28 U.S.C. § 1746, states as follows:

1. I am of adult age and am otherwise competent to make declarations regarding the matters set forth herein, which are based upon my own personal knowledge, unless otherwise stated.
2. I am a member attorney of the firm Clay Daniel Walton and Adams, PLC, and one of the attorneys of record for the Plaintiffs in the above-styled matter.
3. The figures for fees and expenses submitted in this matter are true and correct to the best of my knowledge.
4. The invoice attached to this declaration shows a detailed and accurate accounting of the hours expended by members of Clay Daniel Walton & Adams, PLC, on this matter, those

members being myself, Hon. Laura E. Landenwich and L. Joe Dunman. This invoice was generated by practice management software used by the firm.

5. Most of my time in this case was kept contemporaneously using the software referred to above. I have constructed additional billing records for myself, for any time not kept contemporaneously, based upon a review of the filings in this case, my calendar, my email messages, and other electronic records, including a Lexis search history and the filings in this case. Ms. Landenwich and Mr. Dunman have kept track of their own time in a similar fashion.
6. I am also not seeking to bill Defendant for copies, postage, law clerk/paralegal time, or other incidental expenses incurred by myself or other members of my firm in this case.
7. The rates submitted to this Court represent the high end of what the three lawyers in my firm charge for their services, but the services performed in this case required the specialized skill of dedicated civil rights practitioners, which is what we are. Further, as evidenced by the declarations of Attorneys Belzley [Plaintiffs' Exh. 3], the rates are well within the range charged by attorneys possessing comparable skill and experience in the Eastern District of Kentucky. As such, the rates fall into the traditional lodestar analysis and are not unreasonable.
8. Ms. Landenwich and I have billed for our hours spent on this case, as indicated on the invoice attached at a rate of \$300.00 per hour. L. Joe Dunman billed for hours spent on this case at the rate of \$250.00.
9. I graduated from the University of Louisville, Louis D. Brandeis School of Law *cum laude* in 2007. I have been in practice, and a member in good standing of the Kentucky Barr Association, for approximately nine years. Throughout that time, I have devoted my

practice almost exclusively to civil rights and constitutional issues. I am admitted to practice before all Kentucky state courts, Kentucky federal courts, the Southern District of Indiana, the Sixth Circuit Court of Appeals, and the Supreme Court of the United States. I have argued before both the Sixth Circuit and the Kentucky Supreme Court on more than one occasion each. I have argued before the Kentucky Court of Appeals on several occasions. I am counsel of record for several published and unpublished cases in the aforementioned courts. The vast majority of these cases have concerned civil rights and/or constitutional issues such as those involved in the instant case.

10. I have conducted numerous CLEs and published numerous articles on topics of civil rights and constitutional law. I was voted a Top Lawyer in the Louisville area in the area of individual/constitutional rights by a peer group of Louisville lawyers for the years 2012, 2013, 2014, and 2016 and in the areas of appellate law and employment litigation for the year 2014. I am a Thomson Reuters "Super Lawyer" for 2013-16, and a former member of the American Inns of Court in Jefferson County. I am also an adjunct professor of civil rights law for the Louis D. Brandeis School of Law, and an adjunct professor of criminal justice in the Indiana state college system.
11. Given my qualifications, experience, and track record in the area of civil rights and constitutional law, I believe I am justified in charging my highest rate (\$300/hr) for work performed in this case.
12. Laura E. Landenwich graduated from the University of Louisville Brandeis School of Law in 2007. She is currently licensed to practice law in the Commonwealth of Kentucky (Bar ID #92109) and the State of Indiana (Bar ID #27709-22). Ms. Landenwich is also licensed and has practiced in Kentucky federal courts, the Southern District of Indiana,

the Sixth Circuit Court of Appeals, and the Supreme Court of the United States. Several of these cases are civil rights cases filed under 42 U.S.C. §1983. Ms. Landenwich was identified as a “Super Lawyer” for the years 2014-2016, and was also selected as a “Top Lawyer” in the area of individual rights by Louisville Magazine. In addition to practicing with Clay Daniel Walton & Adams, PLC, Ms. Landenwich is an adjunct professor at Indiana University Southeast.

13. Given Ms. Landenwich's professional and academic experience, I believe her hourly rate of \$300 is reasonable.
14. L. Joe Dunman graduated from the University of Louisville, Louis D. Brandeis School of Law in 2012. For two years before graduation, he clerked for me, assisting me with my practice in civil rights and constitutional cases, and has since devoted his own practice to the same. Mr. Dunman is admitted to practice before all Kentucky state courts, the U.S. District Court for the Western District of Kentucky, and the Sixth Circuit Court of Appeals. He has briefed several cases before both the Kentucky Court of Appeals, the Kentucky Supreme Court, and the Sixth Circuit Court of Appeals. He is also an adjunct professor of constitutional rights at Bellarmine University. His normal hourly rate ranges from \$200-\$250 per hour, depending on the type of case.
15. Given Mr. Dunman's qualifications and experience, I believe he is justified in billing at a rate of \$250/hr on this case.
16. The requested rates in this case for all three members of my firm have already been considered and approved by Hon. Charles R. Simpson, III, in the case of *Bourke v. Beshear*, No. 3:13-CV-00750-CRS, 2016 U.S. Dist. LEXIS 4064 (W.D. Ky. Jan. 13, 2016), which is the Kentucky component of the case better known as *Obergefell v.*

Hodges, 192 L. Ed. 2d 609, 2015 U.S. LEXIS 4250 (2015).

I declare the foregoing to be true and correct under penalty of perjury. Signed this 15th day of
September, 2016.

/s Daniel J. Canon
DANIEL J. CANON



INVOICE

Invoice # 1169
Date: 09/19/2016
Due Upon Receipt

Clay Daniel Walton & Adams PLC

Meidinger Tower Suite 101, 462 S. Fourth Street
Louisville, KY 40202
United States

April Miller

01055-Miller

Kim Davis, Rowan County

| Attorney | Type | Date | Description | Quantity | Rate | Total |
|------------------|---------|------------|--|----------|----------|------------|
| Laura Landenwich | Service | 07/01/2015 | Conference call with Bill Sharp; meeting with Dan Canon & Joe Dunman | 0.80 | \$300.00 | \$240.00 |
| Laura Landenwich | Service | 07/02/2015 | Edit and revise complaint and motion for preliminary injunction. Conference call with co-counsel. Correspondence with co-counsel | 4.20 | \$300.00 | \$1,260.00 |
| Dan Canon | Service | 07/02/2015 | Review and revise complaint; TC and email corresp w legal team | 0.60 | \$300.00 | \$180.00 |
| Dan Canon | Service | 07/02/2015 | Joe - Review and revision of complaint and draft motions, district court | 1.10 | \$250.00 | \$275.00 |
| Dan Canon | Service | 07/02/2015 | Joe - Email exchanges with co-counsel re: draft documents | 0.80 | \$250.00 | \$200.00 |
| Dan Canon | Service | 07/03/2015 | Joe - Email exchanges w/ co-counsel re: complaint and court procedures | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 07/06/2015 | Review court orders, TC w clients | 2.10 | \$300.00 | \$630.00 |
| Dan Canon | Service | 07/06/2015 | Joe - email exchanges w/ co-counsel re: procedures, case status | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 07/07/2015 | Corresp w co-counsel and hearing prep | 0.30 | \$300.00 | \$90.00 |

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|-------------|---------|------------|--|-------|----------|------------|
| Dan Canon | Service | 07/08/2015 | Prep injunction hearing, TC w April, TC w LEL re: strategy, review documents | 2.00 | \$300.00 | \$600.00 |
| Dan Canon | Service | 07/09/2015 | Look at interviews, oath, and AL decision; continue inj hearing prep | 0.60 | \$300.00 | \$180.00 |
| Dan Canon | Service | 07/12/2015 | Prep hearing | 16.20 | \$300.00 | \$4,860.00 |
| Dan Canon | Service | 07/12/2015 | correspondence with Bill Sharp and clients | 3.00 | \$300.00 | \$900.00 |
| Dan Canon | Service | 07/13/2015 | Travel to and from Ashland | 7.00 | \$300.00 | \$2,100.00 |
| Dan Canon | Service | 07/13/2015 | Attend PI hearing | 2.50 | \$300.00 | \$750.00 |
| Dan Canon | Service | 07/13/2015 | Joe - Discuss preliminary hearing in EDKY w/ co-counsel | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 07/14/2015 | Review prior liberty counsel filings; corresp w EDKY and ACLU; notify clients of next hearing date | 2.30 | \$300.00 | \$690.00 |
| Alex Bryant | Service | 07/14/2015 | Saved all filed documents to electronic folders, calendared when necessary, and printed/filed. | 1.00 | \$90.00 | \$90.00 |
| Dan Canon | Service | 07/14/2015 | Joe - email exchanges with co-counsel regarding service on Defendant, new hearing | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 07/15/2015 | Resolution of service issue, TC w ACLU & co-counsel; TC w Aaron Skaggs | 2.90 | \$300.00 | \$870.00 |
| Dan Canon | Service | 07/15/2015 | Joe - email exchange on status of case with co-counsel | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 07/17/2015 | Meet w ACLU | 0.80 | \$300.00 | \$240.00 |
| Dan Canon | Service | 07/17/2015 | Joe - meeting and emails with co-counsel re: status of case, hearing | 1.00 | \$250.00 | \$250.00 |
| Dan Canon | Service | 07/19/2015 | Prep for 2nd round of hearings | 8.00 | \$300.00 | \$2,400.00 |
| Dan Canon | Service | 07/19/2015 | Travel to and from Covington | 3.00 | \$300.00 | \$900.00 |
| Dan Canon | Service | 07/19/2015 | Conduct 2nd round of hearings | 8.00 | \$300.00 | \$2,400.00 |
| Dan Canon | Service | 07/20/2015 | Joe - discussions re: second hearing in EDKY with co-counsel | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 07/23/2015 | Joe - review of hearing transcripts, recommendation for notice of redactions | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 07/27/2015 | Joe - Review of second hearing transcript, notice of redactions | 0.50 | \$250.00 | \$125.00 |

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|-------------|---------|------------|---|------|----------|----------|
| Dan Canon | Service | 07/29/2015 | Joe - review of draft class cert. memo and motions | 0.20 | \$250.00 | \$50.00 |
| Alex Bryant | Service | 07/30/2015 | Much filing | 0.80 | \$90.00 | \$72.00 |
| Dan Canon | Service | 07/30/2015 | Review Davis brief opposing PI | 0.80 | \$300.00 | \$240.00 |
| Dan Canon | Service | 07/30/2015 | Joe - Continue review of draft class cert. docs, email exchanges | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 07/30/2015 | Joe - initial review of Defendant's brief, email exchange with co-counsel | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 07/31/2015 | Review and notate response; take notes for reply; revise reply brief | 3.00 | \$300.00 | \$900.00 |
| Dan Canon | Service | 07/31/2015 | Joe - Review of Defendant's brief, email exchange with co-counsel re: reply | 2.40 | \$250.00 | \$600.00 |
| Dan Canon | Service | 07/31/2015 | Joe - review of Court's order re: reply brief, email exchange with co-counsel | 0.80 | \$250.00 | \$200.00 |
| Dan Canon | Service | 08/02/2015 | Joe - outline and draft section I of reply brief | 0.50 | \$250.00 | \$125.00 |
| Dan Canon | Service | 08/03/2015 | Joe - draft section I of the reply brief, distribute to co-counsel, edit and revise content | 3.10 | \$250.00 | \$775.00 |
| Dan Canon | Service | 08/04/2015 | Joe - draft and distribute section III of reply brief, phone call with co-counsel | 3.50 | \$250.00 | \$875.00 |
| Dan Canon | Service | 08/04/2015 | Joe - receive and review Defendant's MTD | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 08/05/2015 | Review 3p complaint | 0.20 | \$300.00 | \$60.00 |
| Dan Canon | Service | 08/05/2015 | Joe - revise reply brief draft | 1.00 | \$250.00 | \$250.00 |
| Dan Canon | Service | 08/06/2015 | Joe - final review of reply draft | 1.20 | \$250.00 | \$300.00 |
| Dan Canon | Service | 08/07/2015 | Review reply brief to prep for hearing | 1.00 | \$300.00 | \$300.00 |
| Dan Canon | Service | 08/07/2015 | Joe - review of motion for injunction filed by Defendant | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 08/08/2015 | Joe - email exchange with co-counsel | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 08/09/2015 | Joe - email exchange with co-counsel re: subject of next hearing | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 08/10/2015 | Telephonic hrg; TC w Bill Sharp | 0.40 | \$300.00 | \$120.00 |

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|------------------|---------|------------|---|------|----------|----------|
| Alex Bryant | Service | 08/10/2015 | Printed, filed, distributed several filings rec'd via ECF and calendared where appropriate. | 1.50 | \$90.00 | \$135.00 |
| Dan Canon | Service | 08/11/2015 | TC w Bill Sharp, review mtn to extend time, corresp w counsel | 0.80 | \$300.00 | \$240.00 |
| Dan Canon | Service | 08/11/2015 | Joe - review of Defendant's motion for extension of time | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 08/12/2015 | Joe - review of court ruling re: injunction; email exchange regarding next steps | 0.50 | \$250.00 | \$125.00 |
| Dan Canon | Service | 08/13/2015 | Review motion to stay; TC w counsel; TC w clients re: opinion and next steps; review mtn to stay response | 2.00 | \$300.00 | \$600.00 |
| Dan Canon | Service | 08/13/2015 | Joe - review Defendant's Motion to Stay, email exchange re: response | 0.80 | \$250.00 | \$200.00 |
| Dan Canon | Service | 08/13/2015 | Joe - review of Defendant's notice of appeal to CA6 | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 08/13/2015 | Joe - research of issues re: motion for contempt, response to Defendant's motion to stay | 1.50 | \$250.00 | \$375.00 |
| Dan Canon | Service | 08/17/2015 | Review stay order, TC w Mike Abate, corresp w all co-counsel | 0.50 | \$300.00 | \$150.00 |
| Laura Landenwich | Service | 08/17/2015 | review stay order; meeting with co-counsel re same | 0.80 | \$300.00 | \$240.00 |
| Dan Canon | Service | 08/17/2015 | Joe - review Defendant's reply to motion to stay injunction | 0.10 | \$250.00 | \$25.00 |
| Alex Bryant | Service | 08/18/2015 | Filed Appearance for Laura. | 0.30 | \$90.00 | \$27.00 |
| Dan Canon | Service | 08/19/2015 | TC w ACLU, et al; draft FRCP 60 mtn; prelim outline on MTD response | 1.30 | \$300.00 | \$390.00 |
| Laura Landenwich | Service | 08/19/2015 | conf call with DJC and BS re Rule 60 motion, response to MTD, response to anticipated request for stay | 0.60 | \$300.00 | \$180.00 |
| Dan Canon | Service | 08/19/2015 | FRCP 60 motion re: stay | 1.40 | \$300.00 | \$420.00 |
| Dan Canon | Service | 08/19/2015 | Joe - review of EDKY order re: temporary stay by CA6; email exchange with co-counsel | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 08/19/2015 | Joe - review of documents filed in CA6 re Defendant | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 08/20/2015 | Joe - review briefing letter filed by CA6 | 0.10 | \$250.00 | \$25.00 |

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|-------------|---------|------------|--|------|----------|------------|
| Dan Canon | Service | 08/20/2015 | Joe - file notice of appearance in CA6 | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 08/21/2015 | Joe - review draft of stay response to be filed in CA6, related email exchange | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 08/22/2015 | MTD response | 0.40 | \$300.00 | \$120.00 |
| Dan Canon | Service | 08/23/2015 | Review MTD and prep response; corresp w co-counsel | 1.40 | \$300.00 | \$420.00 |
| Dan Canon | Service | 08/23/2015 | Revise stay response | 1.30 | \$300.00 | \$390.00 |
| Dan Canon | Service | 08/23/2015 | Review Eagle Forum Brief & notate | 0.60 | \$300.00 | \$180.00 |
| Dan Canon | Service | 08/23/2015 | Joe - final review of stay response draft | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 08/24/2015 | Draft response to MTD | 6.40 | \$300.00 | \$1,920.00 |
| Dan Canon | Service | 08/25/2015 | Joe - review stay response reply filed by Defendant in CA6 | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 08/25/2015 | Joe - review WDKY stay order | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 08/25/2015 | Draft MTD response | 3.10 | \$300.00 | \$930.00 |
| Dan Canon | Service | 08/26/2015 | Joe - review CA6 order denying stay, email exchange with co-counsel | 0.20 | \$250.00 | \$50.00 |
| Alex Bryant | Service | 08/26/2015 | Much filing. | 1.00 | \$90.00 | \$90.00 |
| Dan Canon | Service | 08/26/2015 | Review stay order; corresp w co-counsel & clients | 0.60 | \$300.00 | \$180.00 |
| Dan Canon | Service | 08/27/2015 | Joe - review draft of SCOTUS stay response, related email exchange with co-counsel | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 08/27/2015 | Review stay response SCOTUS; TC w clients and WES | 1.10 | \$300.00 | \$330.00 |
| Dan Canon | Service | 08/28/2015 | Joe - review updated drafts of SCOTUS stay response | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 08/28/2015 | Joe - review and SCOTUS motion for stay filed by Defendant | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 08/28/2015 | Review and edit stay response SCOTUS | 2.20 | \$300.00 | \$660.00 |
| Dan Canon | Service | 08/31/2015 | Joe - email exchange with co-counsel re: case status | 0.40 | \$250.00 | \$100.00 |
| Dan Canon | Service | 08/31/2015 | Joe - review SCOTUS order denying stay | 0.10 | \$250.00 | \$25.00 |

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|------------------|---------|------------|--|------|----------|------------|
| Dan Canon | Service | 08/31/2015 | TC w co-counsel and clients | 1.00 | \$300.00 | \$300.00 |
| Laura Landenwich | Service | 08/31/2015 | Conference call | 0.50 | \$300.00 | \$150.00 |
| Dan Canon | Service | 09/01/2015 | Joe - review draft of WDKY motion to hold Defendant in contempt | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 09/01/2015 | Joe - review draft of WDKY motion to clarify injunction/stay order | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 09/01/2015 | Joe - review WDKY order for hearing on contempt motion | 0.10 | \$250.00 | \$25.00 |
| Laura Landenwich | Service | 09/01/2015 | conference call with ACLU and clients; draft Miller affidavit; review and revise motion for contempt | 1.60 | \$300.00 | \$480.00 |
| Dan Canon | Service | 09/01/2015 | Review motions and orders; TC w co-counsel; review statement of Kim Davis; research contempt remedies | 2.10 | \$300.00 | \$630.00 |
| Laura Landenwich | Service | 09/01/2015 | teleconference with co-counsel re preparation for hearing | 0.60 | \$300.00 | \$180.00 |
| Dan Canon | Service | 09/02/2015 | TC w co-counsel and clients; continued contempt research; TC w Jeff Mando; prep clients for hrg; review D mtn for inj relief | 2.60 | \$300.00 | \$780.00 |
| Laura Landenwich | Service | 09/02/2015 | draft direct exam of clients; conference call with Sharp & Canon re hearing | 1.50 | \$300.00 | \$450.00 |
| Laura Landenwich | Service | 09/02/2015 | conf call to prep for hearing | 0.50 | \$300.00 | \$150.00 |
| Dan Canon | Service | 09/03/2015 | Joe - conference call with co-counsel re: hearing and arrest of Defendant | 0.30 | \$250.00 | \$75.00 |
| Laura Landenwich | Service | 09/03/2015 | Travel to and from Ashland | 7.00 | \$300.00 | \$2,100.00 |
| Laura Landenwich | Service | 09/03/2015 | Prep for hearing on contempt motion | 3.00 | \$300.00 | \$900.00 |
| Laura Landenwich | Service | 09/03/2015 | Attend hearing on Motion for Contempt | 5.00 | \$300.00 | \$1,500.00 |
| Dan Canon | Service | 09/03/2015 | Travel to and from Ashland | 7.00 | \$300.00 | \$2,100.00 |
| Dan Canon | Service | 09/03/2015 | Prep for hearing on contempt motion | 3.50 | \$300.00 | \$1,050.00 |
| Dan Canon | Service | 09/03/2015 | Attend hearing on contempt motion | 5.00 | \$300.00 | \$1,500.00 |
| Dan Canon | Service | 09/04/2015 | Joe - email exchange with co-counsel re: rumored changes to marriage cert. | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 09/04/2015 | Joe - review of WDKY order re: hearing and arrest of Defendant | 0.50 | \$250.00 | \$125.00 |

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|------------------|---------|------------|---|------|----------|------------|
| Dan Canon | Service | 09/04/2015 | Review filings; TC w OC and co-counsel; review licenses | 1.20 | \$300.00 | \$360.00 |
| Dan Canon | Service | 09/06/2015 | Joe - email exchange with counsel re: state gov response to case, marriage license changes | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 09/06/2015 | Review Lederman commentary; corresp w legal team and Jeff Mando re: validity of licenses | 0.50 | \$300.00 | \$150.00 |
| Dan Canon | Service | 09/07/2015 | Draft status update to court; TC w WES; corresp w clients and legal team; review amd notice of appeal | 1.70 | \$300.00 | \$510.00 |
| Dan Canon | Service | 09/08/2015 | Joe - review draft of statement re: license changes; related email exchange | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 09/08/2015 | Joe - review of WDKY order re: release of Defendant from jail | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 09/08/2015 | Review and file revised status update; corresp w clients and legal team; review orders from DLB, enter appearance in yet another appeal | 2.50 | \$300.00 | \$750.00 |
| Laura Landenwich | Service | 09/08/2015 | conf call with co-counsel; receipt and review various pleadings filed over the weekend and this morning. | 0.90 | \$300.00 | \$270.00 |
| Laura Landenwich | Service | 09/08/2015 | edit and revise response to motion for emergency relief | 0.60 | \$300.00 | \$180.00 |
| Alex Bryant | Service | 09/11/2015 | Hours of printing and filing and turned filing in this case over to Jennifer 2. Filled out LEL Appearance but unable to file in COA ECF bc my computer is old. | 0.50 | \$90.00 | \$45.00 |
| Dan Canon | Service | 09/14/2015 | Review govnr's resp to emer mtn for inj; Davis 6CA mtn to stay inj; rvw resp to MTD appeal; review and edit our response to mtn to stay inj; TC w ACLU national; watch LC press conference; review AG statement on validity of licenses; draft opinion letter to AG | 3.80 | \$300.00 | \$1,140.00 |
| Dan Canon | Service | 09/15/2015 | Joe - review and revise draft of CA6 response | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 09/15/2015 | TC w ACLU | 1.00 | \$300.00 | \$300.00 |
| Laura Landenwich | Service | 09/15/2015 | conference call with co-counsel re next steps | 1.00 | \$300.00 | \$300.00 |
| Laura Landenwich | Service | 09/15/2015 | draft renewed motion for contempt | 0.40 | \$300.00 | \$120.00 |

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|------------------|---------|------------|--|------|----------|------------|
| Alex Bryant | Service | 09/15/2015 | Searched for pleadings in 3rd appeal for Joe. Discovered Joe, Jenny & I weren't receiving them. Will follow up tomorrow. | 1.00 | \$90.00 | \$90.00 |
| Laura Landenwich | Service | 09/16/2015 | draft renewed motion for sanctions | 6.90 | \$300.00 | \$2,070.00 |
| Dan Canon | Service | 09/16/2015 | Draft 6CA response to stay (5978); review second contempt motion | 2.80 | \$300.00 | \$840.00 |
| Dan Canon | Service | 09/17/2015 | Review emails from HW and 2nd contempt mtn, draft response to stay 5978 | 2.00 | \$300.00 | \$600.00 |
| Dan Canon | Service | 09/18/2015 | Joe - revise draft of CA6 response brief, related email exchange with co-counsel | 1.50 | \$250.00 | \$375.00 |
| Dan Canon | Service | 09/18/2015 | Draft, finalize and file response in 5978 | 3.30 | \$300.00 | \$990.00 |
| Dan Canon | Service | 09/21/2015 | Joe - review draft of WDKY motion to enforce, related email exchange | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 09/21/2015 | TC w aclu, revise and refile response | 0.90 | \$300.00 | \$270.00 |
| Laura Landenwich | Service | 09/21/2015 | conference call; research re re-issuing licenses after solemnization | 1.70 | \$300.00 | \$510.00 |
| Dan Canon | Service | 09/29/2015 | Review reply to contempt stay, corresp w ACLU | 0.30 | \$300.00 | \$90.00 |
| Dan Canon | Service | 10/09/2015 | Conference call re: potential plaintiffs and amending complaint | 1.00 | \$300.00 | \$300.00 |
| Dan Canon | Service | 10/13/2015 | Joe - review draft of opposition to stay request filed by Defendant | 0.30 | \$250.00 | \$75.00 |
| Dan Canon | Service | 10/19/2015 | TC w ACLU | 0.80 | \$300.00 | \$240.00 |
| Dan Canon | Service | 10/20/2015 | Joe - review of reply filed by Defendant in CA6 | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 10/22/2015 | Joe - review of draft of motion to re-open class cert. | 0.10 | \$250.00 | \$25.00 |
| Dan Canon | Service | 11/09/2015 | Conference call re: changes to marriage licenses | 1.00 | \$300.00 | \$300.00 |
| Laura Landenwich | Service | 11/09/2015 | Conference call re: changes to marriage licenses | 1.00 | \$300.00 | \$300.00 |
| Dan Canon | Service | 11/19/2015 | Joe - review of draft of reply in support of motion to enforce | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 12/03/2015 | Joe - review and revision of CA6 appellee brief | 0.50 | \$250.00 | \$125.00 |

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|-----------|---------|------------|--|------|----------|----------|
| Dan Canon | Service | 12/05/2015 | Review and edit response brief (6CA) | 0.80 | \$300.00 | \$240.00 |
| Dan Canon | Service | 12/06/2015 | Continue revising and editing 6CA brief | 1.40 | \$300.00 | \$420.00 |
| Dan Canon | Service | 12/14/2015 | Joe - revision of CA6 appellee brief, related email exchange | 0.20 | \$250.00 | \$50.00 |
| Dan Canon | Service | 01/06/2016 | Joe - review of Bevin executive order re: license | 0.10 | \$250.00 | \$25.00 |

Total \$59,854.00

Detailed Statement of Account

Current Invoice

| Invoice Number | Due On | Amount Due | Payments Received | Balance Due |
|----------------|------------|-------------|---------------------------------|--------------------|
| 1169 | 09/19/2016 | \$59,854.00 | \$0.00 | \$59,854.00 |
| | | | Outstanding Balance | \$59,854.00 |
| | | | Total Amount Outstanding | \$59,854.00 |

Please make all amounts payable to: Clay Daniel Walton & Adams PLC

Payment is due upon receipt.

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

**DECLARATION OF JAMES D. ESSEKS IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**

I, James D. Esseks, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of the motion filed by Plaintiffs for an award of attorney fees and costs arising from the work performed by attorneys at Clay Daniel Walton & Adams, PLC; at the American Civil Liberties Union (“ACLU”) Foundation; and the ACLU of Kentucky, in litigating the above-captioned case.

Personal and Professional Background

2. I received a J.D. degree *cum laude* from Harvard Law School in 1991, where I was the editor-in-chief of the *Harvard Civil Rights-Civil Liberties Law Review*. I received a B.A. degree *magna cum laude* from Yale College in 1987, with distinction in linguistic anthropology.

3. I am licensed to practice law in New York State and in California. I am also admitted to practice before the United States Supreme Court; the United States Courts of Appeals for the Second, Third, Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits; the United States District Courts for the Eastern and Southern Districts of New York, the Northern and Central Districts of California, and the District of Columbia.

4. I served as a judicial law clerk for the Honorable Robert L. Carter, United States District Judge for the Southern District of New York, from 1991 to 1992, and for the Honorable James R. Browning, United States Circuit Judge for the Ninth Circuit, from 1992 to 1993.

5. From 1993 until 1997 I was an associate, and then from 1998 through 2001 I was a partner, at Vladeck, Waldman, Elias & Engelhard, P.C., a private law firm in New York City that specializes in employment and labor law (now known as Vladeck, Raskin & Clark, P.C.). While at the Vladeck firm, I tried cases in federal and state courts and before various arbitration tribunals, argued appeals, and pursued claims primarily under federal civil rights statutes and the federal constitution.

6. From 2001 until 2010, I was Litigation Director of the ACLU Foundation's Lesbian, Gay, Bisexual, Transgender, and HIV Project, based in New York, New York. From 2010 until the present, I have been Director of that same Project, overseeing both its legal program and other aspects of its advocacy, including lobbying, administrative advocacy, organizing, and education of the public about issues affecting lesbian, gay, bisexual, or transgender ("LGBT") people or people living with HIV.

7. Through my work with the LGBT & HIV Project, I have developed a specialty in constitutional litigation generally and specifically in constitutional claims about the rights of LGBT people.

8. I have been counsel in numerous constitutional cases about the freedom to marry for same-sex couples, including *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (striking down bans on marriage for same-sex couples in Michigan, Ohio, Tennessee, and Kentucky, and establishing freedom to marry for same-sex couples nationwide) (I was also counsel in *Bourke v. Beshear* and *Love v. Beshear*, the Kentucky cases, which were consolidated with *Obergefell* in the Supreme Court); *United States v. Windsor*, 133 S. Ct. 2675 (striking down the Defense of Marriage Act); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), *cert. denied*, 2014 WL

3924685 (U.S. Oct. 6, 2014) (striking down Virginia's ban on marriage for same-sex couples); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014), *cert. denied*, 2014 WL 3924685 (U.S. Oct. 6, 2014) (striking down Indiana's ban on marriage for same-sex couples) (I was counsel in *Fujii v. Commissioner*, which was consolidated with *Baskin* on appeal); *Whitewood v. Wolf*, 992 F. Supp. 2d 410 (M.D. Pa. 2014) (striking down Pennsylvania's ban on marriage for same-sex couples); *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128 (D. Or. 2014) (striking down Oregon's ban on marriage for same-sex couples) (I was counsel in *Rummell v. Kitzhaber*, which was consolidated with *Geiger*); *Brenner v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014) (granting preliminary injunction against enforcement of Florida's ban on marriage for same-sex couples) (I was counsel in *Grimsley v. Scott*, which was consolidated with *Brenner*); *Fisher-Borne v. Smith*, 14 F. Supp. 3d 695 (M.D.N.C. 2014) (striking down North Carolina's ban on marriage for same-sex couples); *Aaron-Brush v. Bentley*, No. 2:14-cv-01091 (N.D. Ala. 2014) (constitutional challenge to Alabama's ban on marriage for same-sex couples); *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013) (striking down New Mexico ban on marriage for same-sex couples under state constitution); *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008) (striking down California's ban on marriage for same-sex couples under state constitution); *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009) (rejecting state constitutional challenge to Proposition 8); *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006) (upholding New York's ban on marriage for same-sex couples under state constitution) (I was counsel in *Samuels v. New York State Dep't of Health*, which was consolidated with *Hernandez* on appeal); *Conaway v. Deane*, 932 A.2d 571 (Md. 2007) (upholding Maryland's ban on marriage for same-sex couples under the state constitution); *Li v. Oregon*, 110 P.3d 91 (Or. 2005) (dismissing challenge to Oregon's ban on marriage for same-sex couples).

9. I have also been counsel in cases challenging state laws barring lesbians and gay men from being adoptive or foster parents. Those include *In re Matter of Adoption of X.X.G.*

and N.R.G., 43 So.3d 79 (Fla. 3d Dist. Ct. App. 2010), which struck down Florida's ban on adoption by lesbian, gay, or bisexual people as violative of the Florida constitution; *Howard v. Child Welfare Agency Review Bd.*, 238 S.W.3d 1 (Ark. 2006), which struck down Arkansas's ban on placement of a foster child in any household that included a gay person; and *Arkansas Dep't of Human Services v. Cole*, 380 S.W.3d 429 (Ark. 2011), which struck down Arkansas's ban on adoption or foster parenting by any unmarried couple as violative of the Arkansas constitution.

10. I have been counsel in a range of other civil rights cases including, as a representative sample:

- a. *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008), in which a federal district court ruled that the federal ban on sex discrimination in employment bars discrimination against a woman who transitioned from male to female.
- b. *Kansas v. Limon*, 122 P.3d 22 (Kan. 2005), in which the Kansas Supreme Court ruled that a state law that imposed a 17-year sentence for a consensual sex act when engaged in by two people of the same sex, compared to a 15-month sentence for the same act when performed by two people of different sexes, violated federal equal protection.
- c. *Boyd County High School Gay/Straight Alliance v. Board of Education*, 258 F. Supp. 2d 267 (E.D. Ky. 2003) and *Morrison v. Board of Education*, 419 F. Supp. 2d 937 (E.D. Ky. 2006), *aff'd*, 521 F.2d 602 (6th Cir. 2008), in which the district court ruled that a high school violated the federal Equal Access Act by denying students the ability to form a Gay-Straight Alliance student club, and later ruled that the remedial training program set up to redress anti-gay harassment in the school did not violate the free exercise of religion rights of other students or their parents.

d. *Levin v. Yeshiva Univ.*, 754 N.E.2d 1099 (N.Y. 2001), in which the New York high court ruled that denying a same-sex couple who were registered as domestic partners access to “married student housing” constituted disparate impact discrimination based on sexual orientation in violation of New York City law.

11. Over the past 25 years, I have been direct counsel in litigation in, or supervised litigation in, 11 federal circuit courts, 30 federal district courts, and the state courts of 34 states, including 18 state high courts.

12. I have argued appeals in United States Courts of Appeals for the Fourth and Seventh Circuits, in the Kansas Supreme Court, in the New York Court of Appeals, and in the Appellate Division of the New York Supreme Court, in addition to arguing motions and trying cases before many lower state and federal courts.

13. I have received a number of awards for my work, including the 2013 Dan Bradley Award from the National LGBT Bar Association, which is the organization’s “highest honor” and recognizes a person whose work “has led the way in our struggle for equality under the law.” <http://lgbtbar.org/what-we-do/awards-recognition/dan-bradley-award/> I also received the 2012 Community Vision Award from the LGBT Bar Association of Greater New York, was a Wasserstein Public Interest Fellow at Harvard Law School in 2009, and was the 2013-2014 Vanderbilt Law School Social Justice Fellow.

14. I have lectured on constitutional law, LGBT rights, and employment law at Columbia Law School, Fordham Law School, New York Law School, and the Wharton School of the University of Pennsylvania.

Time Spent

15. The ACLU LGBT & HIV Project litigation team for this case included myself, Steven R. Shapiro, Louise Melling, and Ria Tabacco Mar (together, “ACLU counsel”).

16. I have exercised reasonable billing judgment in determining the amount of attorney fees that ACLU counsel are requesting for their services to ensure that the time for which we are seeking compensation is reasonable in light of the tasks counsel were required to perform.

17. As part of that billing discretion, I have decided not to seek payment for over 70 hours of time devoted to this litigation by the following ACLU lawyers:

- a. Steven R. Shapiro, Legal Director of the national ACLU. Mr. Shapiro has practiced law for 39 years and leads all of the ACLU's Supreme Court practice. Under his leadership, the ACLU regularly files more briefs, as party counsel and as counsel for an amicus, than any other law firm or entity in the country other than the Office of the Solicitor General of the United States. Mr. Shapiro devoted over 40 hours to this litigation.
- b. Louise Melling, Deputy Legal Director of the national ACLU. Ms. Melling has practiced law for more than 25 years and currently supervises the ACLU's work on LGBT rights, women's rights, reproductive freedom, and religion. She has been counsel in numerous Supreme Court cases, as well as in federal constitutional litigation across the country. Ms. Melling spent over 30 hours to this litigation.

18. The attorney time records attached to this declaration detail the time I spent on the representation. These hours are based on the contemporaneous records that I maintained during the course of my involvement in this case. The attorney time records are a true and accurate reflection of professional services reasonably rendered by me to the Plaintiffs in this litigation.

19. The attorney time records attached to this declaration also detail the time that Ria Tabacco Mar spent on the representation. Ms. Mar graduated *magna cum laude* from Harvard College and *cum laude* from New York University School of Law, where she was an Articles

Editor of the *Law Review*. She is admitted to practice law in New York State and in the following federal courts: U.S. Supreme Court; U.S. Courts of Appeals for the Fourth, Sixth, and Seventh Circuits; and U.S. District Courts for the Southern and Eastern Districts of New York.

20. Ms. Mar served as a judicial law clerk for the Honorable Julia Smith Gibbons, United States Circuit Judge for the Sixth Circuit, from 2008 to 2009, and for the Honorable Victor Marrero, United States District Judge for the Southern District of New York, from 2010 to 2011.

21. From 2009 to 2010, Ms. Mar practiced complex civil litigation at the law firm of Cravath, Swaine & Moore LLP. From 2011 to 2014, she served as Assistant Counsel at the NAACP Legal Defense & Educational Fund, Inc., where she represented plaintiffs in class action and complex civil litigation under civil rights statutes and participated regularly in the U.S. Courts of Appeals and the U.S. Supreme Court as *amicus curiae* on cases involving marriage equality.

22. Ms. Mar joined the ACLU's LGBT & HIV Project as a Staff Attorney in 2014. She has developed an expertise in federal constitutional law and LGBT rights, including the intersection of equal protection, freedom of speech, and free exercise of religion. For instance, Ms. Mar is lead counsel in *Craig v. Masterpiece Cakeshop, Inc.*, where the Colorado Court of Appeals held that a private business did not have a constitutional right to refuse service to a same-sex couple in violation of the state's anti-discrimination law. 370 P.3d 272 (Colo. Ct. App. 2015), *cert. denied*, No. 15SC738, 2016 WL 1645027 (Colo. Apr. 25, 2016), and *cert. petition docketed*, No. 16-111 (U.S. July 22, 2016). In 2016, the National LGBT Bar Association named Ms. Mar one of the nation's Best LGBT Lawyers Under 40.

23. Ms. Mar's hours are based on the contemporaneous records that she maintained during the course of her involvement in this case. Her attorney time records are a true and accurate reflection of professional services reasonably rendered to Plaintiffs in this litigation.

24. I have reviewed the attorney time records of Ms. Mar and have eliminated all non-productive and non-essential time, as well as all duplicative time.

Hourly Rates

25. I request a rate of \$700 per hour for my legal services. Lawyers of my level of skill and experience, who practice civil rights law in New York City, command a market rate of \$700 per hour, as the United States District Court for the Western District of Kentucky determined earlier this year, *Bourke v. Beshear*, No. 3:13-CV-00750-CRS, 2016 WL 164626, at *5 (W.D. Ky. Jan. 13, 2016) (finding that \$700 per hour is a reasonable rate for attorneys of my skill and experience in the relevant market and awarding \$700 per hour for my work on *Bourke v. Beshear* and *Love v. Beshear*), and as further evidenced by the Declaration of Anne L. Clark, submitted as Plaintiffs' Exhibit 7 in conjunction with this motion for attorney fees.

26. I request a rate of \$350 per hour for the legal services of Ms. Mar, who received her law degree in 2008. Lawyers of her level of skill and experience, who practice civil rights law in New York City, command a market rate of at least \$350. The United States District Court for the Western District of Kentucky recently awarded rates of \$400 per hour and \$325 per hour for the work of other staff attorneys in the ACLU's LGBT & HIV Project with skills and experience similar to that of Ms. Mar. *See Bourke*, 2016 WL 164626, at *5 (awarding \$400 per hour for 2005 law graduate and \$325 per hour for 2010 law graduate); *see also* Declaration of Anne L. Clark (lawyers with the skill and experience of Ms. Mar working in New York command a market rate of \$375).

I declare under the penalty of perjury that the foregoing is true and correct.

DATE: September 19, 2016

s/ James D. Esseks
James D. Esseks

Miller v. Davis

Attorney time for James D. Esseks

| <u>Date</u> | <u>Time</u> | <u>Description</u> |
|-------------|-------------|---|
| 8/12/2015 | 0.4 | Review preliminary injunction decision |
| 8/19/2015 | 0.2 | Correspondence with R. Mar re status of case |
| 8/21/2015 | 0.3 | Edit opposition to stay motion |
| 8/21/2015 | 0.1 | Edit notice of appearance |
| 8/21/2015 | 0.2 | Correspondence with R. Mar re stay opposition |
| 8/23/2015 | 0.2 | Review edits to stay opposition |
| 8/26/2015 | 0.1 | Review order denying stay application |
| 8/26/2015 | 0.2 | Correspondence with B. Sharp re prep for SCOTUS stay opposition brief |
| 8/27/2015 | 0.3 | Review SCOTUS stay opposition and S. Shapiro edits |
| 8/28/2015 | 0.4 | Edit SCOTUS stay opposition brief; correspondence re same |
| 8/28/2015 | 0.3 | Phone calls with B. Sharp and SCOTUS clerk's office re stay application |
| 9/14/2015 | 0.7 | Edit CA6 stay opposition; correspondence with legal team re same |
| 9/14/2015 | 0.5 | Review altered marriage license; correspondence with legal team re response |
| 9/14/2015 | 0.7 | Legal team call re how to respond to altered licenses |
| 9/14/2015 | 0.6 | Correspondence with legal team re response to altered licenses |
| 9/15/2015 | 0.5 | Edit CA6 stay opposition; correspondence with legal team re same |
| 9/15/2015 | 0.6 | Legal team call re next steps and opposition to stay motion |
| 9/15/2015 | 0.4 | Review edits to CA6 stay opposition |
| 9/16/2015 | 1.6 | Review draft motion to clarify district court order; correspondence to legal team |
| 9/17/2016 | 0.6 | Correspondence with legal team re class certification motion |
| 9/18/2015 | 0.7 | Review multiple drafts of motion to expedite class certification |
| 9/18/2015 | 1.2 | Edit CA6 opposition to motion to stay; correspondence with legal team re same |
| 9/20/2015 | 0.5 | Correspondence with legal team re motion to clarify/motion to enforce |
| 9/21/2015 | 0.5 | Edit motion to clarify/motion to enforce |
| 9/21/2015 | 0.9 | Legal team call re motion to clarify/motion to enforce |
| 9/21/2015 | 0.5 | Correspondence with legal team re motion to enforce |
| 9/21/2015 | 1.1 | Edit (multiple times) motion to enforce; correspondence to legal team re same |
| 9/21/2015 | 0.5 | Legal team call re motion to enforce |
| 9/24/2015 | 0.2 | Correspondence with legal team about plaintiffs and SCOTUS review |
| 10/9/2015 | 0.6 | Edit opposition to stay motion |
| 10/9/2015 | 0.6 | Legal team call re additional plaintiffs |
| 10/16/2015 | 0.5 | Review correspondence re amended complaint/proposed new action |
| 10/19/2015 | 0.2 | Correspondence re complaint in intervention |
| 10/23/2015 | 0.3 | Edit motion to reopen class cert briefing |
| 11/5/2015 | 0.4 | Correspondence with legal team re intervening complaint |
| 11/6/2015 | 0.5 | Correspondence with legal team re intervening complaint |
| 11/20/2015 | 0.6 | Edit reply brief in support of motion to enforce; conferences with R. Mar re same |
| 12/9/2015 | 1.2 | Edit CA6 brief |
| 2/9/2016 | 0.5 | Review order denying motion to enforce; correspondence with legal team re san |
| 6/17/2016 | 0.3 | Correspondence with legal team re motion to dismiss appeals |
| 6/21/2016 | 0.4 | Call with April Miller re dismissal of appeals |
| Total | 21.1 | |

Miller v. Davis

Attorney time for Ria Tabacco Mar

| <u>Date</u> | <u>Time</u> | <u>Description</u> |
|-------------|-------------|--|
| 8/3/2015 | 0.4 | Correspondence re preliminary injunction reply brief |
| 8/5/2015 | 0.5 | Revise preliminary injunction reply brief |
| 8/6/2016 | 0.1 | Correspondence re preliminary injunction reply brief |
| 8/12/2015 | 0.4 | Review preliminary injunction order |
| 8/13/2015 | 0.2 | Correspondence re briefing on stay pending appeal |
| 8/19/2015 | 0.2 | Review stay pending appeal and correspond re same |
| 8/20/2015 | 0.4 | Review co-counsel agreement and correspond re same |
| 8/21/2015 | 1.5 | Revise stay opposition brief |
| 8/21/2015 | 0.2 | Execute and circulate co-counsel agreement |
| 8/21/2015 | 0.2 | Review and file notice of appearance |
| 8/21/2015 | 0.5 | Review Davis's motion to dismiss and correspond re same |
| 8/21/2015 | 0.2 | Correspondence re stay opposition |
| 8/26/2015 | 0.3 | Review order denying stay |
| 8/30/2015 | 0.2 | Correspondence re Sixth Circuit procedure |
| 8/30/2015 | 0.3 | Revise Supreme Court stay opposition |
| 8/31/2015 | 1.0 | Research and correspondence re implications of potential stay |
| 8/31/2015 | 0.4 | Review Davis's emergency application for a stay |
| 8/31/2015 | 0.1 | Correspondence re related case |
| 8/31/2015 | 0.1 | Review Supreme Court stay order |
| 8/31/2015 | 0.5 | Conference call with legal team |
| 8/31/2015 | 0.5 | Conference call with clients |
| 9/1/2015 | 0.1 | Correspondence re motion to clarify preliminary injunction |
| 9/1/2015 | 1.0 | Draft motion to clarify preliminary injunction |
| 9/2/2015 | 2.0 | Research re remedies for civil contempt and correspond re same |
| 9/3/2015 | 0.5 | Correspondence re contempt hearing |
| 9/4/2015 | 0.8 | Research and correspondence re mooted of named plaintiffs' claims |
| 9/4/2015 | 0.3 | Correspondence re validity of altered marriage licenses |
| 9/4/2015 | 0.5 | Conference call with legal team re validity of altered marriage licences |
| 9/7/2015 | 0.3 | Review status report and correspond re same |
| 9/8/2015 | 0.5 | Conference call with legal team re validity of altered marriage licences |
| 9/8/2015 | 2.0 | Research and draft opposition to Davis's motion to stay contempt order |
| 9/8/2015 | 1.5 | Revise opposition to Davis's emergency application for a stay |
| 9/8/2015 | 0.2 | Review third-party defendant's opposition to Davis's emergency application for a |
| 9/13/2015 | 1.5 | Revise opposition to Davis's motion to stay 9/3 order |
| 9/14/2015 | 1.0 | Conference call with legal team re altered marriage licenses |
| 9/14/2015 | 1.0 | Research and draft language re impracticability |
| 9/15/2015 | 0.7 | Research and draft language re scope of injunction |
| 9/15/2015 | 0.4 | Correspond re remedies for civil contempt |
| 9/15/2015 | 0.3 | Revise district court opposition to Davis's motion to stay 9/3 order |
| 9/15/2015 | 0.7 | Conference call with legal team re stay opposition |
| 9/17/2015 | 0.7 | Review Sixth Circuit stay order and correspond re same |
| 9/18/2015 | 1.5 | Revise district court opposition to Davis's renewed motion to stay 9/3 order |
| 10/2/2015 | 0.2 | Correspondence re amicus briefs in support of plaintiffs |

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|------------|-----|---|
| 10/5/2015 | 0.3 | Correspondence re amicus briefs in support of plaintiffs |
| 10/5/2015 | 0.5 | Review interview notes of potential plaintiffs and correspond re same |
| 10/6/2015 | 0.3 | Conference call with legal team re amicus briefs in support of plaintiffs |
| 10/6/2015 | 0.5 | Conference call with potential amicus |
| 10/6/2015 | 0.3 | Correspondence re potential plaintiffs and amended complaint |
| 10/7/2015 | 0.2 | Correspondence re potential plaintiffs and amended complaint |
| 10/8/2015 | 4.0 | Draft Sixth Circuit opposition to Davis's renewed motion to stay 9/3 order |
| 10/9/2016 | 0.6 | Conference call with legal team re potential plaintiffs |
| 10/13/2015 | 2.0 | Revise Sixth Circuit opposition to Davis's renewed motion to stay 9/3 order |
| 10/17/2015 | 0.7 | Correspondence re filing amended complaint |
| 10/17/2015 | 1.0 | Draft motion to extend time and proposed order |
| 10/19/2015 | 0.1 | Circulate motion to extend time |
| 10/19/2015 | 0.4 | Correspond re amended complaint |
| 10/19/2015 | 0.8 | Conference call with legal team re amended complaint |
| 10/23/2015 | 0.3 | Review reply in support of motion to reopen class certification briefing |
| 11/2/2015 | 0.7 | Review Davis's opening brief |
| 11/2/2015 | 0.4 | Conference call with potential amicus |
| 11/2/2015 | 0.2 | Correspond re potential amicus |
| 11/5/2015 | 0.3 | Review Sixth Circuit order denying motion to stay 9/3 order and correspond re s |
| 11/8/2015 | 3.0 | Draft complaint in intervention |
| 11/9/2015 | 1.0 | Conference call with legal team re expected changes to marriage licenses |
| 11/13/2015 | 0.4 | Review third-party defendant's response to motion to enforce and correspond re |
| 11/16/2015 | 0.8 | Conference call with legal team re motion to enforce |
| 11/18/2015 | 0.5 | Correspondence with J. Fernandez re affidavit |
| 11/19/2015 | 0.7 | Draft J. Fernandez affidavit |
| 11/19/2015 | 4.0 | Draft reply in support of motion to enforce |
| 11/19/2015 | 0.2 | Correspondence re schedule for potential amicus |
| 11/20/2015 | 0.1 | Correspondence with J. Fernandez re affidavit |
| 11/20/2015 | 0.5 | Conference call with legal team re reply in support of motion to enforce |
| 11/20/2015 | 2.0 | Revise reply in support of motion to enforce and conference with J. Esseks re sar |
| 11/30/2015 | 0.1 | Correspondence re request for oral argument |
| 12/8/2015 | 3.0 | Revise Sixth Circuit opposition brief |
| 12/14/2015 | 2.0 | Revise Sixth Circuit opposition brief |
| 12/15/2015 | 2.5 | Revise Sixth Circuit opposition brief and correspond re same |
| 12/28/2015 | 0.3 | Review executive order and correspond re same |
| 1/6/2016 | 0.3 | Correspond re executive order |
| 1/11/2016 | 1.0 | Draft response to notice of supplemental authority |
| 1/12/2015 | 0.5 | Finalize and file response to notice of supplemental authority |
| 1/19/2016 | 0.4 | Review Davis's Sixth Circuit reply brief |
| 2/9/2016 | 0.1 | Review order denying motion to enforce |
| 2/16/2016 | 0.2 | Review status report of Brian Mason and correspond re same |
| 4/15/2016 | 0.2 | Correspond re new marriage license bill |
| 4/19/2016 | 0.3 | Review Sixth Circuit order granting third-party defendant's motion to dismiss an |
| 6/14/2016 | 0.2 | Correspond re motion to dismiss as moot |
| 6/16/2016 | 0.3 | Correspond re motion to dismiss as moot |
| 6/17/2016 | 0.4 | Review letter to Sixth Circuit re mootness and correspond re same |
| 6/29/2016 | 0.5 | Research vacatur of preliminary order |

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| 6/30/2016 | 0.8 | Revise response to motion to dismiss and correspond re same |
| 7/13/2016 | 0.1 | Review Sixth Circuit order dismissing appeals |
| 7/13/2016 | 0.4 | Correspond with clients re Sixth Circuit order dismissing appeals |
| Total | 66.3 | |

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

**DECLARATION OF ANNE L. CLARK IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEY FEES**

ANNE L. CLARK, under penalty of perjury, affirms and states as follows:

1. I am a member of the firm Vladeck, Raskin & Clark, P.C. (the "Vladeck Firm").¹

I submit this declaration in support of the motion filed by the Plaintiffs for an award of attorney fees and costs arising from the work performed by attorneys at the American Civil Liberties Union ("ACLU") Foundation in preparing, filing, and litigating the above-captioned case.

2. The Vladeck Firm concentrates in representing individuals in employment related matters, and has successfully represented employees in numerous employment litigations and arbitrations. See, e.g., Merino v. Beverage Plus Am. Corp., No. 10 Civ. 0706, 2014 WL 1744728 (S.D.N.Y. Mar. 6, 2014) (\$1.29 million judgment); Redd v. New York Div. of Parole, 678 F.3d 166 (2d Cir. 2012) (reinstating sexual harassment claims); DeCurtis v. Upward Bound Int'l, Inc., No. 09 Civ. 5378, 2012 WL 4561127 (S.D.N.Y. Sept. 27, 2012), aff'd sub nom. De Curtis v. Ferrandina, 529 F. App'x 85 (2d Cir. 2013) (affirming default judgment of

¹ Until last year, the name of the firm was Vladeck, Waldman, Elias & Engelhard, P.C.

\$845,309.11); Davis v. Abercrombie & Fitch Co., No. 08 Civ. 01859 (S.D.N.Y. October 2009); Sotak v. McGraw-Hill Companies, Inc., 07 Civ. 2698 (S.D.N.Y. trial January 2009); Zakre v. Norddeutsche Landesbank Girozentrale, 541 F. Supp. 2d 555 (S.D.N.Y. 2008), aff'd, 344 F. App'x 628 (2d Cir. 2009); Browne-Sanders v. Madison Square Garden, L.P., et al., No. 06 Civ. 0589 (S.D.N.Y. trial Sept.– Oct. 2007); Pappas v. Watson Wyatt & Co., No. 3:04-CV-304, 2008 WL 793597 (D. Conn. Mar. 20, 2008); Sandhaus v. McCann Erickson, Inc., No. 03 Civ. 6743 (S.D.N.Y. trial August 2005); Fitzgerald v. Ford Marrin Esposito Witmeyer & Gleser, L.L.P., No. 01-7256, 01-7322, 2002 WL 313225 (2d Cir. Feb. 27, 2002) (reinstating jury verdict in plaintiff's favor); Lawrence E. Lewis v. Communicar, Inc., No. 99 CV 609 (E.D.N.Y. trial December 2001); Ginsberg v. Valhalla Anesthesia Assocs., P.C., No. 96 Civ. 6462, 1997 WL 669870 (S.D.N.Y. Oct. 28, 1997); Mahoney v. Canada Dry Bottling Co. of New York, No. 94 Civ. 2924, 1998 WL 231082 (E.D.N.Y. May 7, 1998); DeGaetano v. Smith Barney, Inc., 983 F. Supp. 459 (S.D.N.Y. 1997); Dailey v. Societé Générale, 915 F. Supp. 1315 (S.D.N.Y. 1996), aff'd in part and vacated in part, 108 F.3d 451 (2d Cir. 1997); McIntosh v. Irving Trust Co., 873 F. Supp. 872 (S.D.N.Y. 1995); Malarkey v. Texaco, Inc., 794 F. Supp. 1237 (S.D.N.Y. 1992), aff'd, 983 F.2d 1204 (2d Cir. 1993); Pierce v. F.R. Tripler & Co., 770 F. Supp. 118 (S.D.N.Y. 1991), aff'd in relevant part and rev'd in part, 955 F.2d 820 (2d Cir. 1992); Wulach v. Bear, Stearns & Co., No. 86 Civ. 5644, 1988 WL 123632 (S.D.N.Y. Nov. 8, 1988); Whittlesey v. Union Carbide Corp., 742 F.2d 724 (2d Cir. 1984); Plummer v. Chem. Bank, 579 F. Supp. 1364 (S.D.N.Y. 1984); Melani v. Bd. of Higher Educ. of New York, 561 F. Supp. 769 (S.D.N.Y. 1983); Lo Re v. Chase Manhattan Corp., 431 F. Supp. 189 (S.D.N.Y. 1977). See also County of Suffolk v. Long Island Lighting Co. ("LILCO"), 710 F. Supp. 1407 (E.D.N.Y. 1989) (civil RICO, fraud case) aff'd, 907 F.2d 1295 (2d Cir. 1990); County of Suffolk v. Acorn, 710 F. Supp. 1428 (E.D.N.Y.

1989), aff'd in part and rev'd in part, 907 F.2d 1295 (2d Cir. 1990). In LILCO, Judge Weinstein described the firm as "of excellent quality." 710 F. Supp. at 1412.

3. The Vladeck Firm charges \$450-\$750 per hour for partners. The Vladeck Firm has charged \$700 per hour for my time since the beginning of 2012. The firm typically bills clients on an hourly basis and clients of the Vladeck Firm routinely pay my hourly rate.

4. I became associated with the Vladeck Firm in September 1993 and became a partner in January 1997. I graduated from New York University in 1985 and received my J.D. from New York University School of Law in 1990. Before my association with the Vladeck Firm, I was a law clerk for the Honorable Raymond J. Pettine in the United States District Court for the District of Rhode Island. After my clerkship, I worked for two years as a Skadden Fellow/staff attorney at the NOW Legal Defense and Education Fund ("NOW LDEF"). At NOW LDEF, I worked on the Eleventh Circuit appeal of Robinson v. Jacksonville Shipyards, Inc., 760 F. Supp. 1486 (M.D. Fla. 1991); served as lead counsel and argued the appeal of Townsend v. Indiana Univ., 995 F.2d 691 (7th Cir. 1993); and submitted an amicus curiae brief to the Supreme Court on Harris v. Forklift Sys., Inc., 510 U.S. 17 (1993).

5. Since becoming associated with the Vladeck Firm, I have served as lead counsel and co-counsel for plaintiffs in many employment law matters in federal court, including serving as lead counsel in the trials of Delville v. Firmenich Inc., No. 08 Civ. 10891 (S.D.N.Y. trial November 2013); Zakre, No. 03 Civ. 257 (S.D.N.Y. trial April 2007); Pappas, 2008 WL 793597 (D. Ct. trial December 2006); Sandhaus, No. 03 Civ. 6743 (S.D.N.Y. trial August 2005); Kreinik v. Showbran Photo, Inc., No. 02 Civ. 1172 (S.D.N.Y. trial October 2004); Riisna v. Am. Broad. Cos., 219 F. Supp. 2d 568 (S.D.N.Y. trial February 2003); and Mahoney, 94 Civ. 2924; and as co-counsel in the trials of Fitzgerald, 2002 WL 313225; Ginsberg, 1997 WL 669870; and Antreassian v.

Chem. Bank, 93 Civ. 6812 (trial June 1996). I have also been lead counsel in employment arbitrations before the American Arbitration Association and lead counsel and co-counsel in employment arbitrations before FINRA and its predecessors, the New York Stock Exchange and National Association of Securities Dealers.

6. For over a dozen years, I was an adjunct professor at Fordham University School of Law, where I co-taught "Women and the Law" and then "Employment Discrimination," and have guest-lectured at New York University School of Law, Cardozo Law School, New York Law School, Rutgers University School of Law, and John Jay College. I was on the Executive Board of the National Employment Lawyers Association/New York and have spoken about employment law to numerous organizations, including the American Bar Association, the Institute of Judicial Administration/Center for Labor and Employment Law at New York University School of Law, the New York State Bar Association, the Practicing Law Institute, and the Pro Se Mediation Program at the U.S. District Court for the Southern District of New York.

7. I worked with James Esseks ("Esseks") at the Vladeck Firm from 1993 until 2001, including trying the Mahoney case with him. Even when I did not directly work with him on cases, I was familiar with his work. His legal work was always outstanding. Since Esseks left the Vladeck Firm to join the ACLU, I have followed a number of the cases he has worked on, and have continued to be impressed by his work and accomplishments. I have also reviewed his Declaration in support the motion for attorneys' fees, which details his experience. I have no doubt that were Esseks still employed at the Vladeck Firm, his billing rate would be \$700 per hour and clients would be willing to pay that rate.

8. The Vladeck firm has been awarded \$700 per hour for the time of Vladeck partners, including me, see e.g., Kovach v. City Univ. of N.Y., 13 Civ. 7198 (LGS), 2015 WL

3540798, at *2, 5 (S.D.N.Y. Jun. 4, 2015) (approving \$700 per hour for my time); Merino v. Beverage Plus Am. Corp., No. 10 Civ. 0706 (ALC), 2012 WL 4468182, at *3 (S.D.N.Y. Sept. 25, 2012) (approving rate of \$700 for senior Vladeck partner who now bills at \$700-750 and \$450 for Vladeck partner less experienced than Esseks); and has been awarded \$600 and \$550 for Vladeck partners who are less experienced than Esseks, see, e.g., Gualpa v. NY Pro Signs, Inc., No. 11 Civ. 3133 (LGS)(FM), 2014 WL 2200393, at *9 (S.D.N.Y. May 27, 2014) (approving rate of \$600 for Vladeck partner less-experienced than Esseks); DeCurtis v. Upward Bound Int'l, Inc., No. 09 Civ. 5378 (RJS), 2013 WL 3270357, at *6 (S.D.N.Y. June 3, 2013) (using rate of \$600 for Vladeck partner less-experienced than Esseks); DeCurtis, 2011 WL 4549412, at *7-8 (S.D.N.Y. Sept. 27, 2011) (approving rate of \$550 for a Vladeck partner less-experienced than Esseks).

9. A court recently awarded the Vladeck Firm \$350 an hour for the time of a former associate who graduated in 2006. Kovach, 2015 WL 3540798, at *2, 5. The Vladeck Firm currently bills \$450 an hour for a partner who graduated in 2006. I have reviewed the experience of Ria Tabacco Mar. The Vladeck Firm presently does not have any attorneys with the same length of legal experience. However, the firm would likely charge at least \$375 per hour for an attorney with her background and credentials.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 15, 2016, in New York, New York.



ANNE L. CLARK

APRIL MILLER, *et al.*,

Plaintiffs,

v.

KIM DAVIS, *et al.*,

Defendants.

Case No. 0:15-cv-00044-DLB

Electronically filed

**DECLARATION OF DANIEL MACH IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**

I, Daniel Mach, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of the motion filed by Plaintiffs for an award of attorneys' fees and costs arising from the work performed by attorneys at Clay Daniel Walton & Adams, PLC; at the American Civil Liberties Union ("ACLU") Foundation; and the ACLU of Kentucky, in litigating the above-captioned case.

Education and Professional Background

2. I received my J.D., *magna cum laude*, from the New York University School of Law (Order of the Coif) in 1996, where I was an articles editor of the NYU Law Review. I received a B.A., with a concentration in civil rights and civil liberties, as well as a certificate in African-American studies, from Princeton University in 1992.

3. I am admitted to the state bars of New York and the District of Columbia, as well as the bars for the U.S. Supreme Court, U.S. Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits, and various U.S. District Courts.

4. I am currently the Director of the ACLU Program on Freedom of Religion and

Belief (PFRB).

5. As the Director of PFRB, I litigate and coordinate a wide range of religious liberty cases nationwide in both state and federal courts, and at the trial, appellate, and Supreme Court levels. These cases are primarily brought under the Establishment Clause and the Free Exercise Clause of the First Amendment to the U.S. Constitution, as well as numerous federal and state religious freedom statutes. In recent years, for example, I have litigated the following religious liberty cases, among others: *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011); *Salazar v. Buono*, 129 S. Ct. 1313 (2010); *Marrero-Mendez v. Calixto-Rodriguez*, -- F.3d --, 2016 WL 3902635 (1st Cir. July 19, 2016); *Pedreira v. Sunrise Children's Services, Inc.*, 802 F.3d 865 (6th Cir. 2015); *Hudson v. Pittsylvania County, Va.*, 774 F.3d 231 (4th Cir. 2014); *ACLU of Massachusetts v. U.S. Conference of Catholic Bishops*, 705 F.3d 44 (1st Cir. 2013); *Awad v. Ziriox*, 670 F.3d 1111 (10th Cir. 2012); *ACLU of Florida, Inc. v. Dixie County*, 690 F.3d 1244 (11th Cir. 2012); *Joyner v. Forsyth County*, 653 F.3d 341 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 1097 (2012); *Trunk v. City of San Diego*, 660 F.3d 1091 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2535 (2012); *A.A. ex rel Betenbaugh v. Needville Independent School District*, 611 F.3d 248 (5th Cir. 2010); *Cooper v. U.S. Postal Service*, 577 F.3d 479 (2d Cir. 2009), *cert. denied*, 130 S. Ct. 1688 (2010); *Green v. Haskell County*, 568 F.3d 784 (2009), *cert. denied*, 559 U.S. 970 (2010); *Barnes-Wallace v. City of San Diego*, 530 F.3d 776 (9th Cir. 2008), *cert. denied*, 559 U.S. 1106 (2010); *Allen v. English*, 3:16-cv-00712-CSC (M.D. Ala. 2016); *Martin v. Houston*, No. 2:14-CV-905-WKW, 2016 WL 1368109 (M.D. Ala. Apr. 6, 2016); *Fatihah v. Neal*, No. 6:16-cv-00058-JHP (E.D. OK 2016) (ongoing); *ACLU of Northern California v. Burwell*, No. 3:16-cv-3539-LB (N.D. Cal. 2016) (ongoing); *Franciscan Alliance, Inc., et al. v. Burwell*, No. 7:16-cv-108-O (N.D. Tex. 2016) (ongoing); *Williamson v. Brevard*

County, 15-CV-1098-JA-DAB (M.D. Fla. 2015) (ongoing); *Singh v. McHugh*, 109 F.Supp.3d 72 (D.D.C. 2015); *Lane v. Sabine Parish Sch. Bd.*, No. 5:14-CV-001000-EEF-KHL (W.D. La. 2014) (settled); *Ware v. Louisiana Dep't of Corrections*, No. 5:14-cv-2214-DMH-MLH (W.D. La. 2014) (ongoing); *Lund v. Rowan County*, 103 F. Supp. 3d (M.D.N.C. 2013), *currently on appeal*, No. 15-1591 (4th Cir.); *Anderson v. Chesterfield County School District*, No. 4:11-cv-03300-RBH (D.S.C. 2011) (settled); *Does v. School Board for Santa Rosa County*, No. 3:08cv361/MCR/EMT, 2010 WL 1816799 (N.D. Fla. May 6, 2010); *Doe v. Tangipahoa Parish School Board*, 631 F.Supp.2d 823 (E.D. La. 2009); *Does 1-5 v. Enfield Public Schools*, 716 F. Supp. 2d 172 (D. Conn. 2010); and *Thompson v. Ricci*, No. 08-5926 (D.N.J.) (settled). In addition to my role as lead or co-counsel in the foregoing cases, I regularly participate as *amicus* counsel in religious liberty cases that reach the U.S. Court of Appeals and Supreme Court stages.

6. I currently serve as an adjunct professor of law at the George Washington University School of Law, focusing on constitutional law and religious liberty.

7. In addition to litigation and teaching, I regularly write and speak publicly on religious liberty and constitutional law issues, testify before governmental agencies, and am a nationally recognized expert on religious freedom law.

8. Prior to my work at the ACLU, I was a partner in the Washington, D.C. office of Jenner & Block, where I specialized in First Amendment and appellate law as a member of the firm's Appellate and Supreme Court, and Media and First Amendment practices. At Jenner & Block, I served as direct counsel in a wide variety of cases in state courts, federal district courts, federal courts of appeals, and several constitutional cases before the U.S. Supreme Court, including *Vieth v. Jubelirer*, 541 U.S. 267 (2004); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *United States v. American Library Ass'n*, 539 U.S. 194 (2003).

9. Before joining Jenner & Block, I served as a law clerk to the Honorable Barry T. Moskowitz of the U.S. District Court for the Southern District of California.

Hours Expended in Litigation

10. The ACLU PFRB litigation team for this case included myself and Heather L. Weaver (together, “ACLU PFRB counsel”).

11. I have exercised reasonable billing judgment in determining the amount of attorney fees that ACLU PFRB counsel are requesting for their services to ensure that the time for which we are seeking compensation is reasonable in light of the tasks counsel were required to perform.

12. The attorney time records attached to this declaration detail the time I spent on the representation. These hours are based on the contemporaneous records that I maintained during the course of my involvement in this case. The attorney time records are a true and accurate reflection of professional services reasonably rendered by me to the Plaintiffs in this litigation.

13. The attorney time records attached to this declaration also detail the time that Ms. Weaver spent on the representation. Ms. Weaver is a senior staff attorney with the ACLU. She received her J.D. from the University of California, Berkeley, Boalt Hall, in 2003, where she was a Notes and Comments Editor for the California Law Review. She received her B.A., *summa cum laude*, in political science from Dickinson College in 1999.

14. Ms. Weaver is a member in good standing of the State Bar of California and the Bar of Washington, D.C. She is admitted to practice in the U.S. Supreme Court, the U.S. Court of Appeals for the First, Fourth, Sixth, Ninth, Tenth, and Eleventh Circuits; and the U.S. District Court for the District of Columbia, the District of Colorado, the Northern District of California, the Eastern District of California, the Central District of California, and the Northern District of Florida.

15. Ms. Weaver has been an attorney with the ACLU PFRB since 2008. Previously, she served for three years as litigation counsel with Americans United for Separation of Church

and State, and prior to that, she was employed as an associate attorney at the San Francisco office of Quinn Emanuel Urquhart & Sullivan. Through her work with the ACLU PFRB and Americans United, Ms. Weaver has developed a specialty in constitutional litigation pertaining to religious-freedom rights, including litigation involving claims for religious discrimination and for religious exemptions and accommodations. Religious-liberty cases that Ms. Weaver has litigated throughout her career include, among others: *Marrero-Mendez v. Calixto-Rodriguez*, -- F.3d --, 2016 WL 3902635 (1st Cir. July 19, 2016); *ACLU of Massachusetts v. U.S. Conference of Catholic Bishops*, 705 F.3d 44 (1st Cir. 2013); *Awad v. Ziriax*, 670 F.3d 1111 (10th Cir. 2012); *ACLU of Florida, Inc. v. Dixie County*, 690 F.3d 1244 (11th Cir. 2012); *Joyner v. Forsyth County*, 653 F.3d 341 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 1097 (2012); *Green v. Haskell County*, 568 F.3d 784 (2009), *cert. denied*, 559 U.S. 970 (2010); *Americans United for Separation of Church & State v. Prison Fellowship Ministries*, 509 F.3d 406 (8th Cir. 2007); *Allen v. English*, 3:16-cv-00712-CSC (M.D. Ala. 2016); *Martin v. Houston*, No. 2:14-CV-905-WKW, 2016 WL 1368109 (M.D. Ala. Apr. 6, 2016); *Fatihah v. Neal*, No. 6:16-cv-00058-JHP (E.D. OK 2016) (ongoing); *Singh v. McHugh*, 109 F.Supp.3d 72 (D.D.C. 2015); *Lane v. Sabine Parish Sch. Bd.*, No. 5:14-CV-001000-EEF-KHL (W.D. La. 2014) (settled); *Lund v. Rowan County*, No. 1:13-cv-207-JAB-JLW (M.D.N.C. 2013) *currently on appeal*, No. 15-1591 (4th Cir.); *Anderson v. Chesterfield County School District*, No. 4:11-cv-03300-RBH (D. S.C. 2011) (settled); *Does v. School Board for Santa Rosa County*, No. 3:08cv361/MCR/EMT, 2010 WL 1816799 (N.D. Fla. May 6, 2010); *Doe v. Tangipahoa Parish School Board*, 631 F.Supp.2d 823 (E.D. La. 2009) (settled); *Thompson v. Ricci*, No. 08-5926 (D.N.J.) (settled); *Does 1-7 v. Round Rock Independent School District*, 540 F. Supp. 2d 735 (W.D. Tex. 2007) (settled); *Selman v. Cobb County School District*, 1:02-CV-2325-CC (N.D. Ga.) (settled); *Sklar v. Board of Education of Harrison County*, No. 1:2006cv00103 (N.D. W.Va.) (settled); *Person v. Mayor and City Council of Baltimore*, 437 F. Supp. 2d 476 (D. Md. 2006); and *Hurst v. Newman*, No. 1:06-CV-00036-OWW-SMS (E.D. Cal) (settled).

16. Ms. Weaver and I have also both litigated religious-freedom matters in state court (e.g., *Taxpayer for Public Education v. Douglas County School District*, 351 P.3d 461 (Colo. 2015) (multiple certiorari petitions pending before U.S. Supreme Court); *Duncan v. State of Nevada Office of the State Treasurer*, No. 70648 (Nev. 2016) (Nevada Supreme Court decision pending)). And we both regularly participate as amicus counsel in religious-liberty cases at the U.S. Court of Appeals and Supreme Court stages, including, e.g., *Trinity Lutheran Church v. Pauley*, 136 S. Ct. 891 (2016); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014); *Burwell v. Hobby Lobby*, 134 S. Ct. 2751 (2014); *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

17. Ms. Weaver also frequently speaks publicly and writes about religious-freedom issues.

18. I have reviewed the attorney time records of Ms. Weaver and have eliminated all non-productive and non-essential time, as well as all duplicative time.

Hourly Rates

19. I request a rate of \$675 per hour for my legal services. This hourly rate is, in fact, lower than the hourly rate received by lawyers of my level of skill and experience, who practice civil rights law in Washington, DC, as established in the “*Laffey Matrix*”—an attorneys’ fee schedule that “sets out a general guideline for awarding attorneys’ fees based on experience” in fee-shifting civil rights cases involving complex litigation in the D.C. area. *Salazar ex rel. Salazar v. District of Columbia*, 809 F.3d 58, 62 (D.C. Cir. 2015). In *Salazar*, the Court of Appeals agreed that the “Legal Services Index (“LSI”) *Laffey Matrix*,” an updated version of the *Laffey Matrix* that adjusts the hourly rate for attorneys based on inflation, was a proper basis on which to award attorneys’ fees in a § 1983 class action. *Id.* at 63-66. As the court explained, “the LSI-adjusted matrix is probably a conservative estimate of the actual cost of legal services in this area.” *Id.* at

48 (internal quotation marks and citation omitted). *See also Makray v. Perez*, 159 F.Supp.3d 25 (D.D.C. 2016) (discussing at length the LSI *Laffey* Matrix, and awarding hourly rate in sex discrimination based on LSI *Laffey* Matrix); *Electronic Privacy Info. Ctr. v. Dep't of Homeland Sec.*, ___ F.Supp.3d ___, No. No. 13-260 (JEB), 2016 WL 3919810 (D.D.C. July 18, 2016) (noting that “[t]he parties agree that the LSI *Laffey* Matrix acts as a starting point”); *cf.* D.C. Code Ann. §§32-1308(b)(1) (providing that attorneys’ fees in civil actions alleging violations of the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, must be “computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney’s services. The court shall use the rates in effect at the time the determination is made.”).

20. Under the LSI *Laffey* Matrix an attorney who is 20 or more years out of law school would be entitled to an hourly rate of \$797 for work performed between June 1, 2015, and May 31, 2016, and an hourly rate of \$826 for work performed after June 1, 2016. *Compare* (*Salazar*, 809 F.3d 58, Joint Appendix at 1248, *available online* at http://tpmlaw.com/global_pictures/Joint_Appendix__Volume_III_.PDF (LSI *Laffey* Matrix with setting hourly rate at \$753 for work performed between June 1, 2012, and May 31, 2013, by attorneys with 20-plus years of experience), *with Adjustments to the 1988-1989 Laffey Matrix Rates Using the Legal Services Index*, Terris, Prevlik & Millian, LLP, at 4, *available online* at [http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_\(00042285-5xC4E0D\).PDF](http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_(00042285-5xC4E0D).PDF) (showing most recent LSI *Laffey* Matrix update setting hourly rate for attorneys with 20-plus years of experience at \$797 for work performed between June 1, 2015, and May 31, 2016, and \$826 for work performed after June 1, 2016). My proposed hourly rate of \$675 is also consistent with the hourly rate awarded earlier this year to my colleague, James Esseks in

Bourke v. Beshear, No. 3:13-CV-00750-CRS, 2016 WL 164626, at *5 (W.D. Ky. Jan. 13, 2016) (finding that \$700 per hour is a reasonable rate for attorneys of his skill and experience in the relevant market and awarding \$700 per hour for my work on *Bourke v. Beshear* and *Love v. Beshear*).

21. I request a rate of \$500 per hour for the legal services of Ms. Weaver, who (as noted above) received her law degree in 2002. Under the LSI *Laffey* Matrix discussed above, this rate is, in fact, less than lawyers of her level of skill and experience, who practice civil rights law in Washington, DC, command. See *Adjustments to the 1988-1989 Laffey Matrix Rates Using the Legal Services Index*, Terris, Prevlik & Millian, LLP, at 4, available online at [http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_\(00042285-5xC4E0D\).PDF](http://tpmlaw.com/global_pictures/Laffey_Matrix_Updated_Using_Legal_Services_Index_(00042285-5xC4E0D).PDF) (showing most recent *Laffey* Matrix with Legal Services Index Update setting hourly rate for attorneys with 11-19 years' experience at \$662 for work performed between June 1, 2015, and May 31, 2016, and \$686 for work performed after June 1, 2016). This proposed hourly rate for Ms. Weaver, a senior staff attorney who has specialized in religious-freedom law for 11 years of her 13-year career, is also consistent with the rates recently awarded to ACLU attorneys in *Bourke* by the United States District Court for the Western District of Kentucky. 2016 WL 164626, at *5 (awarding \$400 per hour for 2005 law graduate and \$325 per hour for 2010 law graduate).

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ Daniel Mach
Daniel Mach

Executed this 19th day of September, 2016

TIME RECORDS

Daniel Mach

Miller v. Davis

| <u>Date</u> | <u>Time</u> | <u>Description</u> |
|-------------|-------------|---|
| 8/3/15 | 0.4 | Correspondence re PI reply brief |
| 8/5/15 | 1.4 | Edited and revised PI reply brief; correspondence re same |
| 8/6/15 | 0.5 | Correspondence re PI reply brief |
| 8/12/15 | 0.7 | Reviewed and analyzed PI order; correspondence re same |
| 8/13/15 | 0.3 | Correspondence re briefing on stay pending appeal |
| 8/17/15 | 0.3 | Reviewed and analyzed order on stay pending appeal; correspondence re same |
| 8/19/15 | 0.3 | Correspondence re order on stay pending appeal |
| 8/20/15 | 0.2 | Review notice of appearance |
| 8/21/15 | 1.0 | Reviewed and analyzed motion to dismiss and correspondence re same |
| 8/21/15 | 0.2 | Reviewed and edited co-counsel agreement |
| 8/21/15 | 1.6 | Edited and revised stay opp |
| 8/21/15 | 0.2 | Correspondence re stay opp |
| 8/24/15 | 0.4 | Reviewed and analyzed amicus brief |
| 8/26/15 | 0.1 | Reviewed order denying stay |
| 8/29/15 | 0.4 | Edited and revised draft SCOTUS stay response; conferred w co-counsel re same |
| 8/31/15 | 0.1 | Reviewed SCOTUS stay order |
| 8/31/15 | 0.4 | Conferred w co-counsel re contempt and potential sanctions |
| 9/1/15 | 1.1 | Edited and revised draft contempt motion and conferred w co-counsel re same |
| 9/2/15 | 0.5 | Reviewed and analyzed opp to contempt motion and conferred w co-counsel re same |
| 9/3/15 | 0.3 | Conferred w co-counsel re contempt hearing |
| 9/4/15 | 0.5 | Conferred w co-counsel re altered marriage licenses |
| 9/7/15 | 0.3 | Reviewed status report and conferred w co-counsel re same |
| 9/7/15 | 0.5 | Reviewed and analyzed Davis contempt appeal |
| 9/8/15 | 0.5 | Conferred w co-counsel re status report |
| 9/8/15 | 0.6 | Edited and revised response to Davis contempt appeal |
| 9/11/15 | 0.2 | Reviewed and analyzed Davis stay motion |
| 9/14/15 | 1.0 | Conferred w co-counsel re altered marriage licenses |
| 9/14/15 | 0.7 | Edited and revised opp to stay motion and conferred w co-counsel re same |
| 9/15/15 | 1.1 | Conferred w co-counsel re next steps in litigation, injunction, civil contempt, stay opposition |
| 9/17/15 | 0.5 | Reviewed stay order and conferred w co-counsel re same |
| 9/18/15 | 0.4 | Edited and revised motion to expedite and conferred w co-counsel re same |

| | | |
|----------|------|--|
| 9/18/15 | 0.5 | Edited and revised opp to stay motion and conferred w co-counsel re same |
| 9/19/15 | 0.5 | Edited and revised motion to enforce/clarify and conferred w co-counsel re same |
| 9/21/15 | 1.2 | Conferred w co-counsel re motion to motion to enforce/clarify |
| 9/23/15 | 0.2 | Reviewed and analyzed order denying stay |
| 10/6/15 | 0.3 | Conferred w co-counsel re potential amicus briefs |
| 10/9/15 | 0.6 | Conferred w co-counsel re potential plaintiffs and amended complaint |
| 10/13/15 | 1.0 | Edited and revised opp to stay motion |
| 11/2/15 | 0.3 | Reviewed and analyzed Davis opening brief |
| 11/5/15 | 0.2 | Reviewed denial of stay motion |
| 11/9/15 | 1.0 | Conferred w co-counsel re expected changes to licenses |
| 11/13/15 | 0.3 | Reviewed and analyzed Beshear response to motion to enforce and conferred w co-counsel re same |
| 11/20/15 | 0.6 | Edited and revised reply on motion to enforce and conferred w co-counsel re same |
| 12/13/15 | 1.8 | Edited and revised 6 th Cir. response brief |
| 12/28/15 | 0.2 | Reviewed executive order and correspondence re same |
| 1/19/16 | 0.3 | Reviewed and analyzed Davis reply brief |
| 2/9/16 | 0.1 | Reviewed order denying motion to enforce |
| 4/15/16 | 0.2 | Conferred w co-counsel re marriage licence bill |
| 6/14/16 | 0.2 | Conferred w co-counsel re motion to dismiss |
| 6/30/16 | 0.2 | Edited and revised response to motion to dismiss and conferred w co-counsel re same |
| TOTAL | 26.4 | |

HEATHER L. WEAVER ATTORNEY TIME RECORDS*Miller v. Davis*

| | | |
|-----------|-----|--|
| 8/31/2015 | 0.3 | Review Davis's emergency motion for stay & SCOTUS order |
| 8/31/2015 | 0.5 | Legal team phone call |
| 8/31/2015 | 0.5 | Phone call with clients |
| 8/31/2015 | 1 | Legal research re contempt sanctions & rel. objections |
| 9/1/2015 | 0.3 | Review and edit contempt motion |
| 9/1/2015 | 0.5 | Review and edit motio to clarify injunction |
| 9/1/2015 | 1.6 | Legal research re contempt sanctions |
| 9/2/2015 | 0.5 | Email correspondence recounting contempt research thus far |
| 9/2/2015 | 0.8 | Review and analyze Davis's motion for injunction pending appeal |
| 9/2/2015 | 0.2 | Review Davis's opposition to contempt motion |
| 9/2/2015 | 0.5 | Phone call with legal team re contempt hearing |
| 9/3/2015 | 0.3 | Call with Legal team re contempt hearing |
| 9/3/2015 | 0.6 | Email correspondence with co-counsel re contempt hearing |
| 9/4/2015 | 1.4 | Legal research regarding mootness and email correspondence re research |
| 9/4/2015 | 0.5 | Legal team call re altered marriage licenses |
| 9/4/2015 | 0.2 | Email correspondence regarding altered marriage licenses |
| 9/6/2015 | 2 | Legal research and email correspondence re interlocutory appeals of contempt rulings |
| 9/7/2015 | 0.2 | Meeting with Dan Mach re status update filing |
| 9/7/2015 | 1 | Edit status update filing |
| 9/7/2015 | 0.2 | Email correspondence re status update filing |
| 9/7/2015 | 0.4 | Review and analyze Davis's emergency CTA6 contempt appeal |
| 9/8/2015 | 0.5 | Legal team call re status report |
| 9/8/2015 | 1 | Review and edit response to emergency CTA6 contempt appeal |
| 9/8/2015 | 0.2 | Review Beshear opposition to emergency CTA6 contempt appeal |
| 9/11/2015 | 0.3 | Review and analyze Davis second CTA6 motion to stay |
| 9/14/2015 | 1.5 | Edit opposition to CTA6 motion to stay; email correspondence re edits |
| 9/14/2015 | 1 | Legal team call re altered marriage licenses |
| 9/14/2015 | 2.6 | Legal research regarding class certification & Preliminary injunctions |
| 9/15/2015 | 1 | Call with legal team re next steps |
| 9/15/2015 | 2 | Legal research re class certification and preliminary injunction and email corr. Regarding |
| 9/16/2015 | 3.7 | Legal research re class certification and preliminary injunction and email corr. Regarding |
| 9/17/2015 | 2.1 | Legal research re class certification; email correspondence re motion |

| | | |
|------------|-----|--|
| 9/18/2015 | 2.5 | Draft motion to expedite class certification and circulate to team via email |
| 9/18/2015 | 2.5 | Consultation with co-counsel re motion to expedite; revise motion; file |
| 9/18/2015 | 1 | Review and revise opposition to renewed CTA6 motion to stay injunction; email corr. Regarding |
| 9/19/2015 | 2.9 | Edit motion to enforce/clarify; circulate edits to legal team |
| 9/21/2015 | 1.2 | Legal team calls re motion to enforce/clarify |
| 9/21/2015 | 5.5 | Revise and edit motion to enforce/clarify; consult with team re draft; reconcile edits; file |
| 9/23/2015 | 0.2 | Review and analyze district court order denying motion to stay |
| 9/24/2015 | 0.1 | Email correspondence re plaintiffs and SCOTUS review |
| 10/9/2015 | 0.6 | Legal team call re potential plaintiffs and amended complaint |
| 10/13/2015 | 2.5 | Legal research for and revision of opposition to Davis's 10-2 stay motion |
| 10/23/2015 | 1 | Review and edit motion to reopen class certification; email correspondence regarding |
| 11/5/2015 | 0.3 | Review CTA6 denial of motion to stay injunction |
| 11/13/2015 | 0.3 | Review and analyze Beshear's response to motion to enforce & related correspondence |
| 11/20/2015 | 0.5 | Review draft reply in support of motion to enforce |
| 11/30/2015 | 1.6 | Review proposed CTA6 brief argument relating to contempt & RFRA; conduct legal research; consult with Dan Mach |
| 11/30/2015 | 0.1 | Email correspondence regarding request for oral argument |
| 12/1/2015 | 2.8 | Conduct legal research re RFRA & contempt & revise CTA6 argument section |
| 12/11/2015 | 1.3 | Review draft of CTA6 brief |
| 12/12/2015 | 3.5 | Review and edit 6th Circuit brief |
| 12/13/2015 | 3 | Review and edit 6th Circuit brief |
| 12/15/2015 | 1.5 | Review and edit next version of draft CTA6 brief |
| 12/16/2015 | 2.5 | Proofread brief, make final edits, finalize text |
| 12/28/2015 | 0.2 | Review executive order & email correspondence regarding |
| 1/12/2016 | 0.2 | Review response to notice of supplemental authority |
| 1/19/2016 | 0.3 | Review Davis's CTA6 reply brief |
| 2/9/2016 | 0.2 | Review denial of motion to enforce |
| 6/17/2016 | 0.2 | Review draft of 28j letter |
| 8/24/2016 | 2.5 | Legal research re vacatur, edit memo re vacatur in light of mootness |

Total**70.4**

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

ORDER

Plaintiffs, having moved for an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and the Court being sufficiently advised,

IT IS HEREBY ORDERED:

Plaintiffs' Motion for Award of Statutory Attorneys' Fees and Costs is hereby **GRANTED.**

IT IS FURTHER ORDERED that Plaintiffs are awarded \$231,050.00 in attorneys' fees, and \$2,008.08 in costs for a total award of \$233,058.08 for all work performed in the above-styled action from July 1, 2015, through September 16, 2016.

This is a final and appealable order.

Hon. David L. Bunning