**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF KENTUCKY**
**NORTHERN DIVISION AT ASHLAND**

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| APRIL MILLER, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>KIM DAVIS, *et al.*,<br><br>Defendants. | Case No. 0:15-cv-00044-DLB<br><br>***Electronically filed*** |

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS**

Plaintiffs, by counsel, submit this reply memorandum in support of their motion for an award of attorneys' fees and costs. [RE #183.] Defendants, in separate responses, oppose the motion for different reasons. [RE #192: Rowan County's Resp. in Opp. to Fees Motion ("Rowan Co. Resp."); RE #193: Davis' Resp. to Fees Motion ("Davis Resp.").] As is explained below, however, Defendants' arguments are misplaced and should be rejected; thus, Plaintiffs' motion for attorneys' fees and costs should be granted in full.

**Argument**

## I. PLAINTIFFS ARE PREVAILING PARTIES.

Defendant Davis primarily opposes the fees motion by asserting that Plaintiffs are not prevailing parties and therefore are not entitled to a fee award. [Davis Br., 17-23.] In doing so, Davis suggests that either: 1) Plaintiffs did not obtain a material change in the parties' legal relationship because the preliminary injunction did not constitute the permanent injunctive relief Plaintiffs sought in their Complaint [*id*. at 17-18]; or 2) the preliminary injunction did not confer a direct and irrevocable benefit to Plaintiffs because the marriage licenses obtained (and

marriages entered into) as a result of the preliminary injunction are not legally cognizable as an enduring benefit. [*Id*. at 18. ("even [those] Plaintiffs who did legally marry did not acquire any legally permanent relief by virtue of the Preliminary Injunction.").] Davis errs on both counts.

As for Davis' former argument, she concedes (as she must) that a merits-based preliminary injunction can be sufficient to confer prevailing party status. [Davis Br., at 13 (citing *McQueary v. Conway*, 614 F.3d 591 (6th Cir. 2010)).] But she then seeks to avoid the straightforward application of *McQueary* to this case by asserting that Plaintiffs could only attain prevailing party status by obtaining a permanent injunction. [Davis Br., at 17-18.] As an initial matter, *McQueary*, of course, imposes no such requirement, opting instead to adopt a "contextual and case-specific" inquiry for which there are no formalistic rules of application.[1] Nor does *McQueary* require that preliminary injunctions, in order to confer prevailing party status, must be the *functional equivalent* of a permanent injunction (such as in the case of a preliminary injunction that allows a specific protest activity to occur on a date certain). But even if it did, that requirement would be satisfied here.

Two of the Plaintiff couples obtained marriage licenses and wed as a result of the preliminary injunction. As to those Plaintiff couples, they could have obtained no more injunctive relief on their official-capacity claims than they achieved by virtue of the preliminary

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[1] Of course, denying prevailing party status for failing to attain all of the relief sought in the complaint is also contrary to well-settled authority establishing that plaintiffs need not be successful on the central issue in the litigation, nor must they achieve all of the relief they sought in the complaint. *Texas State Teachers Assoc. v. Garland Ind. Sch. Dist.*, 489 U.S. 782, 791-92 (1989). Rather, a prevailing plaintiff is one who "has succeeded on 'any significant issue in litigation which achieve[d] some of the benefits the party sought in bringing the suit.'" *Id*. (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978)); *see Hewitt v. Helms*, 482 U.S. 755, 760 (1987) (plaintiff must "receive at least some relief on the merits of his claim before he can be said to prevail"); *accord DiLaura v. Township of Ann Arbor*, 471 F.3d 660, 670 (6th Cir. 2006).

injunction, nor could they have obtained any additional individualized benefit had it been converted to a permanent injunction.[2] They enjoined enforcement of the challenged policy, obtained the marriage licenses to which they were legally entitled, and, after having obtained those licenses, formalized their commitments to one another through marriage within the proscribed time period before the licenses expired.[3] Once they completed those steps, they fully realized the direct and irrevocable benefit conferred by the injunctive relief. Thus, the preliminary injunction effectively granted them the permanent injunctive relief they sought in their complaint and is no different than other merits-based preliminary injunctions found to have conferred prevailing party status. *See e.g., Rogers Group, Inc. v. City of Fayetteville*, 683 F.3d 903 (8th Cir. 2012) (preliminary injunction barring regulation of quarry operators outside city limits, but later rendered moot by change in the law, sufficient to confer prevailing party status); *Select Milk Producers, Inc. v. Johanns*, 400 F.3d 939 (D.C. Cir. 2005) (preliminary injunction barring defendant from imposing separate price for certain butterfat, but later rendered moot, sufficient to confer prevailing party status); *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009) (preliminary injunction barring voter identification provision requiring voters to pay $20 to $35 to obtain IDs, but rendered moot before final judgment, sufficient to confer prevailing party status).

Similarly, Davis also errs by suggesting that even though the preliminary injunction resulted in two of the Plaintiff couples obtaining marriage licenses and marrying, those Plaintiffs

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[2] Plaintiffs also sought (and obtained) preliminary injunctive relief barring enforcement of the challenged policy as to *any* individuals who were otherwise legally entitled to marry. [RE #74.]

[3] "A marriage license shall be valid for thirty (30) days, including the date it is issued, and after that time it shall be invalid." K.R.S. § 402.105.

did not receive a direct and irrevocable benefit because "a substantial number of marriages end, whether by death or divorce, despite the best of intentions." [Davis Br., at 18.] Davis is certainly correct that for many, marriage will end in divorce and that for some, multiple attempts at marriage will result in multiple divorces. But this reality does not change the fact that marriage itself is a fundamental right. *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015); *Turner v. Safley*, 482 U.S. 78 (1987); *Loving v. Virginia*, 388 U.S. 1 (1967). And regardless of how long one's marriage lasts, the decision (and ability) to exercise that fundamental right is a permanent and unchanging part of one's life. In this regard, the decision to enter into marriage is *at least* as irrevocable and enduring as the benefit an individual attains by being able to engage in a protest on a specific date. *See Young v. City of Chicago*, 202 F.3d 1000 (7th Cir. 2000) (preliminary injunction allowing protesters to engage in specific protest activity proper basis for fee award).[4]

## II. DAVIS, IN HER OFFICIAL CAPACITY, ACTED AS A COUNTY OFFICIAL WITH FINAL POLICYMAKING AUTHORITY WHEN SHE ADOPTED THE "NO MARRIAGE LICENSES" POLICY.

Rather than focus on the sufficiency of the preliminary injunction *per se* to confer prevailing party status, Defendant Rowan County opposes Plaintiffs' fees motion on the basis that even if a fee award is appropriate, the County cannot be held liable for it because: 1) the preliminary injunction did not enjoin the municipal governmental entity and therefore Plaintiffs did not prevail against the County [Rowan Co. Br., 2]; and 2) Davis, in her official capacity, acted as a state, not county, official when she adopted and enforced the "no marriage licenses"

[4] Davis also argues that awarding Plaintiffs prevailing party status would "contradict and frustrate" the Sixth Circuit's vacatur of the preliminary injunction. [Davis Br., 21-23.] But, even as Davis tacitly concedes, such a result would be contrary to the holding of *McQueary* which considered, and rejected, a "straightforward approach" in which fees should *always* be denied because preliminary injunctions rendered moot are generally vacated. [*Id*. at 23 (citing *McQueary*, 614 F.3d at 600).]

policy. [*Id*. at 2-7.] But the resolution of these issues necessarily requires consideration of the second argument first because if Davis acted as a county official with final policymaking authority in adopting the "no marriage license" policy, then the preliminary injunction barring its enforcement effectively enjoined the local government given that official-capacity claims against local officials are equivalent to suits against the entity itself. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 n.10 (1989); *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

And in deciding whether Davis, in her official capacity, acted as a state or local official in adopting and enforcing the "no marriage license" policy, this Court's examination must be "guided by two principles" — "whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue" and whether, and to what extent, the official's functions are defined under relevant state law. *McMillian v. Monroe County*, 520 U.S. 781, 785 (1997). Relevant to this inquiry are the following factors:

> (1) the State's potential liability for a judgment; (2) how state statutes and courts refer to the officer; (3) who appoints the officer; (4) who pays the officer; (5) the degree of state control over the officer; and (6) whether the functions involved fall within the traditional purview of state or local government.

*Crabbs v. Scott*, 786 F.3d 426, 429 (6th Cir. 2015).

As explained below, careful consideration of these factors weigh in favor of finding that Davis acted as a county policymaker when she adopted, and enforced, the "no marriage licenses" policy.[5]

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[5] Of course, *even if* Davis acted as a state official in adopting and enforcing the "no marriage license" policy, that finding would not impede Plaintiffs' entitlement, as prevailing parties, to recover reasonable attorneys' fees and costs even if required to be paid by the state. *Hutto v. Finney*, 437 U.S. 678, 692 ("Hence the substantive protections of the Eleventh Amendment do not prevent an award of attorney's fees against the [state's] officers in their official capacities.") (1978); *Maher v. Gagne,* 448 U.S. 122, 131 n.14 ("The Court has never viewed the Eleventh Amendment as barring such [attorneys' fee] awards, even in suits between States and individual litigants.") (1980); *Quern v. Jordan*, 440 U.S. 332 (1979).

### A. THE STATE'S POTENTIAL LIABILITY FOR A JUDGMENT

This factor considers whether the state itself or another agency will pay any monies awarded from a judgment. In *Hess v. Port Authority Trans-Hudson Corp.,* 513 U.S. 30 (1994), the Court noted that "[t]he proper focus is not on the use of profits or surplus, but rather is on losses and debts. If the expenditures of the enterprise exceed receipts, is the State in fact obligated to bear and pay the resulting indebtedness of the enterprise? When the answer is 'No'—both legally and practically—then the Eleventh Amendment's core concern is not implicated." *Id*. at 51.

Here, county clerks in counties with less than 75,000 people, such as Rowan County[6], must submit to the fiscal court any funds received from the income of his or her office which "exceeds the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants." K.R.S. § 64.152; § 64.530(3). [*See also* RE #26: July 20, 2015 Hrg. Xcript., at 27 (testimony of Defendant Davis).] Conversely, it appears that when a county clerk's office *does not* generate sufficient fees to pay for necessary expenses, "the fiscal court could, *and probably would have a duty to, pay such expenses . . . from the county treasury*." Ky. OAG 93-4, 1993 WL 443708 (emphasis added). Thus, it does not appear that the Commonwealth of Kentucky would be obligated to pay any excess expenditures, including judgments, incurred by the Rowan County Clerk's office.[7] As a result, this factor

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[6] Rowan County currently has a population estimated at less than 24,000. This number is based on projections from the 2010 Census that determined Rowan County's population at 23,333. *See* United States Census Bureau, Census for Rowan County, Kentucky, http://www.census.gov/quickfacts/table/PST045215/21205.

[7] Plaintiffs attempted to elicit testimony on whether the state or County would be liable for any judgment in this case, but the Court sustained the County's objection to the introduction of evidence on this question. [RE #26: July 20, 2015 Hrg. Xcript, at 18 (cross examination of Judge Executive Blevins).]

weighs in favor of Davis having acted as a county official. *See Cash v. Hamilton County Dept. of Adult Probation*, 388 F.3d 539, 545 (6th Cir. 2004) (in discussing analysis whether agency an arm of the state or a county entity, describing "that the most important factor is 'will a State pay if the defendant loses?'" (quoting *Brotherton v. Cleveland*, 173 F.3d 552, 560 (6th Cir.1999))).

**B. HOW STATE STATUTES AND COURTS REFER TO THE OFFICER**

This factor similarly weighs in favor of Davis having acted as a county official because the office of county clerk is a locally elected, constitutional county office under the Kentucky Constitution. KY. CONST. § 99; *see also St. Matthews Fire Prot. Dist. v. Aubrey*, 304 S.W.3d 56, 61 n.3 (Ky. App. 2009) ("Therefore, each of the offices -- PVA as well as Sheriff and County Clerk -- is a constitutional county office."); K.R.S. § 64.535 (setting salaries of "county officers", including county clerks). Moreover, Kentucky courts have rejected, in other contexts, the argument that county clerks are state, not local, officials.

> Carroll also argues that the ordinance is invalid because the Clerk is not a local official subject to control by the Fiscal Court. However, there is no indication in existing case law that county clerks are state officials. Instead, in *Kentucky Executive Branch Ethics Commission v. Atkinson*, 339 S.W.3d 472 (Ky. App. 2010), this Court determined that property value administrators, who were not bound by local ethics code, but only the state ethics code, were state officials. County clerks, on the other hand, are subject to the code of ethics adopted by local government, KRS 65.003; therefore, they are considered local officials subject to a measure of control by the fiscal court.

*Carroll v. N.E. Reed*, 425 S.W.3d 921, 924 (Ky. App. 2014).

**C. WHO APPOINTS THE OFFICER**

As noted above, county clerks are locally elected by the voters of each county. KY. CONST. § 99. This factor, too, weighs in favor of Davis having acted as a county official. *See Crabbs*, 786 F.3d at 429.

**D. WHO PAYS THE OFFICER**

Although Rowan County correctly points out that the Rowan County Clerk's office does not technically receive "any direct funding from the County's general fund" [Rowan Co. Br., 5], it is incorrect to draw from that fact the conclusion that the clerk's office is not funded by county funds. As Davis herself testified, her office is not funded by the state, but rather by the fees generated by the services it provides locally. [RE #26: July 20, 2015 Hrg. Xcript., at 25-27.] Davis's salary as county clerk, therefore, is locally derived from the services the office provides. Moreover, the excess monies generated by those services *must* be remitted to the county fiscal court, not the state. [*Id*. at 27.] *See also* K.R.S. § 64.152.[8] And the budget for the clerk's office is approved by the county's fiscal court. [RE #26: July 20, 2015 Hrg. Xcript, at 18 (testimony of Judge Executive Blevins).] Thus, because the county clerk's office is funded by the fees for the services it provides to county residents and its budget approved by the fiscal court, and because any excess money generated from its services belong to the county fiscal court, the office of county clerk is properly regarded as being funded by county, not state, funds. *See Crabs*, 786 F.3d, at 429.

**E. THE DEGREE OF STATE CONTROL OVER THE OFFICER**

This factor, too, weighs in favor of Davis having acted as a county policymaker in adopting and enforcing the "no marriage license" policy. Specifically, the state proscribes the form, manner, and requirements for issuing marriage licenses in Kentucky, and it mandates that county clerks issue them to qualified applicants. K.R.S. § 402.100 ("Each county clerk *shall make available to the public* the form prescribed by the Department for Libraries and Archives

[8] Notably, though county clerks' salaries are set by statute, it is pursuant to a salary schedule set by the Kentucky Department of Local Government.

for the issuance of a marriage license."); K.R.S. § 402.110 ("In issuing the license *the clerk shall deliver it in its entirety to the licensee*."); K.R.S. § 402.080 ("The license *shall be issued by the clerk of the county in which the female resides at the time*, unless the female is eighteen (18) years of age or over or a widow, and the license is issued on her application in person or by writing signed by her, in which case it may be issued by any county clerk."). Kentucky law *does not* vest county clerks with discretionary authority to adopt new or additional requirements on the issuance of marriage licenses.

Thus, because the challenged "no marriage license" policy deviated so completely from any identifiable statutory authority granted to county clerks in the marriage licensing arena, it is properly considered an internal operating policy over which Davis exercised her final policymaking authority as a county official.[9] [RE #26: July 20, 2015 Hrg. Xcript., at 25-27; 61 (Davis testifying that she possesses authority to set the internal rules, policies and practices for the Rowan County Clerk's office).] *See also McMillian*, 520 U.S. 784-5 (identifying whether government official possesses final policymaking authority must be examined "concerning the action alleged to have caused particular constitutional or statutory violation at issue").

When properly construed, the "no marriage licenses" policy at issue is analogous to the internal jail policies at issue in *DeGenova v. Sheriff of DuPage County*, 209 F.3d 973 (7th Cir. 2000). There, the Seventh Circuit concluded that the Illinois county sheriff, when managing the county jail, acted as a county officer with final policymaking authority when setting jail policies. *Id*. at 976-77. In doing so, the court noted that the sheriff possessed authority under state law to manage the jail "independent of and unalterable by any governing body" and that the policies

[9] There can be no reasonable dispute that Davis, in her official capacity as a constitutional county officer, possesses final policymaking authority over the internal rules, policies and practices for the Rowan County Clerk's office. [RE #26: July 20, 2015 Hrg. Xcript., at 25-27.]

"concerning jail operations are solely under the supervision of the Sheriff as an independently elected constitutional officer." *Id*. (internal quotation marks and citation omitted). Also relevant were additional facts, including, *inter alia*, that the county maintained and furnished the jail and bore the costs to maintain prisoners. *Id*. Of less importance to the analysis were the regulatory and training requirements imposed upon sheriffs by the state, particularly in light of the state authority "designat[ing] the sheriff's office as a local entity apart from the state." *Id*. As in *DeGenova*, Kentucky's county clerks are locally elected and possess independent and unalterable authority over the internal operations of their offices free from state control. This case, in particular, also highlighted the state's inability to control Davis's internal office policies because she adopted, and enforced, the "no marriage license" policy despite an admonition from the Governor to the contrary. [RE #1-3: June 26, 2015 Ltr.]

By contrast, county fiscal courts are granted a measure of control over county clerks' offices, both fiscally and in imposing local ethics codes. As the Kentucky Court of Appeals has noted:

> In *Sheffield v. Graves*, 337 S.W.3d 634 (Ky. App. 2010), this Court addressed the 2006 revision to KRS 64.530 and discussed the manner in which fiscal courts can control the compensation of county officers and employees. We noted therein that fiscal courts are given a measure of control over the county clerk's office. *Id*.; KRS 67.080(1)(c) (The fiscal court may "[r]egulate and control the fiscal affairs of the county."); KRS 67.080(2)(a) (The fiscal court shall "[a]ppropriate county funds, according to the provisions of KRS 68.210 to 68.360, for purposes required by law[.]") Indeed, "the traditional role of fiscal courts is setting legislative and fiscal policy." *Id*. at 639 (quoting *Fiscal Court of Taylor County v. Taylor County Metro. Police*, 805 S.W.2d 113, 115 (Ky. 1991)). In *Sheffield*, we concluded that if the legislature intended to alter the role of the fiscal court, it would have done so explicitly. 337 S.W.3d at 639. Rather than alter the fiscal court's role, this Court concluded that the revision "simply [meant] that revenue received by the county clerk may be used only to fulfill [the clerk's] statutory duties and for no other purpose." *Id*.

*Carroll*, 425 S.W.3d at 924; *see also* K.R.S. § 65.003 (requiring counties to adopt local ethics codes for the "elected officials of a city, county, or consolidated local government" which include the county clerk). As between the state and the county, therefore, counties exercise greater control over the internal operations of county clerks' office even though the state may set the job duties and general qualifications for the office.

Thus, because Davis lacked any statutory authority to adopt the challenged policy concerning marriage licensing, it is properly construed as an internal policy that she adopted as a county official with final policymaking authority over the internal operations of her office. And the state's inability to compel Davis to abandon the policy, combined with the counties' limited ability to exercise control over county clerks in fiscal matters and by way of local ethics codes, support the conclusion that Davis acted as a county, not state, official.

### F. WHETHER THE FUNCTIONS INVOLVED FALL WITHIN THE TRADITIONAL PURVIEW OF STATE OR LOCAL GOVERNMENT

Of the relevant factors, the only one that may arguably point to Davis having acted as a state official is whether the challenged conduct falls within the functions traditionally reserved to state or local governments. But this is so only if one considers the "no marriage license" at a high level of generality, *i.e.*, that it generally relates to the requirements for obtaining marriage licenses (which would traditionally fall within the state's purview). But, as noted above, Plaintiffs maintain that the challenged policy is more properly construed as an internal operating procedure concerning the delivery of services that exceeded any authority granted her office under state law (and, in fact, conflicted with her statutory obligation to issue marriage licenses to eligible applicants).

When a local official acts to "rotely enforce" prescribed state law, she acts on a state level. *Brotherton v. Cleveland*, 173 F.3d 552, 565-66 (6th Cir. 1999). However, when a local

official voluntarily implements policies not direct by the state, the official is acting purely as a local official, where the harm flows directly through that policy. *See id*. at 566. The essential question asks whether the official could have chosen to not act or act differently; if so, then the official did not act as an arm of the state when they "formulated and implemented the contested policy." *Id*. Here, Davis's adoption of the "no marriage license" policy represented a purely local action in her capacity as the county clerk because Kentucky's then-Governor expressly sought to direct county clerks, including Davis, to comply with the holding in *Obergefell* by issuing marriage licenses to legally eligible couples. [RE #1-3: June 26, 2015 Ltr.]

Here, Davis acted solely as a county actor in developing and enforcing the "no marriage license" policy because not only was such a policy not compelled by state law, she lacked any identifiable statutory basis for adopting a policy of refusing to issue marriage licenses to legally entitled couples.

## III. SPECIAL CIRCUMSTANCES DO NOT JUSTIFY DENYING THE REQUESTED FEE AWARD.

The County also argues that even if Plaintiffs are prevailing parties *and* that Davis acted as a county official, special circumstances nonetheless justify denying a fee award because the county lacked control over Davis's conduct. [Rowan Co. Br., at 8-9.] But the County's lack of control over *a County official with final policymaking authority* is not the type of special circumstance that would render a fee award to successful civil rights plaintiffs harmed by that official's conduct unjust. Not only is "the burden is on the non-prevailing party to make a strong showing that special circumstances warrant a denial of fees" *Deja Vu v. Metro. Gov't of Nashville and Davidson County*, 421 F.3d 417, 422 (6th Cir. 2005) (internal quotation marks omitted), but in this circuit, it is "extremely rare" to deny fees based on special circumstances. *McQueary*, 614 F.3d at 604 ("But we have never (to our knowledge) found a "special

circumstance" justifying the denial of fees.") (citing *Deja Vu*, 421 F.3d at 422 (later developments in the law, which would prevent a party from prevailing if case were re-litigated at time of fees determination, are not special circumstances); *Wikol v. Birmingham Pub. Schs. Bd. of Educ.*, 360 F.3d 604, 611 (6th Cir. 2004) (a prevailing party's "bad acts" during course of litigation are not a special circumstance); *Morscott, Inc. v. City of Cleveland*, 936 F.2d 271, 273 (6th Cir. 1991) (a defendant's good faith in enacting challenged provision is not a special circumstance)).

The reason why the County's proffered "special circumstances" must be rejected is apparent when one considers that, if accepted, it would create a situation in which successful civil rights plaintiffs are unable to recover reasonable attorneys' fees for the unlawful acts of local officials with final policymaking authority who, by definition, have final authority for the governmental entity. Such a result would be directly contrary to (and frustrate) the purposes underlying the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988. *See Hescott v. City of Saginaw*, 757 F.3d 518, 523 (6th Cir. 2014) ("Congress enacted 42 U.S.C. § 1988 to encourage the private enforcement of civil rights."); *Riverside v. Rivera*, 477 U.S. 561, 576 (1986) ("Congress enacted § 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process."); *id*. at 577 ("Consequently, awarding counsel fees to prevailing plaintiffs in such litigation is particularly important and necessary if Federal civil and constitutional rights are to be adequately protected." (internal quotation marks and citation omitted)). The County, therefore, has neither made the requisite "strong showing" that a fee award would be unjust, nor offered a legally cognizable justification in this case that would constitute a special circumstance.

## IV. THE REQUESTED FEES AND HOURLY RATES ARE REASONABLE.

Finally, both defendants argue that the requested fees and hourly rates are excessive. [Davis Br., 24-26 (objecting to claimed hours on basis of limited success and tasks unrelated to preliminary injunction); Rowan Co. Br., at 9-10 (objecting to claimed hourly rate for some tasks).]

Plaintiffs maintain that, for the reasons identified in their motion and accompanying memorandum, the claimed hours and requested hourly rates are fully compensable as reasonable and necessarily incurred in the successful prosecution of their official-capacity claims that resulted in the merits-based preliminary injunction and the subsequent successful defense of that ruling.

### *Conclusion*

Plaintiffs obtained a court-ordered material change in the parties' legal relationship that conferred a direct and irrevocable benefit to them in the form of a merits-based preliminary injunction that was later undone by mootness, *not* because of a final determination on the merits. Under the relevant contextual and case-specific inquiry, the merits-based preliminary injunction in this case that barred enforcement of Davis's "no marriage license" policy (and that allowed two of the Plaintiff couples to obtain marriage licenses and wed) is sufficient to confer prevailing party status on Plaintiffs thus entitling them to their reasonable attorneys' fees and costs. Plaintiffs have established, with sufficient particularity, the reasonableness of the claimed hours and requested hourly rates, and the Court 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 November 13, 2016.

Respectfully submitted,

s/ William E. Sharp

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**CERTIFICATE OF SERVICE**

I certify that on November 14, 2016, I filed this Reply In Support of Plaintiffs' Motion for Award of Attorneys' Fees and Costs by using the CM/ECF system, which will send a notice of electronic filing to the following:

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