

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

Heidi Kennard,)	
individually and on behalf of those)	
similarly situated,)	
)	
Plaintiff,)	
v.)	No. 2:14-cv-4017
)	
Christine Kleindienst, in her official capacity)	
as Callaway County Recorder of)	
Deeds and on behalf of all Missouri)	
Recorders of Deeds,)	
)	
Defendant.)	

BILATERAL CLASS-ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This is a civil rights action filed by Heidi Kennard. In this action, Plaintiff seeks declaratory and injunctive relief on her own behalf and on behalf of a class of similarly situated individuals. Plaintiff asserts that Defendant, the Recorder of Deeds for Callaway County, Missouri, has adopted and is enforcing a policy or custom that infringes upon Plaintiff's fundamental right to marry, in violation of rights guaranteed by the United States Constitution, by preventing her from marrying her fiancé, who is an inmate currently incarcerated at Fulton Reception and Diagnostic Center. Plaintiff seeks a determination, pursuant to 42 U.S.C. § 1983, that Mo. Rev. Stat. § 451.040.2, which requires that marriage license applications be signed "in the presence of the recorder of deeds or their [*sic*] deputy[,] " is unconstitutional as applied in instances where one, or both, applicants is incarcerated.

Jurisdiction and Venue

2. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) because the named defendant resides in Callaway County, which is located in this judicial district, and a substantial part of the events or omissions giving rise to the claims occurred in Callaway County.

4. Venue is proper in the Central Division pursuant to L.R. 3.1 (a)(2) and L.R. 3.1 (b)(2).

Parties

5. Plaintiff, Heidi Kennard, is a resident of Missouri.

6. Defendant, Christine Kleindienst, is the Callaway County Recorder of Deeds. She is sued in her official capacity only.

7. Defendant has acted, and continues to act, under color of state law at all times relevant to this Complaint.

Facts

8. Plaintiff is an unmarried woman over the age of eighteen years.

9. She is to engaged to be married to Thomas Ludwick, who is an inmate in the custody of the Missouri Department of Corrections at Fulton Reception and Diagnostic Center in Fulton, Missouri.

10. Ludwick is an unmarried man over the age of eighteen years.

11. Plaintiff and Ludwick are not related to one another.

12. Plaintiff and Ludwick plan to be married in September 2014 at a specific date to be authorized by the Missouri Department of Corrections.

13. Missouri law criminalizes the solemnization of any marriage unless a marriage license has been issued. Mo. Rev. Stat. § 451.120.

14. Marriages solemnized without a marriage license are not recognized in Missouri. Mo. Rev. Stat. § 451.040.

15. Missouri law requires both applicants for a marriage license to sign the application “in the presence of the recorder of deeds or their deputy.” Mo. Rev. Stat. §451.040.2.

16. On March 21, 2013, the United States District Court for the Western District of Missouri “declare[d] the requirement of Section 451.040.2 RSMo that marriage licenses be signed ‘in the presence of the recorder of deeds or their deputy’ to be unconstitutional as applied to situations where one or both applicants for a marriage license is incarcerated.” Fuller v. Norman, 936 F. Supp. 2d 1096, 1097 (W.D. Mo. 2013).

17. On June 3, 2013, the United States District Court for the Eastern District of Missouri declared that “the requirement of Section 451.040.2 that marriage licenses be signed ‘in the presence of the recorder of deeds or their deputy’ is unconstitutional as applied to situations where one or both applicants for a marriage license is incarcerated.” Nichols v. Moyers, 4:13CV735 CDP, 2013 WL 2418218, *2 (E.D. Mo. June 3, 2013).

18. Defendant refuses to accept any affidavit or other documentation in lieu of the in-person presence of an individual who cannot appear at her office because he is incarcerated.

19. Defendant refuses to travel to the location where Plaintiff’s fiancé is incarcerated, or send a deputy, so that Plaintiff’s fiancé can sign a marriage license application in the presence of Defendant or her deputy.

20. As a result of the foregoing, Ludwick cannot sign a marriage application in Defendant's presence, Defendant will not issue a marriage license, and Plaintiff's marriage to Ludwick cannot be solemnized.

21. The conduct of Defendant complained of above constitutes unreasonable and unconstitutional interference with and infringement upon Plaintiff's exercise of rights guaranteed by the United States Constitution.

22. There are no alternative avenues for Plaintiff to exercise her right to marry because her fiancé is in the continued custody of the Missouri Department of Corrections and is not at liberty to leave that custody to apply for a marriage license in person.

23. In addition to being deprived of the right to marry, the inability of Plaintiff to marry deprives her of the benefits of federal and state law accorded to persons who are married, including, by way of example only, the right to make funeral arrangements for one's spouse (Mo. Rev. Stat. § 194.119), give consent to experimental treatment, tests, or drugs on behalf of a spouse who is unable to consent (Mo. Rev. Stat. § 431.064), eligibility for social security survivor benefits, take leave to care for a spouse under the Family and Medical Leave Act, and the marital exemption from the federal estate tax (26 U.S.C. § 2056(a)).

Plaintiff Class Allegations

24. The named Plaintiff is a member of a Class of current and future unmarried individuals who desire to marry inmates incarcerated in Missouri jails or prisons.

25. The number of individuals presently included in the putative Class is unknowable, as is the number of future members, and, therefore, joinder of all members would be impracticable.

26. There are questions of law and fact that are common to the Class, including, but not limited to, the legal questions of whether Mo. Rev. Stat. §451.040.2 is unconstitutional, and relatedly, whether Defendant and other Missouri Recorders of Deeds impermissibly infringe the fundamental right to marry of members of the Plaintiff Class in violation of the rights guaranteed by the United States Constitution.

27. The claim of the named Plaintiff—that the statutory requirement that marriage licenses be signed “in the presence of the recorder of deeds or their deputy” is unconstitutional as applied to situations where one or both applicants for a marriage license is incarcerated—is typical of the claims of the Plaintiff Class.

28. As an unmarried individual engaged to an individual incarcerated in a Missouri prison, the named Plaintiff will fairly and adequately protect the interests of the Plaintiff Class.

Defendant Class Allegations

29. Defendant is a member of a class of Recorders of Deeds for a Missouri County.

30. There are 114 Recorders of Deeds in Missouri, which makes the members of the prospective Defendant Class so numerous that joinder of all members of the class would be impracticable.

31. Mo. Rev. Stat. § 451.040.2 requires the Defendant Class to engage in conduct implicating the constitutional rights of members of the Plaintiff Class such that there is a common nucleus of operative facts and law.

32. Any defenses that could be raised by the Defendant Class would have the same essential characteristics of the defenses of the Defendant Class at large.

33. Defendant Kleindienst will fairly and adequately protect the interests of the class of Missouri Recorders of Deeds.

COUNT I
Violation of Civil Rights - 42 U.S.C. §1983
Right to Marry
Claim for Declaratory and Injunctive Relief on Behalf of Plaintiff
and Plaintiff Class Against Defendant and Defendant Class

34. Plaintiff incorporates herein by reference the allegations made in foregoing paragraphs as if each were set forth here verbatim.

35. Defendant and members of the proposed Defendant Class have adopted and enforced policies, customs, and practices that are generally applicable to the Plaintiff Class, thereby making it appropriate for this court to grant injunctive and any corresponding declaratory relief to the Plaintiff Class as a whole against the Defendant Class.

36. The policies, customs, and practices of Defendant and other members of the Defendant Class, which make it impossible for an individual in jail or prison to obtain a marriage license, prevent Plaintiff and members of the Plaintiff Class from marrying.

37. The right to marry is a fundamental right protected by the United States Constitution that cannot be denied because of the incarceration of one partner to the marriage.

38. The acts described above violate the right to marry of the named Plaintiff and each member of the Plaintiff Class under the United States Constitution and unless enjoined will continue to irreparably harm each member of the Plaintiff Class.

39. The statutory requirement that a marriage license not be issued unless it is signed in the presence of a recorder of deeds or his or her deputy is unconstitutional as applied in instances where one, or both, applicants for a marriage license is incarcerated.

WHEREFORE, Plaintiff requests relief as follows:

- A. Certify a Plaintiff Class of current and future unmarried individuals who desire to marry inmates unable to appear in person before a Recorder of Deeds because they are incarcerated, appoint Plaintiff as representative of the Plaintiff Class, and appoint her counsel as counsel for the Plaintiff Class;
- B. Certify a Defendant Class of Recorders of Deeds and appoint Defendant as representative of the Defendant Class;
- C. Declare, pursuant to 42 U.S.C. § 1983, that Mo. Rev. Stat. § 451.040.2 is unconstitutional as-applied in instances where one, or both, applicants for a marriage license is incarcerated;
- D. Enter a permanent injunction requiring Defendant, members of the Defendant Class, and their officers, agents, servants, and employees to issue a marriage license to Plaintiff and other members of the Plaintiff Class without requiring an incarcerated individual to appear before his or her deputy upon receiving such alternate assurance of identity of the applicant as this Court deems appropriate, or, in the alternate, requiring Defendant and members of the Defendant Class to travel to jail or correctional facilities, or send a deputy, for the purpose of witnessing marriage license applications;
- E. Award Plaintiff's costs, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
- F. Allow such other and further relief for Plaintiff and the putative class as the Court deems just and equitable.

Respectfully submitted,

/s/ Anthony E. Rothert

ANTHONY E. ROTHERT, #44827

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