

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

GENA FULLER,)	
JYMIE JO ESSICK,)	
MARY PIERCE,)	
DOLORIS LAROSE, and)	
ROENA REDMOND,)	
each individually and on behalf of)	
those similarly situated,)	
Plaintiffs,)	
v.)	No. 2:12-cv- 4300- FJG
JEFF NORMAN, Warden, Jefferson City)	
Correctional Center, in his official)	
capacity;)	
KELLY MORRISS, Deputy Warden,)	
Jefferson City Correctional Center, in)	
his individual capacity;)	
and)	
LARRY RADEMAN, Cole County Recorder)	
of Deeds, in his official capacity;)	
Defendants.)	

**FIRST AMENDED CLASS-ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND INDIVIDUAL COMPLAINT FOR DAMAGES**

Introduction

1. This is a civil rights action filed by Gena Fuller, Jymie Jo Essick, Mary Pierce, Doloris LaRose, and Roena Redmond (collectively “Plaintiffs”). In this action plaintiffs seek damages pursuant to 42 U.S.C. § 1983. In addition, they seek declaratory and prospective relief on behalf of a class of similarly situated individuals. Plaintiffs allege Defendants have adopted and are enforcing policies or practices that infringe upon their fundamental right to marry, in violation of rights guaranteed by the United States Constitution, by preventing them from

marrying inmates currently incarcerated at Jefferson City Correctional Center. In the alternative, Plaintiffs seek a determination, pursuant to § 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), and pursuant to 42 U.S.C. § 1983.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) because all defendants reside in Cole County and a substantial part of the events or omissions giving rise to the claims occurred in Cole 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 Gena Fuller is a resident of Missouri.
6. Plaintiff Jymie Jo Essick is a resident of Missouri.
7. Plaintiff Mary Pierce is a resident of Missouri.
8. Plaintiff Doloris LaRose is a resident of Missouri.
9. Plaintiff Roena Redmond is a resident of Missouri.
10. Defendant Jeff Norman is the Warden of Jefferson City Correctional Center (“JCCC”). He is sued only in his official capacity.

11. Defendant Kelly Morriss is the Deputy Warden of JCCC. He is sued in his individual capacity.

12. Defendant Larry Rademan is the Cole County Recorder of Deeds. He is sued in his official capacity.

13. All defendants have acted, and continue to act, under color of state law at all times relevant to this Complaint.

Facts

14. Plaintiffs are unmarried women over the age of eighteen.

15. Plaintiffs are each engaged to marry to an inmate (individually “respective fiancé” and collectively “fiancés”) currently in custody at JCCC:

- a. Fuller is engaged to marry Donnie Fuller, Inmate #514253, her former husband and the father of her two children;
- b. Essick is engaged to marry Stevie G. Jimerson, Inmate #522015;
- c. Pierce is engaged to marry Reginald Groves, Inmate # 1054855;
- d. LaRose is engaged to marry Jason Parson, Inmate # 1003651; and
- e. Redmond is engaged to marry Billy Ray, Inmate #533316.

16. The fiancés are unmarried men over the age of eighteen.

17. Each Plaintiff is not related to her respective fiancé.

18. Upon information and belief, Missouri Department of Corrections’ policy regarding the solemnization of inmate marriages is to allow marriages to be solemnized on two dates each year.

19. Plaintiffs wished to marry their respective fiancés and obtained approval from JCCC to be wed at JCCC on September 24, 2012.

20. Missouri law criminalizes the solemnization of any marriage unless a marriage license has been issued. MO. REV. STAT. § 451.120.

21. Marriages allegedly solemnized without a marriage license are not recognized in Missouri. MO. REV. STAT. § 451.040.

22. 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.

23. Shortly after receiving approval from JCCC to marry their respective fiancés (at a September 2012 ceremony), each Plaintiff traveled to the Cole County Recorder of Deeds’ office to sign a marriage license application and pay the \$51.00 fee.

24. For the past 17 years, Defendant Rademan, the Cole County Recorder of Deeds, has traveled episodically –in temporal proximity to the impending bi-annual weddings– to JCCC to allow inmates scheduled to be married to sign their respective marriage license application in Rademan’s presence, thus completing the marriage license applications.

25. The Cole County Recorder of Deeds’ office is eight miles from JCCC.

26. After both partners sign, Rademan would issue the license, which would permit marriages to be solemnized at JCCC.

27. For the past 17 years, until August 2012, Rademan would gain access to JCCC, to meet with the inmate-fiancés, by showing his driver’s license.

28. Sometime between Rademan’s visit to JCCC in anticipation of the March 2012 weddings and August 2012, Defendant Morriss, the Deputy Warden, implemented a new policy, practice or custom that mandated that those seeking access to JCCC, including Rademan, to fully complete a form titled “Application for Facility Access.”

29. The “Application for Facility Access” requested personal information, including a social security number.

30. In August 2012, Rademan traveled to JCCC to obtain the signatures of the Plaintiffs’ fiancés to complete the marriage license applications before the weddings scheduled for September 24, 2012.

31. Rademan filled out most of the “Application for Facility Access,” but refused to disclose his social security number. A copy is attached to this Complaint as Exhibit A.

32. Because Rademan did not fully fill out the form, and despite his willingness to provide his driver’s license as he has done for 17 years, Morriss denied Rademan access to JCCC.

33. As a result, the fiancés did not sign a marriage application in Rademan’s presence, marriage licenses were not issued, and the marriages were not solemnized.

34. The requirement that Rademan provide a social security number to JCCC violates the federal Privacy Act.

35. The same day Rademan was denied access to JCCC, he was allowed access to perform the same duty at Algoa Correctional Center, another Missouri Department of Corrections’ facility, located 1.5 miles from JCCC.

36. Rademan was not required to, and did not, provide his social security number at Algoa.

37. Rademan wrote the Plaintiffs (and four others similarly situated) notifying each of them of his inability to complete their marriage licenses because of the new JCCC policy, practice, or custom of requiring his social security number and returned the \$51.00 each paid for her license.

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

39. But for the conduct of Defendants and their agents complained of above, each of the Plaintiffs would have been married on September 24, 2012, and would now be married to her respective fiancé.

40. As a proximate result of Defendants' actions complained of above, including, but not limited to, Defendants' policies, customs, practices, and actions denying or impeding Plaintiffs' fundamental right to marry, each Plaintiff suffered significant emotional distress, the loss of the benefits of marriage, and other damages.

41. On October 16, 2012, Plaintiffs' counsel spoke to Morriss, who asserted that he would not allow Plaintiffs to get married unless Rademan provides his social security number and the marriage license applications are completed.

42. When Plaintiffs' counsel asked what alternative policy JCCC would implement, such as transporting inmates to Rademan's office to complete the marriage license applications, Morriss said getting married in prison was a privilege and he would not implement any alternative procedure unless ordered to do so.

43. On October 18, 2012, Plaintiffs' attorneys wrote to Morriss a demand letter (with a copy to Norman) articulating the harm already done demanding notification about how JCCC planned to promptly facilitate marriages.

44. Neither Morriss nor Norman responded to the letter.

45. Upon information and belief, Norman is aware of and has ratified Morriss's policies, practices, and customs at issue in this case.

46. On November 1, 2012, Rademan sent Plaintiffs' counsel a letter asserting that the Cole County Recorder of Deeds is not required by law to travel to JCCC to take inmate applications and that he finds the "Application for Facility Access" required by the JCCC's new prison access policy requiring personal information unacceptable.

47. There is not a valid, rational connection between the requirement that Rademan provide his social security number and any legitimate neutral government interest because the requirement violates the federal Privacy Act, the requirement has not been imposed for the previous 17 years with no ill effects, and the requirement is not imposed at other Missouri Department of Corrections' facilities.

48. There are no alternative avenues for Plaintiffs to exercise their right to marry without accommodations of that right by Defendants because Plaintiffs' respective fiancés are in the continued custody of the Missouri Department of Corrections and are not at liberty to leave that custody to apply for a marriage license or have their marriage solemnized.

49. Accommodating Plaintiffs' right to marry will have a de minimis impact on prison staff, inmates, and allocation of prison resources, as evidenced by the fact that the right to marry was accommodated at JCCC for 17 years and is currently accommodated at other Missouri Department of Corrections facilities, including Algoa Correctional Center, without the requirement that Rademan provide his social security number.

50. Alternatives to the current denial of the right to marry exist, including but not limited to allowing Rademan to enter without providing his social security number; transporting inmate-fiancés to Rademan's office or another location to execute marriage license applications; deputizing Missouri Department of Corrections staff to complete the marriage license applications in JCCC; and Rademan providing his social security number.

51. The Missouri Department of Corrections transports inmates outside of its prisons for various purposes on hundreds of occasions each month.

52. Upon information and belief, there are exceptions to the policy that each individual who enters the secured area of Jefferson City Correctional Center must first undergo a criminal background check.

COUNT I

Violation of Civil Rights - 42 U.S.C. §1983

Right to Marry

Claim for Declaratory and Injunctive Relief on Behalf of All Plaintiffs and Putative Class Against Each Defendant in his Official Capacity

53. Plaintiffs incorporate herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.

54. The named Plaintiffs are members of a Class of current and future unmarried individuals who desire to marry inmates incarcerated at JCCC.

55. There are questions of law and fact that are common to the Class, including, but not limited to the legal question of whether Defendants' policies, customs, and practices impermissibly infringe the Class members' fundamental right to marry in violation of the rights guaranteed by the United States Constitution.

56. The claims of the named Plaintiffs-- that Defendants adopted or enforced policies, customs, and practices that impermissibly infringe their fundamental right to marry in violation of the rights guaranteed by the United States Constitution—are typical of the claims of the Class.

57. As unmarried individuals engaged to inmates incarcerated at JCCC, the named Plaintiffs will fairly and adequately protect the interests of the Class.

58. Defendants adopted and enforced policies, customs, and practices that are generally applicable to the Class, thereby making it appropriate for this court to grant injunctive and any corresponding declaratory relief to the Class as a whole.

59. Defendants' policies, customs, practices, prevent each named Plaintiff and each member of the putative class from marrying her respective inmate-fiancé.

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

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

WHEREFORE, Plaintiffs request relief as follows:

- A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that Defendants' policies, customs, and practices violate the Constitution;
- B. Enter a preliminary and permanent injunction requiring Defendants and their officers, agents, servants, and employees, to make such accommodations as necessary, consistent with legitimate penological concerns, to facilitate the completion of the marriage applications by inmate-fiancés of Plaintiffs and putative class members;
- C. Award Plaintiffs' costs, including reasonable attorney's fees under 42 U.S.C. § 1988, and under other applicable law; and
- D. Allow such other and further relief for Plaintiffs as the Court deems just and equitable.

COUNT II

*Violation of Civil Rights - 42 U.S.C. §1983 - Plaintiff Fuller's Right to Marry
Against Defendant Morriss in his Individual Capacity and
Defendant Rademan in his Official Capacity*

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

63. In addition to the harm articulated in paragraph 40, Fuller has additional damages, including the cost of travel from Moberly, Missouri, to the Cole County Recorder of Deeds' office.

64. Defendants Morriss and Rademan by their actions, inactions, policies, customs, and practices have harmed Fuller and deprived her of her constitutionally protected right to marry.

WHEREFORE, Fuller requests relief as follows:

- A. Enter a judgment in favor of Fuller against Defendant Morriss, in his individual capacity, and Defendant Rademan in his official capacity, pursuant to 42 U.S.C. § 1983;
- B. Award Fuller compensatory damages against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, for their violation of her constitutional rights under the color of state law;
- C. Award Fuller punitive damages against Defendant Morriss, in his individual capacity;
- D. Award Fuller's costs and reasonable attorneys' fees; and
- E. Allow such other and further relief to which Fuller may be entitled.

COUNT III

*Violation of Civil Rights - 42 U.S.C. §1983 - Plaintiff Essick's Right to Marry
Against Defendant Morriss in his Individual Capacity and
Defendant Rademan in his Official Capacity*

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

66. In addition to the harm articulated in paragraph 40, Essick has additional damages, including the:

- a. Cost of travel from Christian County, Missouri, to the Cole County Recorder of Deeds' office;
- b. Cost of her wedding dress and shoes;
- c. Fee paid to pastor to solemnize marriage; and
- d. Cost of her fiancé's divorce to allow marriage.

67. Defendants Morriss and Rademan by their actions, inactions, policies, customs, and practices have harmed Essick and deprived her of her constitutionally protected right to marry.

WHEREFORE, Essick requests relief as follows:

- A. Enter a judgment in favor of Essick against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, pursuant to 42 U.S.C. § 1983;
- B. Award Essick compensatory damages against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, for their violation of her constitutional rights under the color of state law;
- C. Award Essick punitive damages against Defendant Morriss, in his individual capacity;

- D. Award Essick's costs and reasonable attorneys' fees; and
- E. Allow such other and further relief to which Fuller may be entitled.

COUNT IV

*Violation of Civil Rights - 42 U.S.C. §1983 - Plaintiff Pierce's Right to Marry
Against Defendant Morriss in his Individual Capacity and
Defendant Rademan in his Official Capacity*

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

69. In addition to the harm articulated in paragraph 40, Pierce has additional damages, including the:

- a. Cost of travel from Kansas City, Missouri, to the Cole County Recorder of Deeds' office; and
- b. Fee for Islamic cleric to perform marriage ceremony.

70. Defendants Morriss and Rademan by their actions, inactions, policies, customs, and practices have harmed Pierce and deprived her of her constitutionally protected right to marry.

WHEREFORE, Pierce requests relief as follows:

- A. Enter a judgment in favor of Pierce against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, pursuant to 42 U.S.C. § 1983;
- B. Award Pierce compensatory damages against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, for their violation of her constitutional rights under the color of state law;
- C. Award Pierce punitive damages against Defendant Morriss, in his individual capacity;

- D. Award Pierce's costs and reasonable attorneys' fees; and
- E. Allow such other and further relief to which Fuller may be entitled.

COUNT V

*Violation of Civil Rights - 42 U.S.C. §1983 - Plaintiff LaRose's Right to Marry
Against Defendant Morriss in his Individual Capacity and
Defendant Rademan in his Official Capacity*

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

72. In addition to the harm articulated in paragraph 40, LaRose has additional damage, including the cost of travel from Warrensburg, Missouri, to the Cole County Recorder of Deeds' office.

73. Defendants Morriss and Rademan by their actions, inactions, policies, customs, and practices have harmed LaRose and deprived her of her constitutionally protected right to marry.

WHEREFORE, LaRose requests relief as follows:

- A. Enter a judgment in favor of LaRose against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, pursuant to 42 U.S.C. § 1983;
- B. Award LaRose compensatory damages against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, for their violation of her constitutional rights under the color of state law;
- C. Award LaRose punitive damages against Defendant Morriss, in his individual capacity;
- D. Award LaRose's costs and reasonable attorneys' fees; and
- E. Allow such other and further relief to which Fuller may be entitled.

COUNT VI

*Violation of Civil Rights - 42 U.S.C. §1983 - Plaintiff Redmond's Right to Marry
Against Defendant Morriss in his Individual Capacity and
Defendant Rademan in his Official Capacity*

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

75. In addition to the harm articulated in paragraph 40, Redmond has additional damages, including the:

- a. Cost of travel from Kansas City, Missouri, to the Cole County Recorder of Deeds' office; and
- b. Fee for a minister to solemnize marriage.

76. Defendant Morriss and Defendant Rademan by their actions, inactions, policies, customs, and practices have harmed Redmond and deprived her of her constitutionally protected right to marry.

WHEREFORE, Redmond requests relief as follows:

- A. Enter a judgment in favor of Redmond against Defendant Morriss, in his individual capacity, and Defendant Rademan, in his official capacity, pursuant to 42 U.S.C. § 1983;
- B. Award Redmond compensatory damages against Defendant Morriss, in his individual capacity, and Defendant Rademan in his official capacity, for their violation of her constitutional rights under the color of state law;
- C. Award Redmond punitive damages against Defendant Morriss, in his individual capacity;
- D. Award Redmond's costs and reasonable attorneys' fees; and
- E. Allow such other and further relief to which Fuller may be entitled.

COUNT VII

Violation of Civil Rights - 42 U.S.C. §1983

Right to Marry

*Claim for Declaratory and Injunctive Relief on Behalf of All Plaintiffs and Putative Class
Against Defendant Rademan in his Official Capacity*

77. Plaintiffs incorporate herein by reference the allegations made in foregoing paragraphs as if each were set forth here verbatim.

78. MO. REV. STAT. § 451.040.2 requires that marriage license applications be signed “in the presence of the recorder of deeds or their [*sic*] deputy.”

79. 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, Plaintiffs request relief as follows:

- A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that MO. REV. STAT. § 451.040.2 is unconstitutional as-applied to Plaintiffs and to instances where one, or both, applicants for a marriage license is incarcerated;
- B. Enter a preliminary and permanent injunction requiring Defendant Rademan and his officers, agents, servants, and employees, to issue a marriage license to Plaintiffs and other members of the putative class without requiring an incarcerated individual to appear before him or his deputy upon receiving such alternate assurance of identity of the applicant as this Court deems appropriate;
- C. Award Plaintiffs’ costs, including reasonable attorney’s fees under 42 U.S.C. § 1988, and under other applicable law; and

D. Allow such other and further relief for Plaintiffs as the Court deems just and equitable.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF
EASTERN MISSOURI

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ATTORNEYS FOR PLAINTIFFS

Certificate of Service

I certify that on January 18, 2013, a copy of the foregoing was filed using the Court's CM/ECF system and by operation of the system served upon counsel for all parties.

/s/ Anthony E. Rothert