

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

Julia Amos and Wendy M. Downing,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:14-cv-4011
	)	
Michele Higgins, Moniteau County Recorder	)	
of Deeds, in her official capacity,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

*Introduction*

1. This is a civil rights action filed by Julia Amos and Wendy M. Downing. In this action, they seek declaratory and injunctive relief. Plaintiffs assert that Defendant, the Recorder of Deeds for Moniteau County, Missouri, has adopted and is enforcing a policy or custom that infringes upon each Plaintiff’s fundamental right to marry, in violation of rights guaranteed by the United States Constitution, by preventing Plaintiffs from marrying their respective fiancés, who are incarcerated. Plaintiffs seek 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 Defendant resides in Moniteau County, which is in this judicial district, and a substantial part of the events or omissions giving rise to the claims occurred in Moniteau 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 Julia Amos is a resident of Missouri.

6. Plaintiff Wendy M. Downing is a resident of Missouri.

7. Defendant, Michele Higgins, is the Moniteau County Recorder of Deeds. She is sued in her official capacity only.

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

*Facts*

9. Plaintiffs are unmarried women over the age of eighteen years.

10. Plaintiffs are each engaged to marry an inmate in the custody of the Missouri Department of Corrections.

11. Plaintiffs' fiancés are unmarried men over the age of eighteen years.

12. Neither Plaintiff is related to her respective fiancé.

13. 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.

14. Plaintiffs wish to marry their respective fiancés and obtained approval from the Missouri Department of Corrections to marry on February 24, 2014, subject to issuance of a marriage license.

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

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

17. 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.

18. 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).

19. 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).

20. 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.

21. Defendant refuses to travel to the location where Plaintiffs' fiancés are incarcerated, or send a deputy, so that Plaintiffs' fiancés can sign a marriage license application in the presence of Defendant or her deputy.

22. As a result of the foregoing, Plaintiffs' fiancés cannot sign a marriage application in the presence of Defendant or her deputy, Defendant will not issue a marriage license, and Plaintiffs' marriage to their respective fiancés cannot be solemnized.

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

24. There are no alternative avenues for Plaintiffs to exercise their right to marry because Plaintiffs' 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 in person.

25. In addition to being deprived of the right to marry, the inability of Plaintiffs to marry deprives them 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)).

## **COUNT I**

*Violation of Civil Rights - 42 U.S.C. §1983  
Right to Marry  
Claim for Declaratory and Injunctive Relief*

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

27. Defendant's policies, customs, and practices, prevent each Plaintiff from marrying her respective inmate-fiancé.

28. 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.

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

30. 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."

31. 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. A declaration, 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;
- B. Temporary and permanent injunctive relief requiring Defendant and her officers, agents, servants, and employees to issue marriage licenses to Plaintiffs and others engaged to marry individuals who are unable to appear in person before Defendant or her deputy upon receiving such alternate assurance of identity of the applicant as this Court deems appropriate, or, in

- the alternate, requiring Defendant to travel to jails or correctional facilities,  
or send a deputy, for the purpose of witnessing marriage license applications;
- C. Award Plaintiffs' costs, including reasonable attorneys' fees under 42 U.S.C.  
§ 1988; and
- D. Allow such other and further relief for Plaintiffs as the Court deems just and  
equitable.

Respectfully submitted,

/s/ Anthony E. Rothert  
ANTHONY E. ROTHERT, #44827  
GRANT R. DOTY, #60788  
AMERICAN CIVIL LIBERTIES UNION  
OF MISSOURI FOUNDATION  
454 Whittier Street  
St. Louis, Missouri 63108  
PHONE: (314) 652-3114  
FAX: (314) 652-3112  
trothert@aclu-mo.org  
gdoty@aclu-mo.org

ATTORNEYS FOR PLAINTIFFS