

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

SHELBY FERREIRA, CODY-ALLEN  
ZAB, SHAREN UNDERWOOD, and  
JOHN PACHECO, JR.,  
Plaintiffs<sup>1</sup>,

v.

C.A. No. 15-219-ML

A.T. WALL, individually and in his official  
capacity as Director of the Rhode Island Adult  
Correctional Institutions, ERNIE  
ZMYSLINSKI, in his official capacity as the  
Finance Director for the City of Warwick and  
Defendant MARIE AHLERT, in her  
individual and official capacity as the City  
Clerk for the City of Warwick,  
Defendants<sup>2</sup>.

**MEMORANDUM AND DECISION**

The issue in this case is the constitutionality of Rhode  
Island's "civil death" statute, R.I. Gen. Laws § 13-6-1 (the  
"Statute"),<sup>3</sup> which, *inter alia*, precludes persons imprisoned for

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Plaintiffs Sharen Underwood and John Pacheco, Jr. dismissed  
their claims with prejudice on March 29, 2016 after the prospective  
couple decided not to marry after all (ECF No. 20).

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Defendants Ernie Zmyslinski and Marie Ahlert were dismissed  
from the case on March 30, 2016 (ECF Entry 3/30/2016).

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§ 13-6-1 Life prisoners deemed civilly dead. - Every  
person imprisoned in the adult correctional institutions  
for life shall, with respect to all rights of property,  
to the bond of matrimony and to all civil rights and  
relations of any nature whatsoever, be deemed to be dead  
in all respects, as if his or her natural death had taken  
place at the time of conviction. However, the bond of  
matrimony shall not be dissolved, nor shall the rights to  
property or other rights of the husband or wife of the  
imprisoned person be terminated or impaired, except on

life at the Rhode Island Adult Correctional Institution ("ACI") from entering matrimony. The case came before the Court on the parties' cross-motions for summary judgment; however, after acknowledging at a hearing on the motions that the facts underlying this litigation are essentially undisputed<sup>4</sup>, the parties agreed to submit the matter on the merits.

### **I. Factual Background**

The plaintiffs (the "Plaintiffs") in this case are Cody-Allen Zab ("Zab"), who is currently serving a sentence of life with the possibility of parole at the ACI, and Shelby Ferreira ("Ferreira"), a Rhode Island resident who has taught classes to inmates at the ACI, including Zab. At some point, Zab and Ferreira decided to get married. The Plaintiffs brought this case after Zab sought permission to marry Ferreira in July 2014 and was denied by ACI Director A.T. Wall ("Wall"), who is the remaining defendant in this case.<sup>5</sup> According to the Plaintiffs, Zab's request was denied by

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the entry of a lawfully obtained decree for divorce. R.I. Gen. Laws § 13-6-1.

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Although Plaintiffs have alleged that Zab was previously allowed to marry another individual – an allegation that Wall disputes – they conceded at the August 29, 2016 hearing that they are not pressing an estoppel argument. Accordingly, that unsupported allegation is not relevant to this Court's analysis.

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As Wall has pointed out, Ferreira is currently banned from visiting the ACI because of inappropriate contact with another inmate. Therefore, even if permission to marry were granted to Zab, under that current restriction, Ferreira would not be allowed to visit Zab at the ACI or to participate in a marriage ceremony

Wall in reliance on Rhode Island's "civil death" statute, R.I. Gen. Laws § 13-6-1, which, the Plaintiffs allege, is "unconstitutional as it applies to bar a non-prisoner and a prisoner's right to marry." Complaint at 2 (ECF No. 3). The provision in Section 13-6-1 against which the Plaintiffs have mounted a challenge deems a person imprisoned for life "dead in all respects" with respect to the bond of matrimony. R.I. Gen. Laws § 13-6-1.

## **II. Procedural History**

On May 28, 2015, the Plaintiffs filed a complaint (Dkt. No. 1) against the above captioned defendants (the "Defendants"), seeking declaratory and injunctive relief against Wall in order to be allowed to marry and against Zmyslinski and Ahlert for the alleged failure of the City of Warwick clerk's office to issue a marriage license. The Plaintiffs also filed an amended complaint (the "Complaint") on the same day. (ECF No. 3).

Prior to participating in a Rule 16 conference in this case, the Defendants advised Plaintiffs' counsel that the Rhode Island General Assembly was considering an amendment or repeal of the challenged statutory provision in the coming term. Defs.' Rule 16 Statement at 2 (ECF No. 13).

On March 29, 2016, Wall filed a motion to stay the case due to the pendency of the bill, noting that the proposed legislation – which, if enacted by the General Assembly, would have removed the

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there.

bar against prisoners with a life sentence from entering a marriage – would resolve the instant matter with finality. Defs.’ Mot. (ECF No. 19). On the same day, the parties filed a dismissal stipulation, pursuant to which the Plaintiffs dismissed all claims against Defendants Zmyslinski and Ahlert with prejudice and Plaintiffs Pacheco, Jr. and Sharen Underwood dismissed their claims against Wall, both in his individual and official capacity, with prejudice. Dismissal Stip. (ECF No. 20).

On April 6, 2016, the Plaintiffs responded in opposition to Wall’s motion to stay, pointing out that it was uncertain whether the proposed legislation would actually pass and re-emphasizing their desire to get married. Pltfs.’ Obj. (ECF No. 21). Nevertheless, on May 4, 2016, the parties agreed to suspend the deadline for their respective cross-motions for summary judgment pending a June 1, 2016 conference with this Court. Stipulation (ECF No. 23). Following the June 1, 2016 conference, Wall’s motion was granted and the case was stayed until July 1, 2016.

As previously instructed, Wall informed the Court on June 21, 2016, that the pending legislation had not passed before the close of the legislative session. Notice (ECF No. 26).

On July 13, 2016, Plaintiffs Ferreira and Zab filed a motion for summary judgment. (ECF No. 28). Wall filed a cross-motion for summary judgment on July 15, 2016 (ECF No.29). Both parties filed responses in opposition to the other side’s respective motions (ECF

No. 30, 31).

On August 29, 2016, the Court conducted a hearing on the parties' motions. In the course of the hearing, Plaintiffs' counsel confirmed that (1) Plaintiffs' due process claim was no longer a part of the case, limiting the Complaint to an equal protection claim; and (2) any claims against Wall were only directed against him in his official capacity. The parties agreed that, because the facts were not in dispute, the matter was submitted to the Court on the merits. The Court took the matter under advisement in order to issue a written decision.

### **III. Standard of Review**

A statute enacted by the Rhode Island General Assembly enjoys the "presumption of constitutional validity." Rhode Island Medical Soc. v. Whitehouse, 66 F. Supp. 2d 288, 305-306 (D.R.I. Aug. 30, 1999); see also Driver v. Town of Richmond ex rel. Krugman, 570 F. Supp. 2d 269, 275 (D.R.I. Jul. 31, 2008). Accordingly, this Court must read Section 13-6-1 "in a light favorable to seeing it as constitutional." Rhode Island Medical Soc. v. Whitehouse, 66 F. Supp. 2d at 305.

Reviewing courts also must "grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes." Solem v. Helm, 463 U.S. 277, 290, 103 S.Ct. 3001, 3009, 77 L.Ed.2d 637 (1983). Although there is no Rhode Island legislative history

available that would shed light on the purpose of Section 13-6-1, the Supreme Court of Rhode Island has indicated that the provision "was intended to be a limitation on the assertion of any rights by a prisoner serving a life sentence.". Bogosian v. Vaccaro, 422 A.2d 1253, 1254 (R.I. 1980). As an additional deprivation of rights for a specific class of prisoners, the Statute is within Rhode Island's authority to impose such punishment. See Johnson v. Rockefeller, 365 F. Supp. 377, 380 (S.D.N.Y. Oct. 9, 1973) *aff'd without opinion sub. nom.*, Butler v. Wilson, 415 U.S. 958, 94 S.Ct. 1479, 39 L.Ed.2d 569 (1973) (noting that "deprivation of physical liberty is not the sole permissible consequence of a criminal conviction" and declining to "pass upon the wisdom of penal legislation aimed at deterrence or even retribution").

Generally, regulations that restrict otherwise constitutionally protected interests in the prison context are reviewed under a reasonableness standard. Amatel v. Reno, 156 F.3d 192, 196 (C.A.D.C. 1998) (quoting Turner v. Safley, 107 S.Ct. 2254, 2265, 482 U.S. 78, 89, 96 L.Ed.2d 64 (1987)) (noting that courts are directed to "uphold a regulation, even one circumscribing constitutionally protected interests, so long as it 'is reasonably related to legitimate penological interests.'"). It is noted however, that the challenged prohibition against inmate marriages in Safley was a prison regulation, not a state statute and, as such, it did not enjoy the presumption of constitutionality

accorded to statutes formally enacted by a state's legislature. In order to successfully mount a challenge of the Statute's constitutionality, the Plaintiffs have the burden to establish that the Statute is repugnant to the Constitution. Eaton v. Jarvis Products Corp., 965 F.2d 922, 931 (10th Cir. 1992); City of Pawtucket v. Sundlun, 662 A.2d 40, 45 (R.I. 1995).

#### **IV. The Parties' Positions**

The Plaintiffs assert that Section 13-6-1, which prohibits persons serving a life sentence from entering matrimony (while not dissolving an existing marriage except on a lawfully obtained divorce), "creates an impermissible distinction between married and single individuals under the Equal Protection Clause." Pltfs' Mem. at 4 (ECF No. 28-1). The Plaintiffs suggest that, by keeping an existing marriage intact while, at the same time, barring inmates with life sentences from entering a marriage, the Statute "punishes married inmates...in a lesser fashion than single inmates." Id.

On his part, Wall points to binding Supreme Court precedent upholding the constitutionality of a New York State statute barring inmates sentenced to life from entering marriage. Def.'s Mem at 1 (ECF No. 29-1) (referencing Butler v. Wilson, 415 U.S. 953, 94 S.Ct. 1479, 39 L.Ed.2d 569 (1974) (summarily affirming Johnson v. Rockefeller, 365 F. Supp. 377 (S.D.N.Y. Oct. 9, 1973) (holding that a New York statute prohibiting life term prisoners from participating in a marriage ceremony was constitutional)).

Wall also notes that statutes enacted by state legislatures enjoy a presumption of constitutionality, Def.'s Mem. at 11, and that state legislatures have broad discretion to determine appropriate punishment for crimes, id. at 13.

#### **V. Discussion**

The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws." Put another way, "all persons similarly situated should be treated alike." City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985).

As the Plaintiffs have correctly pointed out, the Supreme Court has concluded that to enter into a marital relationship is a fundamental right that also applies to prison inmates. Turner v. Safley, 482 U.S. at 95-96, 107 S.Ct. at 2265 (invalidating prison regulation that prohibited inmates from marrying unless the prison superintendent "approved the marriage after finding that there are compelling reasons for doing so"). See Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974) (holding that a prison inmate "retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system"). Nevertheless, the Supreme Court concluded in Safley that a regulation impinging on inmates' constitutional rights is "valid if it is reasonably

related to legitimate penological interests.” Safley, 482 U.S. at 89, 107 S.Ct. at 2261.<sup>6</sup>

In Safley, the Supreme Court invalidated a prison regulation prohibiting inmates from marrying unless the prison superintendent determined that there were compelling reasons for marriage, on the ground that the regulation did not “satisfy the reasonable relationship standard.” Safley, 482 U.S. at 91, 107 S.Ct. at 2263. However, the Court expressly distinguished “a prohibition on marriage only for inmates sentenced to life imprisonment; and importantly [where] denial of the right was part of the punishment for crime.” Safley, 482 U.S. at 94, 107 S.Ct. at 2265 (citing Butler v. Wilson, 415 U.S. 953, 94 S.Ct. 1479, 39 L.Ed.2d 569 (1974) (summarily affirming Johnson v. Rockefeller, 365 F. Supp. 377 (S.D.N.Y. Oct. 9, 1973))).

Section 13-6-1, Rhode Island’s “civil death” statute, which applies only to persons imprisoned at the ACI for life, imposes an additional punishment on a select category of prisoners.<sup>7</sup> Specifically, and relevant to the instant case, an individual serving a life sentence is precluded from entering a “bond of

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Plaintiffs’ counsel argued, both in her supporting memoranda and at the hearing on the parties’ cross motions, that the applicable standard in this case is that of reasonableness.

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The Statute makes no distinction between prisoners who may eventually be eligible for parole and those whose sentence does not include that possibility; Plaintiffs have not raised that issue.

matrimony" on the ground that the inmate is deemed "civilly dead." R.I. Gen. Laws § 13-6-1. However, the civil death statute also states explicitly that a life sentence does not dissolve an existing marriage unless the person serving a life sentence and his or her spouse obtain a decree of divorce.

From those two provisions in Section 13-6-1 specific to the prohibition against entering a marriage, on the one hand, but preservation of an existing marriage, on the other, the Plaintiffs conclude that Rhode Island's "civil death" statute treats single and married prisoners unequally and is, therefore, unconstitutional. Their argument fails for two reasons. For one, a single individual sentenced to a term of life imprisonment is not similarly situated to a married individual. An existing marriage implies already existing additional rights of the person serving a life sentence as well as the rights of the prisoner's spouse and/or children. Neither of those considerations apply to a single individual. Second, a married individual whose marriage is dissolved by a lawfully obtained divorce decree while serving a life sentence is subject to the same restriction against entering a new marriage as a prisoner who is single.

The constitutionality of a similar New York State statute prohibiting an inmate sentenced to life from entering into marriage has been affirmed by the Supreme Court. See Butler v. Wilson, 415 U.S. 953, 94 S.Ct. 1479, 39 L.Ed.2d 569 (1974) (summarily affirming

Johnson v. Rockefeller, 365 F. Supp. 377 (S.D.N.Y. Oct. 9, 1973)). Although Butler was a summary affirmance, it constitutes binding precedent. See, eg. Hicks v. Miranda, 422 U.S. 332, 344-345, 95 S.Ct. 2281, 2289, 45 L.Ed.2d 223 (1975) (explaining that lower courts are bound by the Supreme Court's summary actions on the merits). However, "[t]he precedential effect of a summary affirmance can extend no farther than 'the precise issues presented and necessarily decided by those actions.'" Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 182, 99 S.Ct. 983, 989, 59 L.Ed.2d 230 (1979) (quoting Mandel v. Bradley, 432 U.S. 173, 176, 97 S.Ct. 2238, 2240, 53 L.Ed.2d (1977)).

In Johnson, a federal district court three-judge panel concluded that the statutory prohibition against marriage was well within the state's power to impose as an additional punishment and that it was not the role of the court "to choose among the various possible penological goals or to pass upon the wisdom of penal legislation aimed at deterrence or even retribution." Johnson at 380. The Johnson court also noted that "[t]he state's interest in marriage surely extends to the power to deny the right to marry to prisoners incarcerated for life who cannot be expected to perform the duties and obligations imposed on a husband by the state's laws relating to marriage, such as, the duty to support wife and children." Id. at 381. The circumstances in Johnson, summarily affirmed by Butler, are markedly similar to those in the instant

case and Plaintiffs have not pointed to any additional decisions by the Supreme Court that would further clarify the Butler Court's reasoning. Therefore, Butler remains binding precedent on this Court.

Any amendment to the statute at issue in this case which lifts the restriction on life-term prisoners against entering a marriage is the province of the Rhode Island General Assembly. Given the still valid precedent of Butler, this Court has no authority to invalidate the Statute as unconstitutional.

#### **Conclusion**

The restriction against marriage in Rhode Island's "civil death" statute imposed on individuals serving a life sentence does not render the Statute unconstitutional. Accordingly, judgment shall enter in favor of the Defendant.

SO ORDERED.

/s/ Mary M. Lisi

Mary M. Lisi  
Senior United States District Judge

October 26, 2016