

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

SHELBY FERREIRA, CODY-ALLEN :  
ZAB, SHAREN UNDERWOOD, and :  
JOHN PACHECO, JR. :  
: :  
Plaintiffs :  
: :  
vs. : CA No. 2015- :  
: :  
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. :

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

Introduction

The Plaintiffs, Shelby Ferreira and Cody-Allen Zab (hereinafter referred to collectively as the “Plaintiffs Ferreira”), and the Plaintiffs, Sharen Underwood and John Pacheco, Jr. (hereinafter referred to collectively as the “Plaintiffs Underwood”) file the within Complaint seeking declaratory and injunctive relief against Defendant A.T. Wall, (hereinafter “Wall”) in his individual and official capacity as the Director of the Rhode Island Adult Correctional Institutions (hereinafter “ACI”) allowing Plaintiff Ferreira to marry Plaintiff Zab while he remains an inmate at the ACI, and allowing Plaintiff Underwood to marry Plaintiff John Pacheco, Jr. while he remains an inmate at the ACI.

Plaintiffs Ferreira additionally file the within Complaint seeking declaratory and injunctive relief as against Defendants Ernie Zmyslinski, sued in his official capacity as the Finance Director for the City of Warwick, and Defendant Marie Ahlert sued in her

individual and official capacity as the City Clerk for the City of Warwick for the failure of the clerk's office to issue a marriage license.

Both sets of Plaintiffs allege that each of the Defendants have violated Plaintiffs' Equal Protection and Due Process rights as afforded by the First, Fifth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §1983.

Plaintiffs seek a declaration from this Court that Defendants have violated All Plaintiffs' constitutionally protected equal protection and due process rights and 42 U.S.C. § 1983 when Defendant Wall refused to allow both sets of Plaintiffs to marry based on the provisions of R.I.G.L § 13-6-1, the so called "civil death statute." The cited statute is unconstitutional as it applies to bar a non-prisoner and a prisoner's right to marry and, as previously recognized by the Department of Corrections, similar statutes have been declared unconstitutional in most if not all other jurisdictions where it has been directly addressed..

Plaintiffs Underwood seek a declaration from this Court that Defendant Ahlert violated Plaintiffs Underwood's constitutionally protected equal protection and due process rights and 42 U.S.C. §1983 when Defendant Ahlert, individually or by and through the other employees of the Clerk's office, refused to issue a marriage license to Plaintiffs Underwood, citing R.I.G.L § 13-6-1, the so called "civil death statute," to support their denials. The cited statute is unconstitutional as it applies to bar a non-prisoner and a prisoner's right to marry.

All Plaintiffs seek injunctive relief restraining, enjoining and prohibiting the Defendant A.T. Wall from prohibiting Plaintiffs from marriage while Plaintiff Zab and Plaintiff Pacheco remain incarcerated at the ACI, in addition to attorney's fees and costs.

The Plaintiffs Underwood additionally seek injunctive relief requiring that the Defendant Ahlert issue a marriage license to Plaintiffs Underwood allowing them to marry

while Plaintiff Pacheco remains incarcerated at the ACI, in addition to attorney's fees and costs.

Parties

1. Plaintiff Shelby Ferreira is a resident of the city of Woonsocket, County of Providence, State of Rhode Island.
2. Plaintiff Cody-Allen Zab resided in the City of Providence, County of Providence, State of Rhode Island before being incarcerated at the ACI in the City of Cranston, Rhode Island.
3. Plaintiff Sharen Underwood is a resident of the city of Warwick, County of Kent, State of Rhode Island.
4. Plaintiff John Pacheco, Jr. resided in the City of Warwick, County of Kent, State of Rhode Island before being incarcerated at the ACI in the City of Cranston, Rhode Island.
5. Defendant A.T. Wall is the Director of the State of Rhode Island's Adult Correctional Institutions, located in Cranston, Rhode Island and is being sued in his Individual and Official Capacity.
6. Defendant Ernie Zmyslinski, is the Finance Director for the City of Warwick and sued in his Official Capacity.
7. Defendant Marie Ahlert, is the City Clerk for the City of Warwick and sued in her Individual and Official Capacity.

Jurisdiction

8. Jurisdiction of this Honorable Court is proper under 28 U.S.C. §§ 1331, 1343, 1367, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b)(2) in that a substantial part of the events or omissions giving rise to this claim occurred within the judicial district of Rhode Island.

Factual Background Plaintiffs Ferreira

10. Plaintiff Zab is incarcerated at the ACI and has been sentenced to a life sentence with the possibility of parole.

11. Plaintiff Ferreira is a college professor who, through the Community College of Rhode Island (hereinafter "CCRI"), taught classes to inmates at the ACI including Plaintiff Zab.

12. Plaintiff Ferreira was denied access to the ACI after she responded to a correspondence from an inmate, other than the Plaintiff Zab, in a fashion that the officials at the ACI deemed to be inappropriate.

13. Subsequent to this event, the Plaintiffs Ferreira and Zab began corresponding and speaking with one another on the telephone and decided that they, Plaintiff Ferreira and Plaintiff Zab, would like to marry to further their strongly held personal and religious beliefs and commitment to each other.

14. Plaintiff Zab requested permission to marry Ferreira on or about July 28, 2014 in accordance with the protocol established by Defendant A.T. Wall and his employees at the ACI and was denied.

15. Defendant A.T. Wall individually or through the conduct of his employees denied the Plaintiff Zab's request to marry Plaintiff Ferreira citing R.I. G.L. § 13-6-1.

16. On April 16, 2012, Plaintiff Zab was allowed to marry by the Defendant despite the provisions of R.I. G.L. § 13-6-1, although he was at the time of his previous marriage request incarcerated with a life sentence.

17. Plaintiff Zab subsequently divorced on August 19, 2013 and, except for the provisions of R.I.G.L. § 13-6-1, is otherwise eligible to marry under the laws of the State of Rhode Island.

18. Plaintiff Zab has exhausted his administrative remedies and the grievance procedure at the ACI prior to the filing of this action.

19. Plaintiff Ferreira is not presently, nor has she ever been, an inmate at the ACI and is legally qualified to marry under the laws of the State of Rhode Island.

20. At all times relevant hereto, Defendant A.T. Wall acted under color of law.

21. The Defendant Wall's actions were done with reckless or callous indifference to Plaintiffs Ferreira's constitutional rights and caused Plaintiffs Ferreira constitutional deprivation.

22. Plaintiffs Ferreira have and will continue to suffer damages from Defendant's actions.

23. Other inmates at the ACI who are sentenced to life have been allowed to marry by Defendant Wall.

24. Defendant Wall is without reasonable or rational basis for his discriminatory treatment of the Plaintiffs Ferreira.

#### Factual Background Plaintiffs Underwood

25. Plaintiff Pacheco is incarcerated at the ACI and has been sentenced to life without the possibility of parole.

26. Plaintiff Underwood is a resident of the City of Warwick who has had a long term relationship with the Plaintiff Pacheco predating his incarceration at the ACI.

27. The Plaintiffs Underwood decided to marry first in September of 2006, and again in April or May of 2014 while Plaintiff Pacheco was an inmate in the Maximum Security prison of the ACI to further their religious and personal beliefs.

28. Both Plaintiffs Pacheco and Underwood were unmarried individuals over the age of 18 at the time of their decision to marry.

29. Defendant Wall initially assented to the Plaintiff Pacheco's request to marry on October 30, 2006 by and through the actions of the staff he controls at the ACI.

30. Plaintiff Underwood went to the Clerk for the City of Warwick to request a marriage license so she could marry Plaintiff Pacheco.

31. Defendant Ahlert, herself or by and through her subordinates in the Clerk's office for the City of Warwick, denied the Plaintiff Underwood's request stating that because Plaintiff Pacheco has a sentence of life imprisonment at the ACI, she cannot issue a license to marry because of the provisions of R.I.G.L. § 13-6-1.

32. Defendant Wall has subsequently withdrawn the permission given to the Plaintiff Pacheco to marry, citing the provisions of R.I.G.L. § 13-6-1.

33. Plaintiff Pacheco has exhausted his administrative remedies through the grievance procedure at the ACI at the time of the filing of this action.

34. At all times relevant hereto, Defendants Ahlert and Wall acted under color of law.

35. The Defendants Ahlert and Wall's actions were done with reckless or callous indifference to Plaintiffs' constitutional rights and caused Plaintiffs' constitutional deprivation.

36. Plaintiffs have and will continue to suffer damages from Defendants' actions.

37. Other inmates at the ACI who are sentenced to life have been allowed to marry by Defendant Wall while incarcerated at the ACI.

38. Defendants Ahlert and Wall are without reasonable or rational basis for their discriminatory treatment of the Plaintiffs Underwood.

COUNT I

(Due Process and Equal Protection/First, Fifth and Fourteenth  
Amendments/42 U.S.C. 1983)

39. Plaintiffs incorporate by reference paragraphs 1-38 as if fully set forth herein.
40. The actions of each Defendant violate Plaintiffs' due process and equal protection rights as protected by the First, Fifth and Fourteenth Amendments to the US Constitution and 42 U.S.C. § 1983.

WHEREFORE, the Plaintiffs request that the Court provide the following relief:

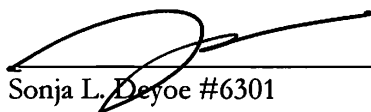
- A. Enter an order that R.I.G.L. § 13-6-1 is unconstitutional as applied to bar an inmate serving a life sentence and a non-prisoner from marrying.
- B. Enter a Declaration declaring that Defendants violated the due process and equal protection rights as guaranteed by the First, Fifth and Fourteenth Amendments to the US Constitution and declare that Plaintiffs are allowed to marry while Plaintiff Zab and Plaintiff Pacheco remain inmates at the ACI.
- C. Enter an order requiring that the Defendant Ahlert, individually or by and through her staff, issue a marriage license to the Plaintiffs Ferreira provided Plaintiffs fill out the designated proxy paperwork for the issuance of a marriage license.
- D. Issue a Permanent Injunction against Defendant Wall prohibiting, restraining and enjoining Defendant Wall from relying upon R.I.G.L. § 13-6-1 as a basis for denying the right of inmates at the ACI with life sentences from marrying.
- E. Issue a Permanent Injunction against Defendant Ahlert prohibiting, restraining and enjoining Defendant Ahlert from relying upon R.I.G.L. § 13-6-1 as a basis for denying inmates a marriage license issued by the City of Warwick.

F. Award Plaintiffs their costs, including a reasonable attorney's fee pursuant to 42 USC § 1988.

G. Award such further relief as this Court deems fair and just.

Plaintiffs Shelby Ferreira, Cody-Allen Zab, Sharen Underwood and John Pacheco, Jr.

By their attorney,



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Dated: May 28, 2015