



April 19, 2017

VIA CERTIFIED MAIL AND EMAIL

Melissa Pearse, Supervisor, Marriage License Department
Hamilton County Probate Court
230 E 9th St, 10th Floor
Cincinnati, OH 45202
mpearse@probatect.org

cc: Vince Wallace, Court Administrator
vwallace@probatect.org

RE: Unconstitutionally denying prisoners the right to marry

Dear Supervisor Pearse:

It has come to our attention that the Hamilton County Probate Court has an official policy of refusing to grant marriage licenses to incarcerated people.¹ We have received complaints that Hamilton County is actively enforcing this ban. This policy is a clear violation of the Fourteenth Amendment of the U.S. Constitution, and the Court must discontinue it immediately.

The constitutional right to marry recognizes that in the American tradition, marriage “supports a two-person union unlike any other in its importance to the committed individuals.”² This fundamental right, “based in history, tradition, and other constitutional liberties inherent in this intimate bond,”³ belongs to all Americans.

The United States Supreme Court has long held that people do not relinquish their constitutional rights when they enter prison or jail. “There is no iron curtain drawn between the Constitution and the prisons of this country.”⁴ It has been the law for decades that incarcerated people retain the fundamental right to marry⁵— and that the government may not limit their exercise of this right absent a constitutionally-sufficient justification.⁶ “[I]mate marriages, like others,

¹ <https://www.probatect.org/marriage-license> (“Both applicants must be present at the time of application. Unless one or both of the applicants are incapacitated. Note: We do not issue licenses to incarcerated individuals under any circumstances.”).

² *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015).

³ *Id.* at 2598.

⁴ *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974).

⁵ *Turner v. Safley*, 482 U.S. 78, 96 (1987).

⁶ *Toms v. Taft*, 338 F.3d 519, 525 (6th Cir. 2003).

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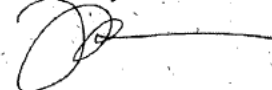


are expressions of emotional support and public commitment.”⁷ The personal, spiritual, and political rights attendant to marriage “are unaffected by the fact of confinement or the pursuit of legitimate corrections goals.”⁸

There is no legitimate justification for a total prohibition on the right to marry for those in prison and jail.⁹ Courts across the nation have protected this right by striking down policies that are far less burdensome than Hamilton County Probate Court’s complete ban on prisoner marriage.¹⁰

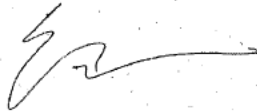
Hamilton County’s refusal to grant marriage licenses to incarcerated people denies those people “one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”¹¹ We urge the Hamilton County Probate Court to abandon its unlawful policy immediately, and to issue a correction advising the public that the Clerk of Court will issue marriage licenses to anybody who wishes to marry, regardless of their incarcerated status.

Sincerely,



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Legal Director
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⁷ *Turner* at 95-96.

⁸ *Id.*

⁹ See *Jones v. Perry*, CV 16-51-GFVT, 2016 WL 6090931 (E.D. Ky. Oct. 18, 2016) (holding that a county clerk's blanket policy of refusing to issue marriage license unless both parties physically appeared at the clerk's office violated the fundamental due process right because it prevented incarcerated people from marrying).

¹⁰ See *Jones* at *4 (collecting cases).

¹¹ *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (quoting *Skinner v. State of Oklahoma*, 316 U.S. 535, 541 (1942)); see also *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978) (“[T]he right to marry is of fundamental importance”).