

November 16, 2017

**VIA CERTIFIED MAIL AND EMAIL**

Lynne Pulver, Chief Deputy Clerk  
Madison County Probate Court  
P.O. Box 557  
London, OH 43140

**RE: Unconstitutionally denying prisoners the right to marry**

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO FOUNDATION  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org

Dear Chief Deputy Clerk Pulver,

We have received multiple complaints that Madison County Probate Court will not issue marriage licenses to people who are incarcerated. If this is the Court's practice, it 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."<sup>1</sup> This fundamental right, "based in history, tradition, and other constitutional liberties inherent in this intimate bond,"<sup>2</sup> 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."<sup>3</sup> It has been the law for decades that incarcerated people retain the fundamental right to marry<sup>4</sup> — and that the government may not limit their exercise of this right absent a constitutionally-sufficient justification.<sup>5</sup> "[I]nmate marriages, like others, are expressions of emotional support and public commitment."<sup>6</sup> The personal, spiritual, and political rights attendant to marriage "are unaffected by the fact of confinement or the pursuit of legitimate corrections goals."<sup>7</sup>

<sup>1</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015).

<sup>2</sup> *Id.* at 2598.

<sup>3</sup> *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974).

<sup>4</sup> *Turner v. Safley*, 482 U.S. 78, 96 (1987).

<sup>5</sup> *Toms v. Taft*, 338 F.3d 519, 525 (6th Cir. 2003).

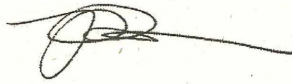
<sup>6</sup> *Turner* at 95-96.

<sup>7</sup> *Id.*

There is no legitimate justification for a prohibition on the right to marry for those in prison and jail.<sup>8</sup> Courts across the nation have protected the right to marry by striking down policies that are far less burdensome than a ban on prisoner marriage.<sup>9</sup>

A refusal to grant marriage licenses to incarcerated people denies them “one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”<sup>10</sup> If this is the official policy or unofficial practice of Madison County Probate Court, the Court must abandon it immediately. We urge the Court to advise the public that the Court will issue marriage licenses to anybody who wishes to marry, regardless of their incarcerated status.

Sincerely,



Freda Levenson  
Legal Director  
ACLU of Ohio



Elizabeth Bonham  
Staff Attorney  
ACLU of Ohio

---

<sup>8</sup> 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).

<sup>9</sup> See *Jones* at \*4 (collecting cases).

<sup>10</sup> *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”).