



PENNSYLVANIA INSTITUTIONAL LAW PROJECT

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November 6, 2023

Superintendent Mark Wahl
SCI Waymart
PO Box 256
Waymart, PA 18472

RE: [REDACTED]

Dear Superintendent Wahl:

We are writing on behalf of our client, [REDACTED], who has been incarcerated in the Pennsylvania Department of Corrections (“DOC”) since 2013. For well over a year, staff members at State Correctional Institute (“SCI”) Waymart have placed a series of administrative roadblocks in Mr. [REDACTED]’s path toward marriage, culminating in your direct refusal on October 2, 2023, of Mr. [REDACTED]’s request to marry. We ask that you grant Mr. [REDACTED]’s request and take immediate action to facilitate Mr. [REDACTED]’s marriage to his fiancée, [REDACTED].

It is well-settled that marriage is a fundamental right under both the United States Constitution and the Pennsylvania Constitution.¹ The constitutional right to marry applies to incarcerated people.² Additionally, because marriage affects the rights of both individuals seeking to wed, a denial of an incarcerated person’s right to marry a civilian “may entail a ‘consequential restriction on the [constitutional] rights of those who are not prisoners.’”³ The “refusal to aid a prisoner in exercising his right to marry, where such refusal completely frustrates the right” can only withstand constitutional muster if it is reasonably related to a legitimate penological interest.⁴ To date, staff at SCI Waymart have denied and delayed Mr. [REDACTED]’s and Ms. [REDACTED]’s marriage for well over a year, while utterly failing to identify any legitimate penological interest underpinning their actions.

On September 21, 2022, Mr. [REDACTED] submitted DOC Form DC-135A to Ms. Cush, his then-counselor at SCI Waymart, seeking approval for a marriage ceremony with Ms. [REDACTED] to take place in late December 2022 or early January 2023. At that time, SCI Waymart staff responded with information directing Ms. [REDACTED] to arrange for a marriage license and submit to an interview with SCI Waymart staff. This was the last straightforward response Mr. [REDACTED] received from SCI

¹ See *Zablocki v. Redhail*, 434 U.S. 374 (1978); *Fabio v. Civil Service Comm’n*, 414 A.2d 82 (Pa. 1980).

² *Turner v. Safley*, 482 U.S. 78, 96 (1987); *In re Coats*, 849 A.2d 254, 258 (Pa. Super 2004).

³ *Turner*, 482 U.S. at 97 (quoting *Procunier v. Martinez*, 416 U.S. 396, 409 (1974)).

⁴ *Toms*, 338 F.3d at 525.

Waymart staff regarding his proposed marriage. Since that time, he has engaged in numerous conversations with SCI Waymart staff, filed multiple Forms DC-135A, and filed three grievances in response to the denial or obstruction of his marriage. SCI Waymart staff have required Ms. [REDACTED] to submit to multiple interviews regarding the proposed marriage, impeded the efforts of Mr. [REDACTED] and Ms. [REDACTED] to obtain a marriage license, and frustrated their attempts to arrange a marriage ceremony that accords with their beliefs and financial means.

The DOC's marriage policy states that an incarcerated person's counselor will interview the person's fiancée "so that both parties fully understand the [incarcerated person's] present custody status and the anticipated date of eligibility for parole or other release status."⁵ Ms. [REDACTED] submitted to an interview with SCI Waymart counselor Ms. Cush in 2022. In 2023, SCI Waymart counselor Ms. Oliver corresponded with Ms. [REDACTED] regarding the proposed marriage. On August 9, 2023, Mr. [REDACTED] submitted to an interview with SCI-Waymart unit manager Mr. Chapo regarding the proposed marriage. It is unclear why multiple interviews and written communications were necessary to communicate to Ms. [REDACTED] the relatively straightforward information required under DC-ADM 821. Ms. [REDACTED] experienced the multiple communications as an attempt to both delay her marriage and dissuade and intimidate her from seeking marriage to [REDACTED].

Pursuant to the instructions SCI Waymart provided in September 2022, Ms. [REDACTED] made arrangements for herself and Mr. [REDACTED] to apply for a marriage license from Bucks County, a county that offers the option to participate in the marriage license interview via videoconference technology. In Pennsylvania, those seeking a marriage license may choose between two types of licenses: a traditional license that requires an officiant to solemnize the marriage, and a self-uniting marriage license which permits a couple to solemnize a marriage themselves in a ceremony conducted before two witnesses.⁶ As a Pennsylvania Court of Common Pleas judge stated, "[t]his Commonwealth has expressly provided for several means of solemnization in order to ensure that members of various religious faiths, and those couples wanting a wholly secular wedding, may marry without any encumbrances."⁷

Mr. [REDACTED] and Ms. [REDACTED] have determined that a self-uniting marriage license is most consistent with their circumstances and religious beliefs. Prior to arranging a video conference with Mr. [REDACTED] and Ms. [REDACTED] for the purposes of issuing a marriage license, the Bucks County Register of Wills & Clerk of the Orphans' Court required confirmation that the self-uniting marriage license they sought had been approved by SCI Waymart. Ms. [REDACTED] and Mr. [REDACTED] agreed with this requirement, because to obtain a marriage license that they were then not permitted to use would cause them unnecessary expense and inconvenience.⁸ On April 16, 2023, Mr. [REDACTED] submitted a

⁵ DC-ADM 821 INMATE MARRIAGES, Section 1.B.2.

⁶ See 23 Pa. C.S.A. §§ 1502-1503; Bucks County, *Applying for a Marriage License*, <https://www.buckscounty.gov/662/Applying-for-a-Marriage-License> (last visited October 25, 2023).

⁷ *In re O'Neill*, No. 08-01620-29-1, 2008 Pa. Dist. & Cnty. Dec. LEXIS 135, at *8 (C.P. Dec. 31, 2008).

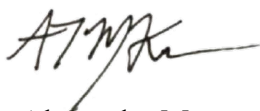
⁸ A Pennsylvania marriage license must be used within sixty days of its issuance. Bucks County, *Marriage Licenses: Requirements and Restrictions*, <https://www.buckscounty.gov/666/Requirements-Restrictions> (last visited October 26, 2023).

Form DC-135A at SCI Waymart seeking approval for the marriage license. When he did not receive a response, Mr. █████ submitted another Form DC-135A on May 31, 2023, again seeking approval for the marriage license. One and a half months after his initial request, on June 2, 2023, you personally denied Mr. █████ approval for the use of a self-uniting marriage license.

Following your denial of Mr. █████'s request to use a self-uniting marriage license, Mr. █████ continued to seek institutional approval of his proposed marriage, filing multiple grievances and Forms DC-135A throughout June-September 2023. On October 2, 2023, you provided a response to Mr. █████'s Form DC-135A submitted on September 25, 2023, stating “[s]ince you are within a year of release, I think it’s best you pursue this upon release.” Denying an incarcerated person’s marriage on this basis is neither consistent with the DOC’s own policy,⁹ nor with well-established case law.¹⁰ It is disingenuous to deny Mr. █████'s request to marry on the grounds that he is too close to his release date, given that he first sought approval for his marriage well over a year ago. Moreover, it is crucial that Mr. █████ and his fiancée are married prior to his release. They are both devout Mormons, and due to their religious beliefs, cannot live together until they are married. Consequently, if they are not married prior to his release, Mr. █████ could likely be homeless for the weeks between his release and their ability to finalize their marriage.

Based on the foregoing, we request that you approve Mr. █████'s marriage via a self-uniting license with the expeditiousness appropriate to a request that has been unduly delayed for over a year and make every effort to assist Mr. █████ and Ms. █████ in their efforts to coordinate a marriage license interview with Bucks County. We ask that you respond in writing to this letter within fourteen days. If you have any questions or concerns, you may contact Alexandra Morgan-Kurtz (amorgan-kurtz@pilp.org) and Evangeline Wright (ewright@pilp.org).

Sincerely,



Alexandra Morgan-Kurtz
Deputy Director



Evangeline Wright
Staff Attorney

cc: Timothy Holmes, tholmes@pa.gov
Chase DeFelice, chdefelice@pa.gov

⁹ DC-ADM 821 INMATE MARRIAGES, Section 1.B.2. states that “[i]f parole appears likely within the next 12 months, the inmate *will be counseled as to the advisability* of deferring the marriage until paroled” (emphasis added). Counseling as to advisability is not a directive to deny a marriage request. Elsewhere, the policy lists a series of circumstances under which a Facility Manager *shall* deny a marriage request, *see* Section 1.A.2., omitting any reference to an incarcerated person’s length of sentence or impending parole.

¹⁰ *See Turner*, 482 U.S. at 96 (finding a “constitutionally protected marital relationship in the prison context”).