

IN THE UNITED STATES DISTRICT COURT RECEIVED

FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2011 NOV 17 A 11:07

CHARLES FLOREN JACKSON

provide for their two young children who are United States citizens. It is important to their religious faiths that the couple marry.

4. Both couples desire to express their love for and commitment to one another by getting married and obtaining the economic, emotional, and psychological benefits of marriage,

marriage.

5. The right to marry is a fundamental right guaranteed under the United States Constitution to *all* persons regardless of immigration status. The Plaintiffs in this case, along with the class they represent, cannot exercise their fundamental right to marry solely because

7. Defendant's policy is not required by any federal or state law, including the recently passed law known as "HB 56", and indeed, conflicts with guidance issued by Alabama's Attorney General.

8. Defendant McKinney, Jr.'s policy is indicative of the policies and practices of 40 other probate judges in Alabama that purposefully or effectively prohibit undocumented immigrants or persons whose intended spouse is undocumented from obtaining a marriage license. Defendant McKinney, Jr.'s policy, and similar policies of the class of probate judges in which he is sought to represent, directly interferes with Plaintiff's fundamental right to

and right to equal protection under the law, as guaranteed under the United States Constitution.

in this country. He is ineligible to receive a marriage license in Montgomery County because he

Security card due to his immigration status.

15 James Doe has several forms of identification including a driver's license, a passport, and a Social Security card.

joinder of all members is impracticable. Alabama is home to an estimated 100,000 – 200,000 immigrants without lawful status. Pew Hispanic Center. *A Portrait of Hispanics in the United States*. April 14, 2000. at 12. http://www.hispanic.org/CS1-Immigrants/1107_10_00

28. This case may be maintained as a class action under Rule 23(b)(2) because in

members is undocumented violates the plaintiff class members' fundamental right to marry as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and whether such a policy or practice violates the plaintiff class members' rights to Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution.

32. Typicality: The defenses of Defendant McKinney, Jr. will be typical of the defenses of the proposed defendant class. Defendant McKinney, Jr., and all of the other members of the proposed class operate under the same policies and practices.

FACTS

Issuance of Marriage Licenses in Alabama

34. In Alabama, no person may marry without a license. Ala. Code § 30-1-9.

35. The requirements for marriage licenses are set forth in chapter 1 of title 30 in the

Alabama Code. The only restrictions set forth in this chapter are

Ala. Code § 30-1-4, and for persons under the age of 18 whose parents or guardians do not

40. No provision of the Code of Alabama or the Alabama Constitution requires marriage license applicants to provide proof of their legal presence in the United States in order to secure a marriage license.

41. Alabama Code § 30-3-194(c) states that “the Social Security number of both parties to the marriage shall be collected by those parties issuing a marriage license and shall appear on the license and certificate sent to the Office of Vital Statistics.”

194(c).

42. In 2008, the Alabama Attorney General issued an opinion that addressed whether a Social Security number is a required element for a person to receive a marriage license. The Office of the Attorney General concluded that a “social security number is not a required element for a person to receive a marriage license.” Opinion of the Attorney General to the Honorable Luke Cooley, Houston County Judge of Probate, dated June 25, 2008, No. 2008-100,

eLicenses.aspx (last accessed November 17, 2011). The website continues,

Each applicant must provide one of the following:

1. An official Picture ID (passport, military ID, State issued ID, Driver's License).
2. An original certified copy of the state issued birth certificate (hospital copy not acceptable) and original social security card.
3. U. S. Government issued Immigration Services Picture ID Card (green card, visa, alien resident card, etc.).

States and cannot satisfy Defendant's requirements to obtain a marriage license in Montana.

restaurant industry. Together, they are raising their two young children. But for Defendant's unlawful policy and practice, Plaintiffs Jane Doe and James Doe would obtain a marriage license from Montgomery County and get married.

50. The Named Plaintiffs want to express their love for and commitment to their

The Named Plaintiffs are also anxious to marry to solemnize their relationship and to obtain the economic, emotional, and psychological benefits for their family that inure from marriage.

51. Any attempt by the Named Plaintiffs to obtain a marriage license in Montgomery County, and in the vast majority of counties in Alabama, would be futile.

55. The policies of Defendant McKinney, Jr. and defendant class members absolutely prevent non-U.S. citizens, such as Jack Doe, Jane Doe, James Doe, and other plaintiff class members who are undocumented, from getting married.

56. Defendant McKinney, Jr.'s policy and defendant class members' similar policies absolutely prevent persons such as Charelle Loder and other plaintiff class members from

though set forth at length herein.

62. The policies adopted, implemented, and enforced by Defendant McKinney, Jr. and defendant class members require a non-U.S. citizen who applies for a marriage license to produce proof of his/her legal presence in the United States and/or Social Security card as a condition of obtaining a marriage license.

63. These policies deny undocumented persons like Jack Doe, Jane Doe, and James Doe and other plaintiff class members, of the equal protection of laws in that it deprives them of the fundamental right to marry solely because of their alienage.

64. Defendant's policy, and the similar policies of the defendant class members, denies persons like Charelle Loder, and other plaintiff class members, their right to equal protection of laws in that it deprives them of the fundamental right to marry solely because of the

68. Plaintiffs, and the class they seek to represent, are entitled to declaratory relief, pursuant to 28 U.S.C. §§ 2201 and 2202, and injunctive relief against Defendant McKinney, Jr.,

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request that the Court:

- (a) Assume jurisdiction over this matter;
- (b) Certify this case as a bilateral class action pursuant to Fed. R. Civ. P. 23;

legal presence in the United States;

- (e) Grant Plaintiffs' costs of suit, and reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988; and
- (f) Grant such other relief as the Court deems just and proper.

Dated: November 17, 2011

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

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Requirements For Persons 18 years or older

Non-citizens of the United States must provide proof of legal presence in the United States

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