

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS
STATE OF MISSOURI
EQUITY DIVISION

FONDRAY LOVING, individually and
as Next Friend of Katarina Loving and
Fondray Loving, Jr., Minors, and

OLIVIA SHELLTRACK, individually
and as Next Friend of Alexia Shelltrack,
a Minor,

Plaintiffs,

v.

CITY OF BLACK JACK,

Serve: Norman C. McCourt
Mayor, City of Black Jack
Black Jack City Hall
12500 Old Jamestown Road
Black Jack, MO 63033

DEBRA IRVIN, individually and in her
official capacity as Housing Director,
City of Blackjack,

Serve at: Black Jack City Hall
12500 Old Jamestown Road
Black Jack, MO 63033

CLIFF CURTIS, individually and as
Chairman and a Member of the Board
of Adjustment, City of Black Jack,

Serve at: Black Jack City Hall
12500 Old Jamestown Road
Black Jack, MO 63033

Division:

Cause No.

17

0500-009157

FILED

CLERK

ALDEN WILLIAMS, individually and as a Member of the Board of Adjustment, City of Black Jack,)
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)
Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
)
ART MEIROTTO, individually and as a Member of the Board of Adjustment, City of Black Jack,)
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Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
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NORMA MITCHELL, individually and as a Member of the Board of Adjustment, City of Black Jack,)
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Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
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DON CRANK, individually and as a Member of the City Council, City of Blackjack,)
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Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
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SANDRA MULLER, individually and as a Member of the City Council, City of Blackjack,)
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)
Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
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AL SCHROEDER, individually and as a Member of the City Council, City of Blackjack,)
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)
Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
)
)

JOHN TAYLOR, individually and as a Member)
of the City Council, City of Blackjack, and)
))
Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
))
BEN ALLEN, individually and as a Member)
of the City Council, City of Blackjack,)
))
Serve at: Black Jack City Hall)
12500 Old Jamestown Road)
Black Jack, MO 63033)
))
Defendants.)

PETITION

Plaintiffs Fondray Loving and Olivia Shelltrack, on behalf of themselves and their minor children, for their causes of action against defendants, state as follows:

PRELIMINARY STATEMENT

Plaintiffs are an unmarried man and woman and their three minor children who have lived together as a family unit for many years, and who desire to continue to live as a family in their five-bedroom, 2,300 square foot home in the City of Black Jack. Defendants have denied plaintiffs an occupancy permit on grounds that they do not meet the definition of a “family” set forth in the City’s Zoning Ordinance, *i.e.*:

An individual or two (2) or more persons related by blood, marriage or adoption, or a group of not more than three (3) persons who need not be related by blood, marriage or adoption, living together as a single non-profit housekeeping unit in a dwelling unit.

In seeking to prohibit plaintiffs from continuing to live in their home as a family, defendants have denied plaintiffs due process and equal protection in violation of the United States and Missouri Constitutions, unlawfully discriminated against plaintiffs based on their marital and familial status, and otherwise violated plaintiffs’ legal rights. Plaintiffs bring this

action to obtain declaratory and injunctive relief, monetary damages and other redress for defendants' unlawful acts and omissions.

PARTIES AND JURISDICTION

1. Plaintiff Fondray Loving ("Fondray") is an adult citizen and resident of the State of Missouri. Fondray brings this action on behalf of himself, individually, and as Next Friend of Katarina Loving and Fondray Loving, Jr., Minors.

2. Plaintiff Olivia Shelltrack ("Olivia") is an adult citizen and resident of the State of Missouri. Olivia brings this action on behalf of herself, individually, and as Next Friend of Alexia Shelltrack, a Minor. (Fondray and Olivia hereafter are sometimes collectively referred to as the "Plaintiff Parents.")

3. Plaintiff Katarina Loving ("Katarina") is a 10-year old girl, born September 8, 1995, who is the biological daughter of Fondray and Olivia.

4. Plaintiff Fondray Loving, Jr. ("Fondray Jr.") is a 9-year old boy, born July 31, 1997, who is the biological son of Fondray and Olivia.

5. Plaintiff Alexia Shelltrack ("Alexia") is a 15-year old girl, born September 25, 1990, who is the biological daughter of Olivia and a father other than Fondray. (Katarina, Fondray Jr. and Alexia hereafter are sometimes collectively referred to as the "Plaintiff Children.")

6. Fondray, Olivia and Alexia have lived together as a family unit for approximately 13 years, and Katarina and Fondray Jr. also have been part of that family unit at all times since their respective births, 10 and 9 years ago. Throughout the many years that plaintiffs have lived together, they have lived and functioned as a single family unit, sharing household duties and responsibilities, and pooling their finances. In the 13 years they have lived together, Fondray

and Olivia have shared child-rearing responsibilities for all three children. Fondray and Olivia are engaged to be married but are not presently married.

7. Defendant City of Black Jack (“Black Jack”) is a municipal corporation and Third Class City, organized and existing under the laws of the State of Missouri and situated within St. Louis County.

8. Defendant Debra Irvin (“Irvin”) is a resident of St. Louis County, Missouri and, at all pertinent times, was the Housing Director of Black Jack. Irvin is sued in her individual and official capacities.

9. Defendant Cliff Curtis (“Curtis”) is a resident of St. Louis County, Missouri and, at all pertinent times, was the Chairman and a Member of the Board of Adjustment of Black Jack. Curtis is sued in his individual and official capacities.

10. Defendant Alden Williams (“Williams”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the Board of Adjustment of Black Jack. Williams is sued in his individual and official capacities.

11. Defendant Art Meiroto (“Meiroto”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the Board of Adjustment of Black Jack. Meiroto is sued in his individual and official capacities.

12. Defendant Norma Mitchell (“Mitchell”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the Board of Adjustment of Black Jack. Mitchell is sued in her individual and official capacities.

13. Defendant Don Crank (“Crank”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the City Council of Black Jack. Crank is sued in his individual and official capacities.

14. Defendant Sandra Muller (“Muller”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the City Council of Black Jack. Muller is sued in her individual and official capacities.

15. Defendant Al Schroeder (“Schroeder”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the City Council of Black Jack. Schroeder is sued in his individual and official capacities.

16. Defendant John Taylor (“Taylor”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the City Council of Black Jack. Taylor is sued in his individual and official capacities.

17. Defendant Ben Green (“Green”) is a resident of St. Louis County, Missouri and, at all pertinent times, was a Member of the City Council of Black Jack. Green is sued in his individual and official capacities.

18. This Court has jurisdiction of this action pursuant to Art. 5, § 14 of the Missouri Constitution.

19. Venue is proper in this Court pursuant to Mo. Rev. Stat. § 508.010 in that all defendants reside in St. Louis County.

20. Insofar as this action seeks declaratory and injunctive relief, plaintiffs bring this action as a class action, pursuant to Mo. Sup. Ct. R. 52.08(b)(2), on behalf of themselves and all similarly situated persons, including all persons who reside in Black Jack as a family unit, or who wish to do so, but who do not meet the definition of “family” in the Black Jack Zoning Ordinance.

ALLEGATIONS COMMON TO ALL COUNTS

Denial of Occupancy Permit

21. As of 2005, plaintiffs were, and had been, living together as a family unit in Minnesota for many years.

22. In 2005, Fondray and Olivia decided to move to the St. Louis metropolitan area. They wished to be closer to Fondray's extended family, who reside in the St. Louis area, and Fondray's Minnesota employer also had operations in the St. Louis area, to which Fondray could transfer.

23. In 2005, Fondray and Olivia contracted to purchase a single family home at 12475 Parkwood Lane, in Black Jack (the "Home"), where they planned to live, together with Katarina and Fondray Jr. – the biological children of both Fondray and Olivia, and Alexia – Olivia's daughter. The Home has five bedrooms and approximately 2,300 square feet of living space, and Black Jack deems it sufficiently spacious to accommodate occupancy for up to ten (10) people.

24. The closing of the Home purchase was scheduled for early January, 2006. In anticipation of closing, Fondray's and Olivia's mortgage lender advised them they would need an occupancy permit. Accordingly, Fondray went to the Black Jack City Hall on December 29, 2005, and applied for an occupancy permit.

25. A Black Jack official told Fondray he would be required to provide identification for all adults, and birth certificates for all children, residing in the household. Fondray did not have the required documentation with him on December 29, 2005, as he and Olivia were waiting for Katarina's and Fondray Jr.'s birth certificates to be sent from Minnesota. Accordingly, Fondray put only his name on the occupancy permit application and the permit was issued on

that basis. The Black Jack official assisting Fondray told him other family members could be added later once their identifying documents had been obtained.

26. Later in January, 2006, Olivia went to the Black Jack City Hall to add her name and those of the Plaintiff Children to the occupancy permit for the Home. In the course of that process, Olivia was asked for a marriage certificate and responded that she and Fondray were not married, whereupon Olivia was told the occupancy permit would be denied because she had too many children and plaintiffs did not meet the definition of family in Black Jack's Zoning Ordinance. Defendant Irvin oversaw and directed the initial denial of plaintiffs' requested occupancy permit.

Actions of Board of Adjustment, Planning and Zoning Commission and City Council

27. Olivia was told she could appeal the denial of the requested occupancy permit, and she filed an appeal in early February, 2006. Plaintiffs were required to, and did, pay a fee of \$110.00 as a condition of filing the appeal.

28. The Black Jack Board of Adjustment ("BOA") considered plaintiffs' appeal at a meeting held February 16, 2006. Present at and participating in the proceedings were defendants Curtis, Mitchell, Meiroto and Williams, as well as defendant Irvin.

29. During the BOA proceedings of February 16, 2006, defendants Curtis, Mitchell, Meiroto, Williams and Irvin placed substantial focus on the fact that Fondray and Olivia were not married and on whether and when their marital status might change. During the BOA proceedings, some or all of defendants Curtis, Mitchell, Meiroto, Williams and Irvin made statements reflecting that preferences, limitations and discrimination in the occupancy of residential property based on marital and/or familial status had been, and would continue to be, imposed within Black Jack, with respect to plaintiffs as well as others.

30. At the conclusion of the BOA proceedings on February 16, 2006, defendants Curtis, Mitchell, Meiroto and Williams, at the urging of defendant Irvin, unanimously voted to reject plaintiffs' appeal and deny the requested occupancy permit.

31. On March 21, 2006, the Black Jack City Council directed the Planning and Zoning Commission to review the current definition of family in the Zoning Ordinance and recommend to the Council any changes to that definition the Commission deemed appropriate.

32. Thereafter, at a meeting on April 26, 2006, following a public hearing and discussion, the Planning and Zoning Commission recommended to the City Council that it change the definition of family in the Zoning Ordinance. The recommended changes included broadening the definition of family to include:

Two (2) unrelated individuals having a child or children related by blood, adoption or foster care relationship to both such individuals, plus any other persons related directly to either such individual by blood, marriage, adoption or foster care relationship, living together as a single non-profit housekeeping unit in a dwelling unit.

33. On May 16, 2006, the Black Jack City Council considered, after a second reading, Bill No. 963, which would have effected the Planning and Zoning Commission's recommended changes to the definition of family in the Zoning Ordinance, and voted 5-3 to reject Bill No. 963. Defendants Crank, Muller, Schroeder, Taylor and Allen all voted to reject Bill No. 963.

34. Following the rejection of Bill No. 963, the Mayor of Black Jack, Norman McCourt, issued a Statement, stating: "As Mayor, I am required by state law to uphold the laws of the City of Black Jack. Tomorrow, we will follow our normal administrative process and request compliance by any individuals that are living in the City who are not in compliance with the Code."

35. As a result of the foregoing, plaintiffs are at risk of suffering enforcement actions and sanctions stemming from Black Jack's refusal to issue an occupancy permit to them to live in their home, including but not limited to fines and/or eviction.

36. Plaintiffs have suffered, are continuing to suffer, and are at great risk of further suffering enormous harm as a result of the conduct of defendants, for which they have no adequate remedy at law and which therefore is irreparable.

Other Similar Instances

37. Black Jack's refusal to issue an occupancy permit based on marital and familial status is not an isolated instance limited to plaintiffs. There have been at least two other documented instances of similar conduct by Black Jack, and there may be other such instances.

38. In one of the documented instances, occurring in 1999, Black Jack refused to issue an occupancy permit to an unmarried couple and their triplets. In a letter relating to that situation, Mayor Norman McCourt stated:

[I]t is apparently the opinion of the majority of the City Council, the Board of Adjustment and certainly the input received from the majority of the City's residents, in this instance, that they do not believe that an unmarried couple having children residing in our community is an appropriate standard that they wish to approve. . . .

[W]e believe our community standards and the morals thereof are something that the City can and must enforce. . . .

The easiest resolution to cure the situation would be for them to be married. Our community believes that this is the appropriate way to raise a family. While it would be naive to say that we don't recognize that children are born out of wedlock frequently these days, we certainly don't believe that is the type of environment within which children should be brought into this world. I believe the City has acted appropriately in keeping with the law, consistent with our community's morals and standards, and that we will continue to enforce our ordinances to protect the interests of our community.

39. In another documented instance, occurring in 2005, Black Jack denied an occupancy permit to an unmarried couple, the woman's 17 year-old daughter, and the couple's two year-old son. The family unit was living in a three-bedroom, 1,700 square foot home.

40. With respect to plaintiffs as well as others similarly situated, defendants' acts and omissions threaten to tear apart family units, preclude parents from living with their minor children, preclude minor children from living with their parents, and preclude minor children from living with their siblings.

Conduct of Defendants

41. Defendants, and each of them, at all times have acted under color of law.

42. Defendants, and each of them, have deprived plaintiffs of rights, privileges and immunities secured to them by the Constitutions and laws of the United States and the State of Missouri.

43. Maintenance of this litigation as a class action with respect to the claims for declaratory and injunctive relief is appropriate under Mo. Sup. Ct. R. 52.08(b)(2) in that defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

44. The conduct of defendants, and each of them, was willful, wanton and outrageous, and in reckless disregard of plaintiffs' rights.

COUNT I

(42 U.S.C. § 1983: Deprivations of Substantive Due Process – All Plaintiffs Against All Defendants)

45. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

46. By seeking to prevent plaintiffs from living together in a single-family dwelling, defendants have threatened to deprive Fondray and Olivia of the ability to establish a home in which they may direct the upbringing of their children and make decisions concerning the care, custody, and control of their children within a unitary household.

47. Defendants similarly have sought, and threaten, to deprive Fondray and Olivia of the ability to maintain their intimate relationship within the seclusion of a single home.

48. Defendants similarly have sought, and threaten, to preclude Katarina and Fondray Jr. from growing up in a single household with both of their parents; have sought, and threaten, to preclude Alexia from growing up in a single household with her mother and the man who has raised her as a father for 13 years; and have sought, and threaten, to preclude Alexia, Katarina and Fondray Jr. from growing up in a single household with all of their siblings, despite their parents' desire and willingness to raise the children together in one home.

49. Defendants similarly have sought, and threaten, to preclude all plaintiffs from exercising their freedom of personal choice in family life, to cohabit with their close relatives and cultivate close family relationships within the seclusion of a single home.

50. By all of the foregoing, and each aspect of same, defendants have sought, and threaten, to deprive plaintiffs of their fundamental liberty interests substantively protected by the Due Process Clause set forth in the Fourteenth Amendment to the United States Constitution.

51. Defendants' conduct set forth above does not serve to further any legitimate governmental interest justifying the drastic infringements of plaintiffs' fundamental liberty interests threatened by defendants.

52. Based on all of the foregoing, defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, plaintiffs of their due process rights guaranteed to them by the United States Constitution, with resulting irreparable harm to plaintiffs.

WHEREFORE, plaintiffs pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct infringes plaintiffs' due process rights; grant temporary and permanent injunctive relief enjoining defendants from further infringing the due process rights of plaintiffs and all other similarly situated persons; award to plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to plaintiffs from each of the defendants to the extent allowable by law; award to plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

COUNT II

(42 U.S.C. § 1983: Discrimination Against Unmarried Couples in Violation of Equal Protection – Plaintiffs Fondray and Olivia Against All Defendants)

53. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

54. By seeking to prevent Fondray and Olivia from cohabiting in a single-family dwelling under circumstances where they would allow a similarly situated married couple to

cohabit, defendants have discriminated against Fondray and Olivia on the basis of their marital status.

55. Defendants' foregoing discrimination against Fondray and Olivia serves to burden their rights to control the upbringing of their children and to order their intimate family relationships within a single home, both of which are fundamental rights.

56. Defendants' conduct set forth above does not serve to further any compelling state interest or, indeed, any legitimate governmental interest and is without rational basis. Defendants' discrimination against Fondray and Olivia and burdening of their fundamental rights thus is unjustified.

57. Based on all of the foregoing, defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, plaintiffs Fondray and Olivia of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the United States Constitution, with resulting irreparable harm to plaintiffs.

WHEREFORE, plaintiffs Fondray and Olivia pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct denies plaintiffs Fondray and Olivia equal protection; grant temporary and permanent injunctive relief enjoining defendants from further denying equal protection to said plaintiffs and all other similarly situated persons; award to said plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to said plaintiffs from each of the defendants to the extent allowable by law; award to said plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

COUNT III

(42 U.S.C. § 1983: Discrimination Against Non-Marital Children in Violation of Equal Protection – Plaintiff Children Against All Defendants)

58. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

59. By seeking to prevent Plaintiff Children from cohabiting in a single-family dwelling under circumstances where they would allow similarly-situated children of a married couple and their parents to cohabit, defendants have discriminated against Plaintiff Children on the basis of their status as non-marital children.

60. Defendants' foregoing discrimination against the Plaintiff Children serves to burden their rights to cohabit with both of their parents, as well as with all of their siblings, and to order their intimate family relationships within a single home, all of which are fundamental rights.

61. Defendants' conduct set forth above does not serve to further any compelling state interest or, indeed, any legitimate governmental interests and is without rational basis. Defendants' discrimination against Fondray and Olivia and burdening of their fundamental rights thus is unjustified.

62. Based on all of the foregoing, defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, the Plaintiff Children of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the United States Constitution, with resulting irreparable harm to plaintiffs.

WHEREFORE, the Plaintiff Children pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct denies the Plaintiff Children equal protection; grant temporary and permanent injunctive relief enjoining defendants

from further denying equal protection to said plaintiffs and all other similarly situated persons; award to said plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to said plaintiffs from each of the defendants to the extent allowable by law; award to said plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

COUNT IV

(Deprivations of Substantive Due Process Under Missouri Constitution— All Plaintiffs Against All Defendants)

63. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

64. By seeking to prevent plaintiffs from living together in a single-family dwelling, defendants have threatened to deprive Fondray and Olivia of the ability to establish a home in which they may direct the upbringing of their children and make decisions concerning the care, custody, and control of their children within a unitary household.

65. Defendants similarly have sought, and threaten, to deprive Fondray and Olivia of the ability to maintain their intimate relationship within the seclusion of a single home.

66. Defendants similarly have sought, and threaten, to preclude Katarina and Fondray Jr. from growing up in a single household with both of their parents; have sought, and threaten, to preclude Alexia from growing up in a single household with her mother and the man who has raised her as a father for 13 years; and have sought, and threaten, to preclude Alexia, Katarina and Fondray Jr. from growing up in a single household with all of their siblings, despite their parents' desire and willingness to raise the children together in one home.

67. Defendants similarly have sought, and threaten, to preclude all plaintiffs from exercising their freedom of personal choice in family life, to cohabit with their close relatives and to cultivate close family relationships within the seclusion of a single home.

68. By all of the foregoing, and each aspect of same, defendants have sought, and threaten, to deprive plaintiffs of their fundamental liberty interests substantively protected by the Due Process Clause set forth in Art. 1, § 10 of the Missouri Constitution.

69. Defendants' conduct set forth above does not serve to further any legitimate governmental interest justifying the drastic infringements of plaintiffs' fundamental liberty interests threatened by defendants.

70. Based on all of the foregoing, defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, plaintiffs of their due process rights guaranteed to them by the Missouri Constitution, with resulting irreparable harm to plaintiffs.

WHEREFORE, plaintiffs pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct infringes plaintiffs' due process rights; grant temporary and permanent injunctive relief enjoining defendants from further infringing the due process rights of plaintiffs and all other similarly situated persons; award to plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to plaintiffs from each of the defendants to the extent allowable by law; award to plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

COUNT V

(Discrimination Against Unmarried Couples in Violation of the Equal Protection Clause of the Missouri Constitution – Plaintiffs Fondray and Olivia Against All Defendants)

71. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

72. By seeking to prevent Fondray and Olivia from cohabiting in a single-family dwelling under circumstance where they would allow a similarly-situated married couple to cohabit, defendants have discriminated against Fondray and Olivia on the basis of their marital status.

73. Defendants' foregoing discrimination against Fondray and Olivia serves to burden their rights to control the upbringing of their children and to order their intimate family relationships within a single home, both of which are fundamental rights.

74. Defendants' conduct set forth above does not serve to further any compelling state interest or, indeed, any legitimate governmental interest and is without rational basis. Defendants' discrimination against Fondray and Olivia and burdening of their fundamental rights thus is unjustified.

75. Based on all of the foregoing, defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, plaintiffs Fondray and Olivia of the equal protection of the laws guaranteed to them by Art. 1, § 2 of the Missouri Constitution, with resulting irreparable harm to plaintiffs.

WHEREFORE, plaintiffs Fondray and Olivia pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct denies plaintiffs Fondray and Olivia equal protection; grant temporary and permanent injunctive relief enjoining defendants from further denying equal protection to said plaintiffs and all other

similarly situated persons; award to said plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to said plaintiffs from each of the defendants to the extent allowable by law; award to said plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

COUNT VI

(Discrimination Against Non-Marital Children in Violation of the Equal Protection Clause of the Missouri Constitution – Plaintiff Children Against All Defendants)

76. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

77. By seeking to prevent Plaintiff Children from cohabiting in a single-family dwelling under circumstances where they would allow similarly-situated children of a married couple and their parents to cohabit, defendants have discriminated against Plaintiff Children on the basis of their status as non-marital children.

78. Defendants' foregoing discrimination against the Plaintiff Children serves to burden their rights to cohabit with both of their parents, as well as with all of their siblings, and to order their intimate family relationships within a single home, all of which are fundamental rights.

79. Defendants' conduct set forth above does not serve to further any compelling state interest or, indeed, any legitimate governmental interest and is without rational basis. Defendants' discrimination against Fondray and Olivia and burdening of their fundamental rights thus is unjustified.

80. Based on all of the foregoing, defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, the Plaintiff Children of the equal

protection of the laws guaranteed to them by Art. 1, § 2 of the Missouri Constitution, with resulting irreparable harm to plaintiffs.

WHEREFORE, the Plaintiff Children pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct denies the Plaintiff Children equal protection; grant temporary and permanent injunctive relief enjoining defendants from further denying equal protection to said plaintiffs and all other similarly situated persons; award to said plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to said plaintiffs from each of the defendants to the extent allowable by law; award to said plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

COUNT VII

(Intentional Discrimination on the Basis of Family Status in Violation of the Federal Fair Housing Act—All Plaintiffs Against All Defendants)

81. Plaintiffs repeat and incorporate by reference all the allegations contained in the preceding paragraphs of this petition.

82. By adopting a policy that denies legal occupancy to nonmarital families with more than two children in a household, defendants have engaged in intentional discrimination on the basis of familial status in violation of the Fair Housing Act, 42 U.S.C. § 3604 (a) and (b).

83. Based on all the foregoing defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, the plaintiffs of their right to be free from housing discrimination on the basis of familial status.

WHEREFORE, the Plaintiffs pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct denies the plaintiffs the right to

be free from housing discrimination on the basis of familial status; grant temporary and permanent injunctive relief enjoining defendants from further denying plaintiffs the right to be free from housing discrimination on the basis of familial status to said plaintiffs and all other similarly situated persons; award to said plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to said plaintiffs from each of the defendants to the extent allowable by law; award to said plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

COUNT VIII

(Disparate Impact Discrimination on the Basis of Family Status in Violation of the Federal Fair Housing Act--All Plaintiffs Against All Defendants)

84. Plaintiffs repeat and incorporate by reference all of the allegations contained in the preceding paragraphs of this petition.

85. By adopting a policy that denies legal occupancy to nonmarital families with more than two children in a household, defendants have engaged in a practice that has a disparate impact on families with children and therefore discriminates on the basis of familial status in violation of the Fair Housing Act, 42 U.S.C. § 3604 (a) and (b).

86. No necessity justifies this discriminatory policy.

87. Based on all the foregoing, defendants, under color of law, improperly and unlawfully have deprived, and threaten to further deprive, the plaintiffs of their right to be free from housing discrimination on the basis of familial status.

WHEREFORE, plaintiffs pray the Court to grant a declaratory judgment in their favor, and against defendants, providing that defendants' conduct denies the plaintiffs the right to be free from housing discrimination on the basis of familial status; grant temporary and permanent

injunctive relief enjoining defendants from further denying plaintiffs the right to be free from housing discrimination on the basis of familial status to said plaintiffs and all other similarly situated persons; award to said plaintiffs from defendants, jointly and severally, such compensatory damages as may be proven at trial; award punitive damages to said plaintiffs from each of the defendants to the extent allowable by law; award to said plaintiffs from defendants, jointly and severally, the costs of this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other relief as the Court may deem just and proper.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF EASTERN MISSOURI

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AMERICAN CIVIL LIBERTIES UNION FOUNDATION
WOMEN'S RIGHTS PROJECT

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