

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HAROLD BRYAN WILSON, AND
RILEY NICOLE SHADLE,

Plaintiffs,

vs.

JASON GEERDES, FRED BRITTEN,
CATHY SHEAIR, SCOTT FRAKES,

Defendants.

8:16CV524

**MEMORANDUM
AND ORDER**

Plaintiffs Harold Bryan Wilson (“Wilson”) and Riley Nicole Shadle (“Shadle”) (or “Plaintiffs”) filed a Complaint on November 30, 2016.¹ ([Filing No. 1.](#)) They have each been given leave to proceed in forma pauperis. (Filing Nos. [13](#), [14.](#)) Plaintiffs have various motions pending before this court. (Filing Nos. 15-24.)

Wilson and Shadle are incarcerated with the Nebraska Department of Corrections. They seek to get married and to remain in the same facility. ([Filing No. 1 at CM/ECF p. 3.](#)) Wilson is male and Shadle is “a transgender female residing in a male facility.” (*Id.* at CM/ECF p. 2.) They contend that staff have harassed them at the direction of Defendants for sitting too close together and displaying non-sexual, physical contact with each other because they are both considered male. (*Id.*) They allege that Wilson was “reclassified for transfer” to the state penitentiary from the Lincoln Correctional Center because they wish to

¹ Shadle alleges that Wilson signed the Complaint with her permission. (*See* [Filing No. 24.](#)) The court will take no action on the parties’ failure to comply with Rule 11 at this time. *See* [Fed. R Civ. P. 11\(a\)](#) (“Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name---or by a party personally if the party is unrepresented.”). Rather, the court will revisit the issue and also consider appointing counsel after Defendants have answered or otherwise responded to Plaintiff’s allegations.

marry.² (*Id.*) They maintain that another incarcerated couple, Mr. and Mrs. Paul Gilpatrick, were allowed to marry in 2016, and that other couples are allowed to remain together in the same facility. (*Id.*) They allege that they are prohibited from having contact with one another and therefore cannot comply with this court's order that each of them sign any document filed in this case. (*See* Filing Nos. [6](#), [12](#).) Wilson and Shadle seek injunctive relief. ([Filing No. 1 at CM/ECF p. 3.](#))

Liberally construed, Wilson and Shadle allege federal constitutional claims of due process, equal protection, and retaliation against Defendants Jason Geerdes, Fred Britten, Cathy Sheair, and Scott Frakes in their official capacities. *See Turner v. Safley*, 482 U.S. 78 (1987) (invalidating a regulation that restricted marriage access for prison inmates). *See also, Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (recognizing fundamental right to marry for same-sex couples). Given the nature of their allegations and the state of the law, the court will allow this case to proceed to service of process.

IT IS THEREFORE ORDERED that:

1. This matter may proceed to service of process as to Plaintiffs' [42 U.S.C. § 1983](#) claims based on due process, equal protection, and retaliation against Defendants Jason Geerdes, Fred Britten, Cathy Sheair, and Scott Frakes in their official capacities only.

2. Because Defendants are sued only in their official capacities, they shall be served at the office of the Nebraska Attorney General. *See Federal Rule of Civil Procedure 4(j)(2); Neb. Rev. Stat. § 25-510.02 (Reissue 2016)*. The clerk of the court is directed to complete summons forms and USM-285 forms for each of the Defendants using the address "Office of the Nebraska Attorney General, 2115

² It appears that Wilson has been transferred to the Nebraska State Penitentiary from the Lincoln Correctional Center, where Shadle remains. (*See* Filing Nos. [12](#), [24](#).)

State Capitol, Lincoln, NE 68509,” and forward them together with a copy of the Complaint and a copy of this Memorandum and Order to the Marshals Service for service of process on Defendants.

3. Defendants shall have 21 days from the date they are served to file an answer or other responsive pleading to Plaintiffs’ Complaint.

4. Wilson’s Motion for Status is granted. ([Filing No. 16.](#)) Shadle has been given leave to proceed in forma pauperis. ([Filing No. 14.](#))

5. Shadle’s Motion ([Filing No. 21](#)) seeking an extension of time to file his initial partial filing fee is denied as moot. The court received Shadle’s initial partial filing fee on January 20, 2017.

6. All other pending motions (Filing Nos. [15](#), [17](#), [18](#), [22](#), and [24](#)) will be stayed in abeyance pending a response from Defendants. The clerk’s office shall terminate Defendants Brad Exstrom, Troy Hawk, and Richard Cruickshank from the case until the court acts on Wilson’s Motion to Amend (Filing No. [18](#)).

7. The clerk’s office shall set a pro se case management deadline using the following text: February 15, 2017: check for Defendants’ response.

Dated this 26th day of January, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge