

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA
2013 DEC 10 PM 12:00

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

HAROLD B WILSON and)	Case No 8 13 CV 130
GRACY SEDLAK)	
Plaintiffs)	
)	AMENDED COMPLAINT
V.)	
)	
JON BRUNING et al)	
Defendants)	

Comes now the Plaintiffs and ask the Court for leave to file this Amended Compliant per the Courts order. The Plaintiffs reassert all claims asserted in their original complaint

BACKGROUND

Plaintiff Wilson was raised in and is currently a member the Society of Friends (Quakers), which is his family’s religious tradition. Wilson’s sincerely held religious belief and practice also includes the religion of Wicca. His official religious preference, as filed with the Dept. of Corrections includes Quaker, Wicca and Buddhist. The U.S. and State Constitutions guarantee freedom of religious practice and preference and guarantees that a person can hold religious beliefs from different religious sects...

Ms. Sedlak has practiced the religion of Wicca since 2007. She is a transsexual, male to female, who has attended Quaker Services at the local Lincoln Friends Meeting.

On March 19, 2011 the Plaintiffs were joined in a Wiccan Hand fasting marriage ceremony by High Priestess Cynthia Blodgett-Griffin at the Religious Center in the Nebraska State Penitentiary (NSP). Blodgett-Griffin issued a certificate of marriage to the couple.

The Plaintiff couple have combined all their property and finances and issued Durable Powers of Attorney for each other. Plaintiffs are co-Plaintiffs in four other legal actions involving financial investments and discrimination against Transsexuals because of their non-conforming stereotype.

Because the Dept. of Corrections (DCS) has a three year waiting period policy for visitation consideration of former inmates, the Plaintiffs are unable to have confidential communication in preparation of these legal matters in state and federal court as both mail and telephone calls are monitored by DCS staff. These are the case numbers for those actions: CI12-2031, CI12-1513, CI13-1225, A-13-000967, and a-13-000787 and 4-12-CV-3061.

On 11-30-2012 the Plaintiffs were denied permission by Defendant Peart to meet with the Members of the Lincoln Friends Clearness Committee on Marriage who wished to meet with the Plaintiffs following their request to be married under the Care of the Lincoln Friends Meeting. The following is a tenet of the Friends Religion as recorded in their book of Faith and Practice regarding marriages under the care of the Meeting:

“Some couples choose to forego licensing and the privileges it brings because they feel marriage is a personal spiritual matter in which the state has no part. Others choose not to seek licensure because in many states not all committed couples (specifically come same-gender couples) are allowed to share the opportunities it affords.

The wedding Committee meets with the couple to discuss plans for the wedding and reception...The committee is also responsible for seeing that the certificate of marriage and other necessary documents are properly completed,...It is also the committees responsibility to see that the marriage is properly recorded in the Monthly meeting records and , if the couple desires, in the County records”

Constitution of Nebraska Article I section 3 Revised Statute 42-115:

It shall be lawful for every religious society to join together in marriage such persons as the society, according to the rites and customs of the society to which they belong.

On 12-21-2012 Robert Madsen signed a Step I Grievance for Mario Peart which denied the Plaintiffs request to meet together with the Friend’s Wedding Committee.

On 1-18-2013 Frank Hopkins signed a Step II grievance for Director Houston, again denying the Plaintiffs request to meet with the Friend’s Wedding Committee and denying consideration of Ms. Sedlak visiting Mr. Wilson until three years after March 23, 2012

On 12-20-212 Plaintiff Wilson requested by kite to wear a hat indoors after the tradition of Quakers. The Religious Coordinator and later Religious Study Committee of the DCS denied this request. On 12-21-2012 Wilson filed an informal Grievance and was denied by UM Cruz. On 1-3-2013 Wilson filed a Step II Grievance which was refused to be answered by Frank Hopkins. Wilson filed follow up grievances on this refusal which were still denied even though the rules only limit the number of Step I Grievances an inmate can file in a given week. These were replied to and denied by UM Cruz, Frank Hopkins and Diane Sabbatka-Rine for Director Houston.

The state of Nebraska and the DCS rules and policies violate the Plaintiffs Constitutional rights of association and religious practice. There is no justifiable penological reason for a blanket denial of visitation by former inmates for three years after their release from custody, especially in view of the fact that Ms. Sedlak is approved and has visited an inmate currently in the custody of the Lancaster County Jail.

Questions of Law

1. Is Nebraska's marriage law section 29 of the Nebraska State Constitution narrowly drawn to avoid unnecessarily violating the Plaintiffs rights to Equal protection, freedom of religious practice and right of association?
2. Is procreation truly a state interest when those in capable of procreation, such as the elderly and those incapable of child bearing and prisoners serving life in prison or a death sentence are allowed to marry freely?
3. Are the compelling interests of tax incentives, Heritance and access to the courts by co-Plaintiffs of more compelling constitutional interest then limiting or banning marriage for a large group of the population?
4. Is the three year waiting period for visitation consideration in violation of the First Amendment freedom of association?
5. Should section 29 of the State constitution be given strict scrutiny or a rational basis test in considering if it is constitutional?

ARUGUMENT

In *Baehr v Lewin* 74 Haw 530, Hawaii's marriage statute discriminated on the basis of sex by limiting marriage licenses to male—female couples. In that case the Plaintiffs were entitled to an evidentiary hearing to determine if it furthered a compelling state interest and was narrowly drawn to avoid unnecessarily violating the plaintiff's equal protection rights under Hawaii's state constitution.

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his or her claims that would entitle them to relief. A court must therefore view a Plaintiff's complaint in a light most favorable to him or her in order to determine whether the allegations contained therein could warrant relief under any Alternative Theory. For this reason. In reviewing a lower court's order dismissing a complaint, an Appellate courts consideration is strictly limited to the allegations of the complaint, and it must deem those allegations to be true. *Baehr v Lewin* 74 Haw 530

The right to marry is part of the fundamental right of privacy implicit in the Due Process clause of the U.S. Constitution Amendment XIV *Baehr v Lewin* 74 Haw.530

Plaintiffs believe section 29 of the Nebraska State Constitution mandates "strict scrutiny" review as to whether it is constitutional or not.

Whenever a denial of equal protection of the is alleged, as a rule the courts initial inquiry is whether the legislation in question should be subjected to 'strict scrutiny' or to a 'rational basis' test. The strict scrutiny analysis is applied to laws classifying on the basis of suspect categories or impinging upon fundamental rights expressly or impliedly granted by the Constitution in which case the laws are presumed to be unconstitutional unless the state shows compelling state interests which justify such classifications and the laws are narrowly drawn to avoid unnecessary abridgement of Constitutional rights. *Baehr v Lewin* 74 Haw.530

The recent ruling in the *Windsor* case declares that the right to marry someone of ones choosing is a Constitutional right; "The right to marry is part of the fundamental right of privacy inherit in the Due Process Clause of the U.S. Constitution Amendment XIV" *U.S. v. Windsor* 133 S.Ct. 2675. Plaintiffs claim that the right of a person who is declared to be transsexual to marry a person of the opposite gender to their gender dysphonic gender is a new area of law. It is medically established that s Sedlak is mentally a female and undergoing hormone treatment required for this condition. Transsexuals should not be forced to only legally marry someone of the same gender to their presented gender identity, but should be granted the right protected by the U. S. and state constitution's to marry someone of the opposite gender to the gender they present themselves to be.

In 2007 Gracy Sara Sedlak had a name change filed with the Lancaster County District Court from her birth name of John Francis Jirousky. If Ms. Sedlak was not in reality a woman mentally then she would not have selected a female name to call herself. A person self-nomenclature is indicative of their actual gender.

When an individual's gender or sex identity is incongruous with the name given them at birth, they may want to change it. Any citizen of Nebraska under current state statute is permitted to alter their name. The statute requires that the applicant appear before the court and give cause as to why they are requesting a name change. At that time, people can object and present cause as to why the court should deny the change or the court can do so on its own motion. It is fully within the court's discretion to deny the name change. No one not even the court objected to Ms. Sedlak's name change. Thus the Lancaster county District Court has already legitimately recognized her as a female.

The statute does not require a finding of fraud or intention to commit an alleged act in order to deny the name change. Instead, it is within the discretion of the court to deny a transsexual or gender non-conforming applicant based on a policy concern about gender change and gender identity to deny this change if they desired to do so. No case exists that has been appealed to either the Nebraska Supreme court or the Nebraska Court of Appeals. Thus there exists prominence that Ms. Sedlak's gender is female or the District Court should have denied this name change.

Ms. Sedlak is diagnosed with Gender Dysphoria

The word 'sex', male' and 'female' in everyday understanding does not encompass transsexual. The plain ordinary meaning of 'persons of the opposite sex' contemplates a biological man and a biological woman and not persons who are experiencing gender Dysphoria. A male-to-female post-operative transsexual does not fit the definition of a female. The male organs have been removed, but the ability to produce ova and bear offspring does not and never did exist. There is no woman's cervix or ovaries, not is there any change in his chromosomes. 49 Idaho L. Rev 587.

Yet such an individual in Nebraska is eligible for a birth certificate correction to female. So too should Ms. Sedlak be afforded this kind of correction of her birth certificate and status as a woman and be allowed to marry Mr. Wilson as an opposite sex spouse.

Currently 47 states and the District of Columbia will allow transgender and gender non-conforming individuals to amend their birth certificate to accurately reflect their sex.

..Furthermore, the statute defines gender identity expression as: "a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance or gender-related expression is different from that traditionally associated with the person's sex at birth 49 Idaho L. Rev 587.

The term transgender or transsexual is defined as: A person who experiences a mismatch of the sex they were born as and the sex they identify as. A transsexual sometimes undergoes medical treatment to change his/her physical sex to match his/her identity through hormone treatment and/or surgery. Not all transsexuals can have or desire surgery. In the instant case, Ms. Sedlak cannot afford the cost of such surgery. Would the court punish and condemn her to never be afforded the benefits and privileges of being legally married to someone of opposite sex to her perceived and expressed gender if her gender cannot truly be either male nor female?

In Nebraska a post-operative trans-woman could marry another woman and have the Court, and consequently the state, validate and protect the marriage. While this would normally violate much state's prohibition against same-sex marriages, under essentialist system currently in place, this would be completely legal as a trans-woman is often assigned a male sex at birth. However, if the couple moves to a jurisdiction that also bans same-sex marriage, but does not construe sex and gender based on biology, their marriage would not be legal as the trans-woman is now a woman for the purpose of the law. See 49 Idaho L. Rev 587 supra.

Heightened Scrutiny versus Rational Review

To evaluate Equal Protection claims under the Nebraska State Constitution, the Court must follow a three-part framework set out by the U.S. Supreme Court. First the Court must identify the Classification that is being challenged. Second, the Court must determine the standard under which the classification will be judicially reviewed, and finally, the court must determine whether the appropriate standard was satisfied. No case on point exists from either the Nebraska Supreme court or Nebraska Court of Appeals, which addresses the interpretation of the Equal Protection Clause of the Nebraska State Constitution in light of transgender/transsexual or gender nonconforming individuals.

The Nature of discrimination is the same, it may differ in degree, but not in kind, and discrimination on the basis of conforming or failing to conform to gender stereotypes] is a form of sex based discrimination that is subject to heightened scrutiny under the Equal Protection Clause. Ever since the Supreme Court began to apply heightened scrutiny to sex-based classification, its' consistent purpose has been to eliminate discrimination on the basis of gender stereotypes. *Glen v. Brumby* 663 F.3d 1312, 1316, and 1319.

The Windsor Case

Several Courts have read the Supreme Courts recent cases in this area to suggest that rational basis review should be more demanding when there are historic patterns of disadvantage suffered by the group adversely affected by the statute *U.S. vs. Winsor* 133 S.Ct 2675

In this case, transgender/transsexual individuals and gender nonconforming stereotypes and herein the Plaintiffs. From the Windsor case supra there are seven A Quasi-suspect class requirements :

Historically subjected to discrimination

Class has a defining characteristic that often bears a relation to ability to perform or contribute to society

Obvious characteristics that define them as a discrete group

Whether class is a minority or politically powerless

Obviously transgender/transsexual individuals such as the Plaintiffs meet these four requirements to be denoted as a quasi-suspect class which has suffered historic discrimination.

Due Process

Just as currently in the state of Michigan, which has a similar state constitutional amendment to Nebraska's Section 29 the court has determined sufficient cause to hold a hearing. In *Deborer v. Synder* 2013 U.S. Dist. Lexis 98382. The Federal court has said those Plaintiffs should have their day in court.

Due Process of Law means that a party shall have his day in court. *Brisbin v. E.L. Oliver Lodge No 335 124 Neb 517; 279 N.W. 277.*

Procreation as a compelling state interest

The reach of Section 29 is at once too broad and too narrow to satisfy its purported purpose of defining marriage, preserving marriage or fostering procreation and family life. *Citizens for Equal Protection v. Bruning* 368 F. Supp. 2d 987 at 1002.

In the State of Nebraska a majority of Nebraska citizens have decided that Section 29 is the will of the people. In most instances, the peoples vote carries much weight and should be afforded great deference, however, "ones right to life, liberty and property and other fundamental rights may not be submitted to vote. They depend on the outcome of no elections." 319 U.S. 624. 638

See *Romer v. Evans* 517 U.S. at 632, 670. The notion that a ban on same sex marriage encourages procreation to take place within the socially recognized that is best situated for raising children is just a notion.. There is no plausible evidence that this traditional notion that two committed heterosexuals are the optimal partnership for raising children. Is it constitutional that the state mandate that couples must procreate in order to be legally married? If that is the state's compelling interest then the elderly and sterile couples and also prisoners serving a life or death sentence should not be allowed to legally marry.

The focus is not so broad as the render Nebraska's reasons for its enactment inexplicable by anything but animus toward same-sex couple *Romer v Evans supra* at 632

The court noted that a statute infringing first Amendment Rights is subject to strict scrutiny. *Citizens for Equal Protection v Bruning* 368 F. Supp. 2d 989

(The purpose of the Bill of Rights) ones right to life, liberty and property, to free speech, a free press, freedom of worship and association and other fundamental rights may not be

submitted to vote, they depend on the outcome of no elections. W.Va. Bd. Of Ed. V Barnette 34 U.S. 624.

In Nebraska Transgenders/transsexuals are allowed to legally use the restroom of the gender they believe themselves to be. Also, recently the High School Athletic Association has mandated that transsexuals can participate on athletic teams of the gender they present themselves to be—not forced to be limited to only athletic teams of their biological gender . Yet the same transgender individuals cannot marry an opposite gender spouse if their physical gender is one and the same as their intended spouse. Does that make any kind of logic or sense, or Equal treatment?

If procreation is a compelling state interest why are abortions legal in Nebraska? They are contrary to procreation. What is the state’s plausible evidence that procreation is a compelling state interest in a state burdened by child support arrearages and child welfare shortages.

It was not that many years ago that persons suffering from mental retardation were not allowed to procreate and were sterilized by the state. Yet they were still allowed to marry. Not allowing transgender individuals to marry someone of a different gender than the one they present themselves to be is just as wrong as that was. Should the state now revert to banning interracial marriages too? If procreation is of such compelling interest to the state why are birth control pills readily, legally available in Nebraska?

Are Transgenders treated as Second Class Citizens by Section 29?

Forcing a transgender woman such as Ms. Sedlak to only legally marry someone of the same gender as she presents herself to be makes the Plaintiff into a second class citizen.

It is clear that the government can regulate conduct e.g. criminal activity, but the government may not create classes among its’ citizens on the basis of who they are, rather than what they do. Citizens for Equal Protection v Bruning 368 F. Supp. 2d 980.

State laws defining and regulating marriage must respect the Constitutional Rights of persons.... Defense of Marriage Act which denied recognition of same-sex marriages is unconstitutional as deprivation of liberty of persons protected by the Fifth Amendment of the U.S. Constitution. U.S. v Windsor 133 S.Ct 2675

Violation of First Amendment

Plaintiffs have been denied freedom of association by not being allowed visitation with each other. There is no plausible penological reason to deny Plaintiffs to associate by visiting when until Ms. Sedlak was paroled the defendants allowed the Plaintiffs daily unlimited association, even though transgender inmates are often isolated from General Population, Ms. Sedlak was not.

Plaintiffs First Amendment Rights have been violated by defendants arbitrary three year ban on visitation consideration. Especially considering that Ms. Sedlak has been approved to and has visited a

non-immediate family member inmate currently incarcerated in the Lancaster County Jail. How can the DCS claim a justifiable penological reason to deny her visitation at the Lincoln Correctional Center (LCC)

Expressive association-the right to associate for the purpose of engaging in those activities protected by the First Amendment speech, assembly, Petition for redress of grievances and the exercise of religion is governed by the First Amendment principles... Noting that the Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties. Intimate associations characterized as choices to enter into and maintain certain intimate human relationships receives protection as a fundamental of personal liberty under the Due Process Clause 435 U.S. 778.

Stating the liberty of speech and of the press which the First Amendment guarantees against abridgment by the Federal government is within the liberty safeguarded by the Due Process Clause of the 14th Amendment. These two constitutionally protected freedoms can coincide particularly when the state interferes with an individual's selection of those whom they wish to join in a common endeavor. *Roberts v. U.S. Jaycees* 468 U.S. 609, 618

The First Amendment, applicable to the states through the 14th Amendment provides that congress shall make no law abridging the freedom of speech...the hallmark of the protection of free speech is to allow free trade in ideas...even ideas that the overwhelming majority of people might find distasteful or discomfoting. *Virginia v. Black* 538 U.S. 343, 357

An individual's interest in self-expression is a concern of the First Amendment separate from the concern for open and informal discussion, although the two often converge. *Boston v. Bellotti* 475 U.S. 765

The Court never clarified whether it was holding that Section 29 violates the First Amendment as applied to the states. *Citizens for Equal Protection v Bruning* 368 F. Supp. 2d 989

It does not directly and substantially interfere with the ability to associate in lawful pursuit of a common goal...exceedingly unlikely it will prevent person from continuing to associate *Lyna v. International Union* 485 U.S. 360, 364-66.

In this current case the Plaintiffs ability to associate in lawful pursuit of common goals of happiness and of legal endeavors has been more than substantially interfered with by the defendants.

The Court noted that a statute infringing on First Amendment Rights is subject to strict scrutiny. *Citizens for Equal Protection v Bruning* 368 F. Supp. 2d 989.

The Windsor case is applicable to Section 29, "The U.S. Constitution's guarantee of equality must, at the very least, mean that a bare congressional desire to harm a politically unpopular group cannot justify disparate treatment of that group. In determining whether a law is motivated by an

improper animus or purpose, discriminations of an unusual character especially require careful consideration.

The power of the U.S. Constitution grants, it also restrains and, though Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by the Due Process Clause of the Fifth Amendment.

The defense of Marriage Act I U.S.C.S. section 7 is unconstitutional as a deprivation of the liberty of the person protected by the 5th Amendment of the U.S. Constitution. U.S. V. Windsor supra

Logic would dictate that if the Federal Defense of marriage Act is unconstitutional so too is Section 29 of the Nebraska State Constitution.

...most cases treat an abridgement of the right to marry as a Due Process issue under the 5th or 14th Amendments. In Windsor a majority of Supreme Court Justices struck down the Federal Defense of Marriage Act as a deprivation of the liberty of the person protected by the 5th Amendment. And in Conway v. Deane 401 Md. 219, 932 A.2d 571, a majority of the Court of Appeals, in considering a ban on same-sex marriage, similarly noted that "it is beyond doubt that the right to marry is a federal liberty interest protected by the Constitution. Id at 292 n. 63. Never the less, Roberts v. U.S. Jaycees 968 U.S. 609, 617-8; 104 S.Ct 3244 does recognize that the right to marry and to enter into intimate relationships may be protected by the First Amendment freedom of Association. Cross v Baltimore City Police Dept. 213 Md. App. 294.

Freedom of intimate association as the Plaintiffs desire is protected by the Bill of rights which is designed to serve individual liberty. It affords the formation and preservation of highly personal relationships and affords a substantial measure of sanctuary from unjustified interference by the state (Roberts Supra) The Constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others and protects those relationships from unwarranted state interference and therefore safeguards the ability independently to define identity that is central to any kind of liberty. The First Amendment protects those relationships that by the other individuals with whom one shares not only a special community of thoughts, experiences and beliefs, but also distinctively personal aspects of one's life. These protected relationships are distinguished by such attributes as relative smallness, high degree of selectivity in decisions to begin and maintain the affiliation and seclusion from others in critical aspects of their relationship and generally only relationships with these sort of qualities are likely to reflect the consideration that have led to an understanding of freedom of association as an intrinsic element of personal liberty(See Roberts 468 U.S. at 620). The Equal Protection Clause necessarily limits the authority of a state to draw such "legal Lines" as it chooses.

The Court need not decide whether and to what extent the state can define or limit the statutory definition of marriage. The Court can only hold that the prohibition of any relationship similar to marriage is both exceedingly rogue and overly broad.

Benefits being denied the Plaintiffs

Joint Social Security Benefits

Protected leave under the Family Medical Leave Act

Joint Retiree health insurance benefits

Joint Survivor Benefits and Death Benefits

Ability of incarcerated spouse to send family support to spouse

A taxpayer has standing to challenge the collection of a specific assessment as unconstitutional; being forced to pay such a tax causes real and immediate economic injury to the individual taxpayer...

The requirement of the U.S. Constitution Article III standing are familiar. First the Plaintiffs must have suffered an injury in fact. An invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical, second, there must be a causal connection between the injury and the conduct complained of...The injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative that the injury will be readdressed by a favorable decision U.S. v Windsor Supra.

Ms. Sedlak has been harmed by not being able to avail herself of filing a joint tax return as a married person and from realizing the other benefits above as a married person.

8th Amendment Violation

In addition to the above denial of marital Benefits and privileges the Plaintiffs are suffering the cruel and unusual punishment of not being able to visit with each other as immediate family members.

A serious medical need may mental or physical. Therefore deliberate indifference to an inmate's serious mental health needs violate U.S. Constitution Amendment VIII Kosilk v Spencer 889 F.Supp 2d 190; 2013 U.S. Dist. Lexis 75921.

Plaintiffs both have suffered severe depression and Ms. Sedlak has attempted suicidal actions because of the denial of visitation as immediate family. Plaintiff Sedlak has been hospitalized for depression and a suicide attempt and has undergone extensive counseling of which the cause is directly attributable to the forced separation and denial of visitation. There can be no justifiable penological reason to deny Ms. Sedlak from immediate visitation when the defendant's policy allows former inmates to become volunteers for religious and club functions after only 18 months of release from custody, which Ms. Sedlak has already surpassed. She is eligible for approval as a volunteer, but is not

allowed to visit Plaintiff Wilson. She is not being treated to equal consideration as a visitor to those approved to become volunteers after only 18 months of release from the DCS.

Absent legitimate counter vailing penological consideration, adequate medical care typically requires addressing the causes of the inmate's serious medical need rather than merely providing treatment to reduce the pain it causes. *Kosilek v Spencer supra*.

Plaintiffs submit that the direct cause of their depression and suicide attempt and thoughts is the denial of visits which marriage and approval to visit as immediate family members would eliminate.

The very purpose of a Bill of rights is to withdraw certain subjects from the vicissitudes of political controversy. To place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. The Right to be free of cruel and unusual punishments like other guarantees of the Bill of Rights, may not be submitted to vote, it depends on the outcome of no elections. The whole point of the U.S. Constitution Amendment VIII is to protect persons convicted of crimes. Eighth Amendment protections are not forfeited by ones prior acts. *Kosilek Supra*.

It is obvious that the facts of the Plaintiffs damages and distress meet all Constitutional criteria for violation of their right to association and cruel and unusual punishment simply because Ms. Sedlak is a transgender female and former inmate. Plaintiffs are being punished for falling in love with each other. The Plaintiffs have demonstrated their commitment to each other as spouses and wish to have their commitment to each other in a common purpose on an equal status to any other hetro-sexual married couple who are citizens of Nebraska and the United States. The Plaintiffs are only allowed non-confidential communication by phone or mail, which makes it impossible for them to confidentially discuss legal matters in the several lawsuits they have pending in state and federal courts.

Many important attributes of marriage remain, however, after taking into account the limitations imposed by prison life. These incidents of marriage; like the religious and personal aspects of marriage commitment are unaffected by the fact of confinement in the pursuit of legitimate goals. *Turner v Safely* 482 U.S. 78; 107 S.Ct 2754.

The assumed sex of an individual at birth is based only on observation of anatomy at birth, which itself may change when the individual reaches puberty.

The U.S. Supreme court has noted that the construction of Title VII was meant to broadly help people . Penalizing someone for conforming or failing to conform to gender expectations is unacceptable.

If it is truly a new right, [Judges] will have to go beyond the technical legal materials of decision and consider moral, political, empirical, prudential and instructional issues including public acceptability of a decision recognizing the new right...Constitutional Rights are, after all, rights against the democratic majority. 49 Idaho L. Rev 587

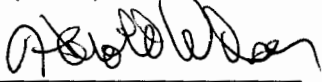
Some states require a genital reconstructive surgery, while others just require a showing that the sex of an individual has changed. Only three states do not allow Birth Certificate Corrections.

CONCLUSION

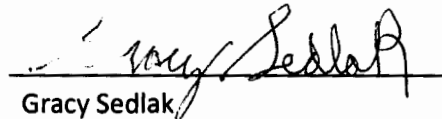
Ms. Sedlak has demonstrated that her gender has changed by taking hormones and testosterone blockers which have changed her physical appearance to female and has presented herself in mode of dress and actions for over 30 months as a female.

The Plaintiffs aver that it is Ms. Sedlak's Right as a transgender female to be declared as such legally and have her birth certificate corrected to reflect her change of gender, and to marry Mr. Wilson who is of the opposite gender to her under care of the Lincoln Friends Meeting and to be approved to visit her spouse who is incarcerated at LCC.

Plaintiff Wilson declares that as a member of the Society of Friends and the Lincoln Friends Meeting that his religious practice of not removing his hat while indoors should be honored by the defendants as any other religious headgear that is allowed to be worn indoors by the DCS and points out to the court that no other institution of the DCS has such a rule and that hats are allowed outdoors even at LCC. That being so there is no justifiable security concern since they are allowed to be worn outdoors and that religious head gear is authorized by the LCC for wearing indoors. This is his sincerely held religious belief to not remove his hat for any person, as has been Quaker practice for hundreds of years as adopted by William Penn himself.



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