

CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAINÉ APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
Department of Health Services, and

Judge Daniel R. Moeser

JOHN KIESOW, in his official capacity as
State Registrar of Vital Statistics,

Case Code: 30701 (Dec. Judgment)
30704 (Other Injunction)

Defendants,

and

FAIR WISCONSIN Inc.,
Glenn Carlson & Michael Childers,
Crystal Hyslop & Janice Czynscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

THE FAIR WISCONSIN DEFENDANTS' BRIEF
IN SUPPORT OF THEIR MOTION TO INTERVENE

Fair Wisconsin Inc., Glenn Carlson & Michael Childers, Crystal Hyslop & Janice Czynscon, Kathy Flores & Ann Kendzierski, David Kopitzke & Paul Klawiter, and Chad Wege & Andrew Wege (collectively the "Fair Wisconsin Defendants"), through their undersigned counsel, submit this memorandum in support of their Motion To Intervene.

FACTUAL BACKGROUND

The Domestic Partnership Law and The Legal Challenge

On June 29, 2009, Governor James E. Doyle signed into law a state budget that included the creation of a domestic partner registration system under Chapter 770 of the Wisconsin Statutes (the “Domestic Partnership Law”). To qualify for a domestic partnership under the Domestic Partnership Law, two individuals must: be at least 18 years old and capable of consenting to the domestic partnership; be members of the same sex; share a common residence, with one partner having resided in the county for at least 30 days; not be nearer of kin than second cousins; and not be married or in another domestic partnership.

At the same time that the Domestic Partnership Law was enacted, the Wisconsin legislature revised certain existing state statutes so that they would be applicable to domestic partners. These revisions had the effect of granting a limited number of legal protections to domestic partners including: the right to share a room in a nursing home and visit one another in the hospital, the right to inherit from the estate of a domestic partner who dies without a will, the ability to take a medical leave to care for a domestic partner with a serious medical condition, the right to sue for a partner’s wrongful death, the presumption that real estate held between domestic partners is held as joint tenants with rights of survivorship, and an exemption from real estate transfer fees for real estate transferred between domestic partners.

Although important, the protections extended to domestic partners are limited in scope. For example, domestic partners do not have the mutual obligation of support that spouses have in a marriage. Nor do they enjoy the comprehensive property system that applies to spouses under the marital property law. Domestic partners are also not afforded the rights, benefits and responsibilities associated with divorce law. Creating the domestic partnership status does not

require solemnization by a state authorized official. Similarly, dissolving the relationship is at the will of the parties and does not require a court's consent.

On July 23, 2009, some of the individuals who are Plaintiffs in the present action filed a "Petition To Take Jurisdiction Of Original Action" (the "Petition") in which they asked the Wisconsin Supreme Court to take jurisdiction of, and grant leave to commence, an original action challenging the constitutionality of the Domestic Partnership Law. The Petition asserted that the Domestic Partnership Law violates Article XIII, § 13 of the Wisconsin Constitution (the "Marriage Amendment"), which was passed by the voters of Wisconsin in November 2005. The Marriage Amendment states:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state.

The Petition asked the Wisconsin Supreme Court to declare the Domestic Partnership Law unconstitutional and to enjoin the Governor, the Secretary of the Wisconsin Department of Health Services and the State Registrar of Vital Statistics (the "Respondents") from enforcing its provisions.

On August 21, 2009, the Wisconsin Attorney General issued a statement stating that he would not represent the Respondents in defending the Domestic Partnership Law. In response, Governor Doyle appointed private outside counsel to represent the Respondents and to defend the Domestic Partnership Law. On September 22, 2009, Fair Wisconsin, on its own behalf and on behalf of its members, filed a motion to intervene in the proceedings before the Wisconsin Supreme Court. The ACLU of Wisconsin, on behalf of several same-sex couples, also filed a motion to intervene. As part of both motions to intervene, briefs were submitted by the intervening parties in which they asked the Wisconsin Supreme Court to decline to take original jurisdiction over the matter.

On November 3, 2009, the Wisconsin Supreme Court issued an order in which it declined the Petition for original jurisdiction. The Court dismissed the motions to intervene as moot.

After waiting over nine months, on August 12, 2010, Plaintiffs filed the present case. Once again, the Governor has appointed outside counsel to represent the government defendants. Fair Wisconsin and five same-sex couples who are registered domestic partners and members of Fair Wisconsin now move this court to intervene in this matter to defend the constitutionality of the Domestic Partnership Law.

The Fair Wisconsin Defendants¹

Fair Wisconsin is a statewide nonprofit membership organization dedicated to advancing and protecting the civil rights of lesbian, gay, bisexual and transgender people. (Belanger Decl. ¶ 1.) Fair Wisconsin carries out its mission through education, legislative advocacy, grassroots organizing, coalition building, and electoral involvement. (Belanger Decl. ¶ 1.) These efforts are designed to educate the general voting public, sensitize the media, promote a politically active and effective organizational membership, and better inform policy makers on issues of concern to its members. (Belanger Decl. ¶ 1.)

Fair Wisconsin was originally known as Action Wisconsin. (Belanger Decl. ¶ 3.) In March 2006, Action Wisconsin launched Fair Wisconsin as a referendum group focused on educating the public about the Marriage Amendment and attempting to convince voters not to support it. (Belanger Decl. ¶¶ 3 and 4.) As part of that process, the organization filed a *Campaign Registration Statement* creating the Fair Wisconsin referendum group with the then State Elections Board. (Belanger Decl. ¶ 4.) Fair Wisconsin and its members participated in the

¹ The factual statements about Fair Wisconsin are supported by the attached Declaration Of Katie Belanger ("Belanger Decl."), Executive Director of Fair Wisconsin. The factual statements about the same-sex couples who seek intervention are supported by the attached declarations of each individual who seeks to intervene.

public debate about the Marriage Amendment by issuing press releases, speaking with the media, distributing education materials, conducting fundraisers, and organizing grass roots election activities. (Belanger Decl. ¶ 4.) During the debate, Fair Wisconsin monitored, and responded to, public statements made by the leading legislative and political proponents of the Marriage Amendment. (Belanger Decl. ¶ 4.) Fair Wisconsin also conducted and analyzed public opinion polls about the Marriage Amendment. (Belanger Decl. ¶ 4.) In short, Action Wisconsin, through the Fair Wisconsin referendum group, was the principal organization opposing passage of the Marriage Amendment. (Belanger Decl. ¶ 4.)

After the November 2006 election, Action Wisconsin officially changed its name to Fair Wisconsin. (Belanger Decl. ¶ 5.) Since that time, Fair Wisconsin has devoted significant resources to enacting important domestic partnership protections for same-sex couples. (Belanger Decl. ¶ 5.) Indeed, Fair Wisconsin was the principal organization advocating on behalf of the Domestic Partnership Law. (Belanger Decl. ¶ 7.) As part of that effort, Fair Wisconsin developed a broad coalition of support from across the community, lobbied the Governor and the State Legislature, and conducted grassroots organizing and educational outreach. (Belanger Decl. ¶ 7.) Katie Belanger, Fair Wisconsin's current Executive Director, served as the organization's Legislative Director from January 5, 2009 to June 30, 2009. (Belanger Decl. ¶ 6.) In that capacity, Ms. Belanger managed, and was responsible for, Fair Wisconsin's lobbying efforts with respect to the Domestic Partnership Law. (Belanger Decl. ¶ 6.) Ken Walsh, an independent contract lobbyist with Martin Schreiber & Associates, Ms. Belanger, and Fair Wisconsin Inc. all registered with the Government Accountability Board as lobbyists – first with respect to domestic partnerships generally, and then with respect to the specific budgetary provisions that became the Domestic Partnership Law. (Belanger Decl. ¶ 6.)

Fair Wisconsin has more than 25,000 members in Wisconsin who contribute time and money to the organization's goal of advancing and protecting the civil rights of lesbian, gay, bisexual and transgender people. (Belanger Decl. ¶ 2.) Fair Wisconsin's members include hundreds of same-sex couples, many of whom have already registered as domestic partners under the Domestic Partnership Law or intend to do so in the future. (Belanger Decl. ¶¶ 2 and 8.)

Five same-sex couples who are members of Fair Wisconsin and who registered as domestic partners under the Domestic Partnership Law also seek to intervene in this matter. Glenn Carlson and Michael Childers live together on Madeleine Island in the town of La Pointe, Wisconsin. Glenn and Michael registered as domestic partners in Ashland County. Crystal Hyslop and Janice Czynscon share a home together in Madison, Wisconsin and are registered domestic partners in Dane County. Kathy Flores and Ann Kendzierski live in Appleton, Wisconsin and they registered as domestic partners in Outagamie County. Chad and Andrew Wege also live together in Appleton and are registered in Outagamie County. Finally, David Kopitzke and Paul Klawiter have lived together for many years in Richland County and they are registered domestic partners in Richland County. The direct stake these couples have in this litigation are demonstrated by sworn declarations of each individual, which are attached to this brief and state some of the reasons why the protections provided by the Domestic Partnership Law are important to people who are directly benefited by the law.

ARGUMENT

The Fair Wisconsin Defendants² seek to intervene in this matter to defend the constitutionality of the Domestic Partnership Law. Intervention may be established as a matter of right or may be granted by permission through the exercise of a court's discretion. Wis. Stat. §§ 803.09(1) and (2). The Fair Wisconsin Defendants respectfully submit that they are entitled to be granted intervention as of right pursuant to Wis. Stat. § 803.09(1). In the alternative, the Fair Wisconsin Defendants request that they be permitted to intervene pursuant to Wis. Stat. § 803.09(2).

I. THE FAIR WISCONSIN DEFENDANTS HAVE THE RIGHT TO INTERVENE.

The Fair Wisconsin Defendants have the right to intervene in this matter pursuant to Wis. Stat. § 803.09(1).³ To establish intervention as of right, a movant must satisfy each of the following four criteria:

- (a) that the movant's motion to intervene is timely;
- (b) that the movant claims an interest sufficiently related to the subject of the action;
- (c) that disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest;

² "Fair Wisconsin Defendants" refers collectively to the organization Fair Wisconsin and the five same-sex couples identified above who seek to intervene.

³ The members of the same-sex couples who seek to intervene assert their right directly on their own behalf. The organization Fair Wisconsin seeks the right to intervene on its own behalf and on behalf of its members who are not directly represented in this matter. As a nonprofit organization, Fair Wisconsin has the right to seek intervention in judicial proceedings and to raise claims on behalf of its members. Wis. Stat. § 184.07. Indeed, Wisconsin courts routinely allow organizations to intervene in suits seeking declaratory and injunctive relief against government entities or agencies. *Wis. Citizens Concerned for Cranes and Doves v. Wis. Dept. of Natural Resources*, 270 Wis.2d 318, 677 N.W.2d 612 (2004) (in which the U.S. Sportsmen Alliance Foundation intervened as a defendant in a suit against the Department of Natural Resources); *Mallo v. Wis. Dept. of Revenue*, 253 Wis.2d 391, 645 N.W.2d 853 (2002) (in which several farmer's organizations intervened as defendants in a suit against the Department of Revenue); *Davis v. Grover*, 166 Wis.2d 501, 480 N.W.2d 460 (1992) (in which several civil rights organizations intervened as plaintiffs challenging the constitutionality of a statute).

(d) that the existing parties do not adequately represent the movant's interest.

Helgeland v. Wisconsin, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1. These criteria are not analyzed in isolation from one another – rather, courts consider the interplay between the requirements and the fact that a strong showing with respect to one requirement may contribute to the movant's ability to meet other requirements. *Helgeland*, 2008 WI 9, ¶ 39. As the Wisconsin Supreme Court has noted, the requirements must be “blended and balanced” to determine whether the movant has the right to intervene. *Id.*

A. The Fair Wisconsin Defendants' Motion To Intervene Is Timely.

The Fair Wisconsin Defendants' motion is timely because these proceedings have just begun. Indeed, the Fair Wisconsin Defendants are filing their motion before the first responsive pleading is due from the named government defendants. Thus, there can be no credible claim that intervention at this preliminary stage would cause prejudice to any of the parties. *See, e.g., Bilder v. Township of Delavan*, 112 Wis.2d 539, 550-51, 334 N.W.2d 252 (1983) (finding that a lack of prejudice to any party in the litigation was a factor weighing in favor of concluding that a motion to intervene was timely).

B. The Fair Wisconsin Defendants Have An Interest Directly Related To The Subject Of This Action.

The Fair Wisconsin Defendants have the type of interest in this litigation that satisfies the intervention standard set forth in *Helgeland*. No precise test exists for determining what type of interest in the litigation is sufficient to allow a party to intervene as a matter of right. *Helgeland*, 2008 WI 9, ¶ 43. Instead, Wisconsin courts employ a “pragmatic approach” to allow participation by as many concerned parties as is compatible with efficiency and due process. *Id.* at ¶ 43-44. In applying this pragmatic approach, courts consider whether the interest of the

intervening party is “of such direct and immediate character that the intervenor will either gain or lose by direct operation of the judgment.” *Id.* at ¶ 45.

In *Helgeland*, eight municipalities sought to intervene in a declaratory judgment action brought by state employees and their domestic partners challenging the constitutionality of state employee trust fund statutes. The municipalities asserted several interests in the disposition of the action – including a financial interest in the dispensation of health and dental benefits to municipal employees (which they claimed might be increased if similar programs for state employees were forced to include domestic partners in their eligibility standards) and an interest in preserving the municipalities’ collective bargaining agreements with municipal employees (which they argued they might be forced to modify if the plaintiffs prevailed in the *Helgeland* matter). The Court rejected these interests as insufficient for intervention because their connection to the subject matter of the action – the state’s employee trust fund statutes – was “too remote and speculative.” *Id.* at ¶ 53. The Court concluded that the interests asserted by the municipalities were not “unique” or “special” because they were the types of interests that other municipalities could claim in almost any action challenging the constitutionality of a state statute, or that any employer could claim when an action affects a contract similar to one to which an employer is a party. *Id.* at ¶ 71. In short, because the municipalities’ employee benefit plans and collective bargaining agreements were not directly at issue in the *Helgeland* case, the Court determined that the municipalities failed to satisfy the second part of the intervention analysis.

By contrast, the Fair Wisconsin Defendants do have direct and unique interests in the subject of this action. The same-sex couples who seek intervention, as well as the numerous other same-sex couples whose interests are represented by Fair Wisconsin, have availed themselves of the legal protections provided by the Domestic Partnership Law. Indeed, in the attached declarations, these couples state that they have registered as domestic partners and describe why the legal protections provided by the Domestic Partnership Law are important to them. Thus, the same-sex couples who seek intervention have a direct and unique interest at stake in this matter – namely, preserving the legal protections they have secured by registering as domestic partners.

Additionally, Fair Wisconsin represents both couples who have not yet registered and single individuals who may choose to form domestic partner relationships in the future that will benefit from the limited legal protections provided by the Domestic Partnership Law. Furthermore, as a nonprofit advocacy organization, Fair Wisconsin has a further direct and unique interest that supports its request to intervene in this matter. Fair Wisconsin's central mission is to advance and protect the civil rights of lesbian, gay, bisexual and transgender people. As part of that mission, the organization dedicated significant time, money and resources to achieving passage of the Domestic Partnership Law – legislation that provides important legal protections for same-sex couples in Wisconsin. This litigation directly relates to, and threatens to undo, the advocacy work that is central to Fair Wisconsin's mission.

In summary, the Fair Wisconsin Defendants have interests in this case that are “of such direct and immediate character that [the Fair Wisconsin Defendants] will either gain or lose by the direct operation of the judgment.” *Id.* at ¶ 45. Thus, the second part of the intervention analysis is satisfied. *See also Armada Broadcasting, Inc. v. Stirn*, 183 Wis.2d 463, 474, 516

N.W.2d 357 (1994) (holding that an intervenor satisfied the second part of the intervention analysis because he had a “unique and significant” interest in the outcome of the case).

C. Granting The Relief Sought By Petitioners Would Impair The Ability Of Fair Wisconsin And Its Members To Protect Their Interests.

The Fair Wisconsin Defendants also satisfy the third part of the intervention analysis because a disposition of this matter in favor of the Plaintiffs would directly and immediately impair the ability of the Fair Wisconsin Defendants to protect their interests. The third part of the intervention analysis is closely tied to the second – i.e., if an interest is not directly related to the subject matter of the action, then it is unlikely that an intervening party will be able to demonstrate that disposition of the action will sufficiently impair the intervenor’s ability to protect its interest. In *Helgeland*, for example, the Court found that the municipalities’ argument that the disposition of the action would impair their ability to protect their interests was “weak at best” because the municipalities only had a “generalized interest” in the subject matter of the lawsuit.

In contrast, a decision in favor of the Petitioners in this matter would directly impair the ability of the Fair Wisconsin Defendants to protect their interests. If, for example, the Domestic Partnership Law were determined to be unconstitutional, then the same-sex couples who seek intervention would be stripped of the legal protections provided by the Domestic Partnership Law. These couples would no longer have the ability to legally guarantee that they could visit each other in the hospital, share a room in a nursing home or similar facility, or take a medical leave to care for each other. Nor would they be guaranteed any of the other rights presently provided to domestic partners. Such a decision would impair the ability of Fair Wisconsin to realize its organizational mission.

With respect to Fair Wisconsin, if the Plaintiffs were to prevail, then Fair Wisconsin's successful lobbying effort to achieve limited, but important, legal protections for same-sex couples would be undone. Furthermore, a decision that the Domestic Partnership Law was a legal status "substantially similar" to marriage would limit Fair Wisconsin's future efforts to advocate for legislation on behalf of same-sex couples because it would provide a restrictive precedent that might dramatically limit the type of legislation that could be enacted in the future to protect same-sex couples.

D. The Existing Parties Do Not Adequately Protect The Interests Of The Fair Wisconsin Defendants.

The fourth part of the intervention test – i.e., that the existing parties do not adequately represent the intervenors' interests – also demonstrates that the Fair Wisconsin Defendants have the right to intervene. The Wisconsin Supreme Court has held that the showing required for proving inadequate representation should be treated as "minimal." *Armada Broadcasting*, 183 Wis.2d 463, 476 (citing *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 539 (1972)) ("The requirement of the [inadequate representation showing] is satisfied if the applicant shows that representation of his interest *may be* inadequate; and the burden of making that showing should be treated as minimal.") (emphasis added and internal quotation marks omitted)). Although adequate representation is presumed when a movant and an existing party have the same ultimate objective or when a governmental body or officer is charged by law with representing the interests of the absentee, these presumptions are balanced against the nature of the interest claimed by the intervenor. See *Helgeland*, 2008 WI 9, ¶¶ 90-91 and 117. Specifically, courts consider whether the interest of the intervenor is different from, or more powerful or personal than, the interests of the existing parties such that the intervenor should be permitted to intervene to protect the intervenor's interest.

For example, in *Armada*, the Wisconsin Supreme Court held that a school teacher had the right to intervene in an action in which a broadcasting company sought a writ of mandamus directing a school district to disclose a report detailing sexual harassment allegations against the teacher. Although the school district and the teacher had the same ultimate objective of preventing disclosure of the report, the Court held that the “personal nature” of the teacher’s interest in the matter was sufficient to demonstrate that his interests were not adequately represented by the district. *Armada Broadcasting*, 183 Wis. 2d at 476. The Court noted that intervention was warranted because one could not expect the school district to defend the action with the same “vehemence” as someone who would be directly affected by the outcome of the case. *Id.*; see also *Wolff v. Town of Jamestown*, 229 Wis.2d 738, 601 N.W.2d 301 (1999) (permitting a township to intervene even though it was not wholly adverse to the county defendant because the township had different interests such that it would defend the matter “more vigorously” than the county).

In contrast, in *Helgeland*, the Court concluded that the municipalities that sought intervention failed to demonstrate inadequate representation because they did not have a “special, personal or unique” interest that was more powerful or personal than the interests of the named defendants in the case. *Helgeland*, 2008 WI 9, ¶ 117. Because the municipalities could not show that they had “more at stake” than the existing defendants, the Court determined that intervention was not appropriate.

The Fair Wisconsin Defendants have the type of interest that satisfies the “inadequate representation” part of the intervention analysis. In this matter, Plaintiffs are challenging the constitutionality of the Domestic Partnership Law by seeking to sue three government respondents – the Governor, the Secretary of the Wisconsin Department of Health Services, and

the State Registrar of Vital Statistics. The duty to represent the respondents and defend the constitutionality of the law normally rests with the Attorney General. In this matter, however, the Attorney General has declined to fulfill this duty. Although Governor Doyle has retained outside private attorneys to represent the government respondents, the fact that the governmental officer charged by law with representing the respondents has refused to do so weighs in favor of granting intervention to those vitally concerned about and directly affected by the Domestic Partnership Law's defense.

Although the Fair Wisconsin Defendants desire the same outcome as the government respondents – namely, upholding the validity of the Domestic Partnership Law, the Fair Wisconsin Defendants have unique, special and personal interests in this matter that are different than the interest of the government respondents and thus motivate their defense in a very different way. The government respondents have a general interest in upholding the law of Wisconsin and protecting the legitimate use of the political process. In contrast, the Fair Wisconsin Defendants have a specific interest in upholding this particular law and the legal protections it provides because of the direct effect it has on them personally. Although the government respondents will no doubt defend the law through their outside attorneys, it can naturally be expected that their arguments, motivated by protection of the political process, would differ significantly from those asserted by Fair Wisconsin, an organization that spent considerable time, money and resources advocating for legislation that lies at the core of its mission and the same-sex couples, who have a very personal stake in the outcome of this litigation because it threatens a law that they need to protect their families. Because these interests are fundamentally different from – and more powerful and personal than – the interests

of the government respondents, the Fair Wisconsin Defendants have made the minimal showing necessary to satisfy the inadequate representation part of the intervention analysis.

II. IN THE ALTERNATIVE, THE FAIR WISCONSIN DEFENDANTS SHOULD BE PERMITTED TO INTERVENE.

If this court concludes that the Fair Wisconsin Defendants do not have the right to intervene, they respectfully request that this court exercise its discretion and permit them to intervene pursuant to Wis. Stat. § 803.09(2). Permissive intervention is appropriate when a movant's claim or defense and the pending action have a question of law or fact in common. Wis. Stat. § 803.09(2). In this matter, the Fair Wisconsin Defendants seek to intervene to defend the Domestic Partnership Law and to refute the Plaintiffs' argument that it creates a legal status "substantially similar" to marriage. In essence, the Fair Wisconsin Defendants seek a declaration that is the polar opposite of the declaration sought by the Plaintiffs. As a result, the Fair Wisconsin Defendants' claim, and its defense to the claim raised by the Plaintiffs, raise all of the same questions of law and fact raised in the pending action.

It is particularly appropriate for this court to exercise its discretion and allow the Fair Wisconsin Defendants to intervene because the Plaintiffs are all affiliated with Wisconsin Family Action, the principal organization that advocated for passage of the Marriage Amendment. In contrast, Fair Wisconsin was the principal organization that opposed passage of the Marriage Amendment. Thus, this court will benefit from allowing representatives of both of these two organizations to bring their unique knowledge to this matter and to allow them the opportunity to present evidence and argument in support of their respective claims and defenses.

CONCLUSION

For the foregoing reasons, the Fair Wisconsin Defendants respectfully ask this court to grant their Motion To Intervene.

Dated: October 1, 2010.



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DECLARATION OF KATIE BELANGER

I, Katie Belanger, declare under oath and state as follows:

1. I am the Executive Director of Fair Wisconsin, Inc., a statewide nonprofit membership organization dedicated to advancing and protecting the civil rights of lesbian, gay, bisexual and transgender people. Fair Wisconsin carries out its mission through education, legislative advocacy, grassroots organizing, coalition building, and electoral involvement. These

efforts are designed to educate the general voting public, sensitize the media, promote a politically active and effective organizational membership, and better inform policy makers on issues of concern to its members.

2. Fair Wisconsin has over 25,000 members in Wisconsin who contribute time and money to the organization's goal of advancing and protecting the civil rights of lesbian, gay, bisexual and transgender people. Fair Wisconsin's members include hundreds of same-sex couples.

3. Fair Wisconsin was originally known as Action Wisconsin. In March 2006, Action Wisconsin launched Fair Wisconsin as a referendum group focused on educating the public about a proposed amendment to the Wisconsin Constitution regarding the recognition of marriage (the "Marriage Amendment"). The Marriage Amendment, which was ultimately passed by the voters, states:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state.

4. Action Wisconsin created the Fair Wisconsin referendum group to convince voters not to support the Marriage Amendment. As part of that process, Action Wisconsin filed a *Campaign Registration Statement* (EB-1) creating the Fair Wisconsin referendum group with the then State Elections Board. Fair Wisconsin and its members participated in the public debate about the Marriage Amendment by issuing press releases, speaking with the media, distributing education materials, conducting fundraisers, and organizing grass roots election activities. During the debate, Fair Wisconsin monitored, and responded to, public statements made by the leading legislative and political proponents of the Marriage Amendment. Fair Wisconsin also conducted and analyzed public opinion polls about the Marriage Amendment. In short, Action

Wisconsin, through the Fair Wisconsin referendum group, was the principal organization opposing passage of the Marriage Amendment.

5. After the November 2006 election, Action Wisconsin officially changed its name to Fair Wisconsin. Since that time, Fair Wisconsin has devoted significant resources to enacting important domestic partnership protections for same-sex couples.

6. From January 5, 2009 to June 30, 2009, I served as Fair Wisconsin's Legislative Director. In that capacity, I managed, and was responsible for, Fair Wisconsin's lobbying efforts with respect to domestic partnership legislation. Ken Walsh, an independent contract lobbyist with Martin Schreiber & Associates, and I, as well as Fair Wisconsin Inc., our 501(c)(4) advocacy arm, all registered with the Government Accountability Board as lobbyists – first with respect to domestic partnerships generally and then with respect to the specific budgetary provisions that ultimately created a domestic partnership registry and provided limited, but important, legal protections for registered domestic partners. (the "Domestic Partnership Law").

7. Fair Wisconsin was the principal organization advocating on behalf of the Domestic Partnership Law. As part of that effort, Fair Wisconsin developed a broad coalition of support from across the community, lobbied the Governor and the State Legislature, and conducted grassroots organizing and educational outreach.

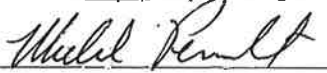
8. I became the Executive Director of Wisconsin on July 1, 2009. Since then, our organization has spent considerable time and resources educating the public about the Domestic Partnership Law. Specifically, we have attempted to educate the public about how to register as domestic partners and the importance of the limited rights and protections that are provided to registered domestic partners.

9. In the past year, many of our members have registered as domestic partners and many others have indicated to me that they intend to register in the future.

10. In August 2010, members of Fair Wisconsin's staff contacted the clerks of each county in the state to find out how many same-sex couples in Wisconsin had registered as domestic partners. We discovered that, as of August 2, 2010, 1541 couples had registered as domestic partners.


Katie Belanger

Subscribed and sworn to before
me this 29 day of September, 2010


Notary Public

CIRCUIT COURT OF DANE COUNTY
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DECLARATION OF GLENN CARLSON IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, Glenn Carlson, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I was born on September 7, 1956, and I am 54 years old. I live with my partner, Michael Childers, at our home on Madeleine Island in the town of La Pointe, Wisconsin.

3. On August 3, 2009, Michael and I registered as domestic partners in Ashland County.

4. I was born and raised in northern Illinois. I earned a Bachelor of Science degree in Accountancy from the University of Illinois – Urbana in 1980 and became a CPA the same year. I joined the tax department at Price Waterhouse in 1982, and became a partner in 1990. Most of my work centered on advising clients on the tax implications of employee compensation strategies, whether benefits, insurance, or incentivized plans. In 1993 I left Price Waterhouse to help start a west coast consulting practice with Arthur Andersen. I was also appointed as one of the industry representatives to the ERISA Advisory Council, a fifteen-member committee that advises the Secretary of Labor on issues related to the Secretary's functions under ERISA.

5. Michael and I met in 1991 when I was still living in Los Angeles. Within six months Michael moved to L.A. so we could be together.

6. In 1997, I took a long-term leave of absence under Arthur Andersen's disability plan. My disability benefits folded over into retirement benefits after 2002.

7. When I stopped working in 1997, Michael and I decided to find a new home so that Michael could retire. Having grown up in the Midwest, I was partial to returning to the region, and we quickly found the perfect place in a town just outside of

Madison, Wisconsin. Michael and I both became active in local and state politics, particularly on issues related to the needs of Wisconsin's gay and lesbian community. We moved into our current home on Madeleine Island in May 2009.

8. Because of my disability, and because Michael and I are growing older, the health-care related rights that come with registration are very important to me. Registration guarantees that, in the event I am unable to make certain medical decisions or unable to communicate my wishes for end-of-life care, Michael would have the authority to speak on my behalf. Michael, as my partner of eighteen years, is the person most familiar with my preferences regarding nursing facilities and hospice care, so I feel more secure knowing that his decision-making authority has the force of law. Furthermore, because neither Michael nor I have children, I'm especially eager to protect our rights. If something were to happen to me, Michael would be my only voice.

9. It is also a great comfort for me to know that Michael will be by my side if I am ever hospitalized. I have heard horrible stories of same-sex partners who have been unable to see their partners in the hospital. Without the registry, Michael and I would be dependent on the compassion and good nature of hospital staff to be permitted to visit each other.

10. Michael and I were able to provide ourselves with some security through powers of attorney agreements, but the additional protection provided by the registry is important. In the event that our documents are unavailable or not honored, the registry provides us with added protections. Furthermore, many couples do not have powers of attorney or cannot afford to pay an attorney to draft the highly specialized documents.

11. Although the limited rights afforded by the registry are important, they hardly compare to the full range of rights and responsibilities that exist when couples marry. The law protects the relationship between married couples with a safety net of procedures and benefits that reflects society's deeply rooted commitment to the strengthening of families. The domestic partnership law provides a handful of rights, but that's not marriage.

Glenn W. Carlson
Glenn Carlson

Sworn to before me this
29th day of September, 2010



Barbara L. Nelson

Notary Public, State of Wisconsin

My commission expires: August 14, 2011

CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAIN APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
Department of Health Services, and

Judge Daniel R. Moeser

JOHN KIESOW, in his official capacity as
State Registrar of Vital Statistics,

Case Code: 30701 (Dec. Judgment)
30704 (Other Injunction)

Defendants,

and

FAIR WISCONSIN, Inc.,
Glenn Carlson & Michael Childers,
Crystal Hyslop & Janice Czynscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF MICHAEL CHILDERS IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, Michael Childers, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I was born on September 16, 1954, and I am 56 years old. I live with my partner, Glenn Carlson, at our home on Madeleine Island in the town of La Pointe, Wisconsin.

3. Glenn and I registered as domestic partners in Ashland County on August 3, 2009.

4. I was born and raised in Battle Creek, Michigan. In 1972 I enrolled at the University of Michigan at Ann Arbor to study economics, but left school after my second year to join the army. I was stationed at Fort Sill, Oklahoma, in the 1st Battalion, 12th Field Artillery. After three years, and after working as Clerk of Operations and receiving an Army Commendation, I returned to the University of Michigan to finish my undergraduate degree.

5. In 1980, I earned an MBA in Finance. I've worked for a number of different businesses during my career, especially in the retail industry. From 1983 to 1987, for example, I was the Assistant Buyer for Electronics for Target Corporation in Minneapolis. From 1987 to 1990 I worked as the Director of Planning and Distribution for the west coast operations of Mervyns, a department store chain based in California.

6. Glenn and I met in 1991 while I was visiting Los Angeles. Within six months I had moved to L.A. from my home in Long Beach, California, so we could be together. I retired in 1997 when Glenn and I moved from California to Cambridge, Wisconsin. We bought land on Madeleine Island in 2003, and permanently moved into our house there in May 2009 after I received a realtor's license.

7. Glenn and I have completely intertwined finances. We jointly own our home and all our possessions. We have shared bank accounts and are the primary beneficiaries on each other's pension funds, IRA accounts, and life insurance policies.

8. We have taken – at considerable expense – various steps to protect our assets. Our estate-planning attorney at Michael Best & Friedrich prepared a number of documents for us, including individualized Powers of Attorney for Finance and Property. I understand that these documents, which are tailored to address the legal issues unique to unmarried couples, provide us with more protection than the form wills and powers of attorney documents that are available for free through the State of Wisconsin website. As I listened to our attorney explain each of the provisions, I realized that only lawyers with a high degree of expertise could craft the documents necessary to avoid all the legal landmines that exist for unmarried couples. Although I believe our estate planning documents provide us with protections, the rights provided to domestic partners under Wisconsin law relating to inheritance of property are important to me because they provide an additional layer of protection in the event that our documents are challenged or are somehow found to not address a circumstance that is covered by the statutory protections.

9. The domestic partnership registry is important to me also because it provides me and Glenn with certain rights in the medical setting, including the right to visit each other in the hospital and the right to make certain medical decisions. Glenn and I were able to privately secure some of these rights through medical powers of attorney agreements, but even these documents don't have the same scope as the rights afforded under the registry. I know that these private legal precautions alone would still

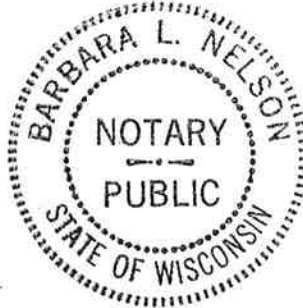
leave us dependent on the good graces of hospital personnel to respect our agreements, and they would mean little in an emergency if they were unavailable or if a nurse or staff member felt empowered to reject them. Only registration provides the assurance that our health care decisions will be honored and our hospital visitation rights will be respected. Because I don't have any children, I'm especially eager to guarantee that he be able to speak on my behalf. If something were to happen to me, Glenn would be my only voice.

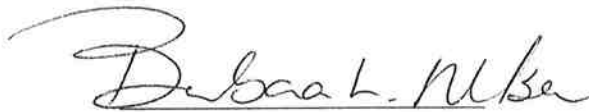
10. The limited rights and benefits that we secured when we registered as domestic partners are worthy and important, but registration is not marriage. Glenn and I took the extraordinary step of entering into a private contract that spells out how our present and future assets would be divided if things were not to work out between us. Unmarried couples, including those registered as domestic partners, have no access to the body of law and procedure that protects married couples who divorce. Domestic partners who separate, for example, have no venue to request a maintenance decree, and no state-subsidized court to arbitrate the division of property. While Glenn and I are committed to spending our lives together, we also don't want to experience the legal limbo that results when couples without access to dissolution protections separate.

11. Furthermore, domestic partnership lacks any of the social significance or cultural import that we and our families and friends attribute to marriage. That's why Glenn and I didn't celebrate the occasion of our registration.


Michael Childers

Sworn to before me this
29th day of September, 2010





Notary Public, State of Wisconsin

My commission expires August 14, 2011

CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAIN E. APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
Department of Health Services, and

Judge Daniel R. Moeser

JOHN KIESOW, in his official capacity as
State Registrar of Vital Statistics,

Case Code: 30701 (Dec. Judgment)
30704 (Other Injunction)

Defendants,

and

FAIR WISCONSIN, Inc.,
Glenn Carlson & Michael Childers,
Crystal Hyslop & Janice Czynscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF CRYSTAL HYSLOP IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, Crystal Hyslop, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I live in Madison, Wisconsin, with my life partner, Janice Czynscon and I am 58 years old.

3. On August 3, 2009, Janice and I registered as domestic partners in Dane County. We were the first couple in Dane County to register as domestic partners.

4. I was born and raised in Port Huron, Michigan. I earned a bachelor's degree in 1974 from Western Michigan University. After receiving my paralegal certificate from the American Institute for Paralegal Studies in 1986, I spent twelve years working at Legal Action in Wisconsin where I helped coordinate pro bono projects and promote access to the legal system for indigent clients. Since 1998 I've worked on criminal litigation matters in the Attorney General's office, focusing particularly on cases involving sexually violent persons.

5. Janice and I met in 1980. We recently celebrated our 30th anniversary as a couple.

6. Before Janice and I met, I was married for several years. I have two daughters from that marriage, who are now 35 and 32 years old. Janice helped me raise the girls and, since they were young, they have regarded her as a parent.

7. For years, Janice and I have regarded ourselves as a family unit. We jointly own our home and have joint bank accounts and investment funds. We also each have life insurance so we know we'll be taken care of.

8. To protect each other and our joint assets in the event that something were to happen to one of us, Janice and I consulted with an attorney and executed several

important documents, including wills, trust documents, and powers of attorney. This was an expensive process that, unfortunately, many same-sex couples cannot afford.


9. Although we have taken certain measures to protect ourselves financially, the inheritance rights and spousal support rights that the domestic partnership registry provides are important to me in the event that our documents were found to be inadequate or they failed to address some critical aspect of the law that we had not foreseen.

10. Furthermore, the ability to take a family medical leave in the event that Janice were to become ill is important to me because it is a right that I have as a registered domestic partner that I cannot create by entering into a private legal contract.

11. Although the rights provided by the domestic partnership registry are important, I do not consider our registration to be similar to a marriage. Having been married, I am familiar with many of the legal rights and obligations associated with the marital relationship that are not associated with the domestic partnership registry. For example, when I was married, I had the option to file joint tax returns with my husband. That is not an option with the domestic partnership registry. When my husband and I were divorced, we had to go through a legal proceeding in order to dissolve our marriage. In contrast, a domestic partnership can be dissolved by either person in the partnership by filing an affidavit with the county clerk.


Crystal Hyslop

Sworn to before me this
29th day of September, 2010


Notary Public, State of Wisconsin
My commission expires: 4/22/12

CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAINÉ APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
Department of Health Services, and

Judge Daniel R. Moeser

JOHN KIESOW, in his official capacity as
State Registrar of Vital Statistics,

Case Code: 30701 (Dec. Judgment)
30704 (Other Injunction)

Defendants,

and

FAIR WISCONSIN, Inc.,
Glenn Carlson & Michael Childers,
Crystal Hyslop & Janice Czynscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF JANICE CZYSCON IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, Janice Czynscon, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I was born on April 26, 1953 and I am 57 years old. My partner, Crystal Hyslop, and I live together in Madison, Wisconsin.

3. Last summer, Crystal and I were the first couple to register as domestic partners in Dane County under the recently enacted domestic partnership law.

4. I was born and raised in Chicago, Illinois. I earned a Bachelor of Art's degree in Political Science and Journalism from University of Wisconsin – Madison in 1984. For the past twenty-six years I've worked in the Department of Continuing Education in the College of Engineering. As Senior Editor, I draft various documents and materials in support of the College's work, including instructional and web-based materials. In or around 1991, I earned a Masters degree from the School of Education so I could broaden the range of skills I bring to my job.

5. Crystal and I recently celebrated our 30-year anniversary as a couple. When we met in 1980, I was chairing a political action committee dedicated to the extension of the Equal Rights Amendment. Crystal had just joined our group, and our relationship quickly blossomed.

6. When Crystal and I met, Crystal had two daughters from her marriage. Crystal and I raised the two girls together as co-parents in our home. Since a very young age, Carmen and Miranda have considered me to be a parent and I have considered them to be my daughters. In fact, I remember when Miranda was in the third grade, one of her teachers suggested that she would not be permitted to make two Mother's Day cards as part of a class project. Crystal and I both went to the school to voice our displeasure and

to insist that we be recognized as a family unit. Crystal and I both served as girl scout leaders when the girls were growing up.

7. Crystal and I registered as domestic partners to avail ourselves of some of the important legal protections that the registry provides. As we are getting older and contemplating retirement, we want to ensure that we have whatever legal protections we can obtain with respect to protecting the assets that we jointly own in the event that something were to happen to one of us. Equally important, however, are the rights the registry provides with respect to visiting each other in the hospital and making certain medical decisions in the event that one of us were to become incapacitated.

Janice Cyscon
Janice Cyscon

Sworn to before me this
29th day of September, 2010

Rhonda J. Main
Notary Public, State of Wisconsin
My commission expires: 4/22/12

IN THE CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAIN APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

Judge Daniel R. Moeser

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
Department of Health Services, and

JOHN KIESOW, in his official capacity as
State Registrar of Vital Statistics,

Defendants,

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FAIR WISCONSIN, Inc.,
Glenn Carlson & Michael Childers,
Crystal Hyslop & Janice Czyscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF KATHY FLORES IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, Kathy Flores, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I was born on January 10, 1967, and I am 43 years old. I live in Appleton, Wisconsin, with my life partner Ann Kendzierski.

3. On August 3, 2009, Ann and I registered as domestic partners in Outagamie County.

4. I'm originally from California but I've called Wisconsin home for twenty-four years. I attended Fox Valley Technical College in Appleton, Wisconsin, and most of my adult professional life has focused on local community work, particularly on issues concerning domestic violence and the needs of victims of domestic violence. Beginning in 2000, I helped to organize teen and adult support programs at Harmony Café, a non-profit coffeehouse and community center in Appleton, Wisconsin. I also spent seven years as the Community Education Coordinator for Harbor House, from 2002 to 2009, where I was responsible for training law enforcement and clergy on domestic abuse recognition and prevention. I currently serve as the Diversity Coordinator at the Mayor's office in Appleton.

5. Ann and I met when she was volunteering at the Harbor House. We've been a couple for four years, and she knows me better than anyone else in the world.

6. Ann and I have had our fair share of medical worries in our time together, particularly in the last few years, so the health care components of the domestic partnership registry have always been our focus and concern. In December 2007, I was diagnosed with a relapsing-remitting course of multiple sclerosis. My relapses come a couple times per year, and can last about a month each, so I try to keep my stress levels

low to help stave off any flair ups. Additionally, in the course of diagnosing my multiple sclerosis, my doctors discovered that I had a cerebral aneurysm behind my right eye. I understand that the symptoms of a cerebral aneurysm are sometimes similar to the symptoms of multiple sclerosis. Treating and monitoring my medical conditions thus has me and Ann in hospitals with some regularity, and the frequency and extent of our visits have made me especially nervous about our limited rights in that setting.

7. I understand that individuals with multiple sclerosis are at a higher risk of becoming incapacitated. If this were to happen to me, our registration gives Ann unambiguous priority to make certain decisions on my behalf, such as whether or not I should be placed in a nursing facility or in a hospice. Registration also guarantees that Ann can receive my lengthy and complicated medical records to aid her in those decisions.

8. My medical bills are pretty burdensome, so Ann and I didn't pay a lawyer to draw up Powers of Attorney documents or individualized wills. We did download and sign the form documents that are available on the Internet, but given my medical conditions it's especially important for me that Ann's power to make medical decisions has the force of law. Should our documents ever be unavailable, disrespected or challenged, I know that the registry provides us with further protections.

9. I have seen firsthand how same-sex couples can be treated differently from opposite-sex couples in the medical setting. In early 2009, I developed a thyroid condition that required some tests for cancer, so my doctor and I scheduled a needle biopsy exam. I was very anxious about the procedure; my own experience with domestic violence has left me with strong feelings of vulnerability whenever the area around my

throat is touched. I called ahead to double-check that Ann would be permitted to be with me during the procedure, and the hospital confirmed that she could. I knew I could make it through so long as I had Ann. At the hospital, however, we encountered a nurse who, whether out of malice or ignorance I don't know, simply refused to respect or recognize my relationship with Ann. When I was called from the waiting room, she explained that Ann would have to stay behind as I changed into my hospital gown. Ann agreed, but she and I both assumed that she could come back in once I was situated. As the nurse began to prepare me for the procedure, I told her that I wanted Ann to be with me. She responded that "your friend" would be more comfortable waiting outside. I responded that she wasn't "my friend," but rather my life partner. But it was like the nurse wasn't even hearing me. The nurse just kept saying the Ann would be happier outside because she was just my "friend." I had no way of communicating to this nurse that Ann *ought* to be with me. Finally, I told her that I was thinking about just canceling the procedure. Only when the doctor came in – and instructed the nurse to get Ann – were we finally able to be together.

10. This experience, particularly the demeaning repetition of "your friend", is the potential situation that Ann and I steel ourselves for before every doctor's visit. I know, however, that were this to happen today Ann and I would be much better prepared because of our registration. I can say that Ann is my "registered domestic partner," and that over time nurses and hospital staff will learn to understand that Ann and I can be together. More concretely, I understand that the domestic partnership law requires hospitals that have visitation policies that permit spouses to be with each other must treat domestic partners in the same way.

11. The limited rights provided by the registry, particularly the rights that protect us in the medical setting, will only increase in importance for me as I grow older.


Kathy Flores

Sworn to before me this
27 day of September, 2010



Notary Public, State of Wisconsin

My commission expires: 12/8/2013



IN THE CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAIN APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
Department of Health Services, and

Judge Daniel R. Moeser

JOHN KIESOW, in his official capacity as
State Registrar of Vital Statistics,

Defendants,

and

FAIR WISCONSIN, Inc.,
Glenn Carlson & Michael Childers,
Crystal Hyslop & Janice Czynscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF ANN KENDZIERSKI IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, Ann Kendzierski, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the
above-captioned matter.

2. I was born on October 16, 1967, and I am 42 years old. I live in Appleton, Wisconsin, with my life partner Kathy Flores.

3. Kathy and I registered as domestic partners in Outagamie County on August 3, 2009.

4. I was born and raised in Milwaukee, Wisconsin. Like my partner, Kathy, I took some time off between high school and college. I spent a few years working a number of odd jobs – for example at a hotel, in a grocery store – before enrolling in New Mexico State University. I received my Bachelor of Arts degree in anthropology and psychology in 1998, and continued on to earn a Masters in English in 2000. After graduate school I joined Dell, Inc. and worked as a technical writer, drafting user manuals and other documents. In 2003 I decided to move back to Wisconsin and found a job with ThedaCare, a community-owned non-profit health system based in Appleton, working first in customer service but ultimately performing as a Project Manager. Since 2007 I've been an E-Commerce Team Leader with Goodwill Industries of North Central Wisconsin, where I help sell high-value collectible items by listing them on the Internet.

5. I've been a volunteer at several not-for-profit organizations, both in New Mexico and here in Wisconsin. It was while volunteering at Harbor House, a shelter and advocacy center for victims of domestic violence, that I first met Kathy. We've been a couple for four years.

6. Kathy has faced a number of medical challenges in the past few years. She was diagnosed with multiple sclerosis shortly after we started dating, and has also had to seek treatment for a cerebral aneurysm, a pulmonary embolism, and thyroid cancer. I've supported her throughout this time, but some moments have been harder

than others. Her surgery to treat the cerebral aneurysm that had developed behind her right eye took eight hours – five hours longer than we were told to expect. Like any person in a committed relationship, I waited anxiously in the hospital's waiting room until I received the news that everything was alright.

7. Because of Kathy's medical issues, we were eager to register as domestic partners as soon as we could. It was important for me that we protect our authority to make certain medical decisions for each other should one of us become incapacitated. Furthermore, some of the rights provided by the registry aren't rights that we can create with a Power of Attorney agreement or other document.

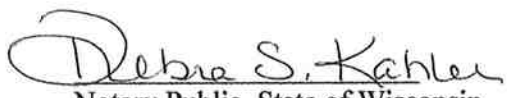
8. The right to be by each other's side is one I've especially grown to cherish and assert in the past two years. In March 2009, Kathy had to have a needle biopsy to test her thyroid for cancer. We called the hospital beforehand to be sure that I could be in the room with her for the procedure, but when the nurse came to bring us back to the room, she told me to stay in the waiting room while Kathy changed into her hospital gown. She said it was just to give Kathy privacy, so I figured it wouldn't be too long – but I was just sitting outside and waiting and waiting. I had no idea what was going on. When I learned that the nurse had pressured Kathy to leave her "friend" in the waiting room, I became angry and hurt. I'm proud of Kathy for standing up for herself, but I felt powerless. When registration became available, and Kathy and I could sign up and be recognized as domestic partners, I was overjoyed to learn that, in the future, visitation rules would have to be applied uniformly by hospital staff; in future circumstances, domestic partners won't be dismissed as just "friends."

9. Additionally, now that Kathy and I are domestic partners, we are protected by the Wisconsin Family and Medical Leave Act. As a result, if I need to take time off of work in order to care for Kathy, I am entitled to do so under the law.

10. While I value the limited rights that come from registration, I know that no small bundle of rights could ever be marriage. Marriage is the highest form of recognition and validation that our society can bestow on a couple's relationship. Hospital visitation rights and the right to make certain medical decisions are very dear to me and Kathy, but they hardly compare to the full range of economic and legal protections provided to spouses.


Ann Kendzierski

Sworn to before me this
30 day of September 2010


Notary Public, State of Wisconsin
My commission expires: 12/8/2013



IN THE CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAIN APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

Judge Daniel R. Moeser

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
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JOHN KIESOW, in his official capacity as
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Defendants,

and

FAIR WISCONSIN, Inc.,
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Crystal Hyslop & Janice Czynscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF DAVID KOPITZKE IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, David Kopitzke, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I live in rural Richland County, Wisconsin, with my life partner, Paul Klawiter and I am 68 years old.

3. On August 10, 2009, Paul and I registered as domestic partners in Richland County. I believe we were the first same-sex couple to register as domestic partners in Richland County. A notice of our registration was printed in our local newspaper.

4. I was born in northern Michigan but was raised in Wisconsin and Indiana. I earned a bachelor's degree in biology and art from Earlham College and a Master of Science degree in Plant Ecology from the University of Wisconsin – Madison. I worked as a curator at the Milwaukee Public Museum from 1969 to 1976, and in 1978 established a native plant nursery that I operated for ten years. After selling the nursery in 1988, I became Landowner Contact for the Wisconsin Department of Natural Resources in the Bureau of Endangered Resources, helping to advise property owners who had discovered rare species growing on their land. I worked for the state until 1999, when I became a professor of biology at the University of Wisconsin – Richland.

5. Paul and I first met each other through mutual friends in Madison in January of 1969. The land that we first purchased together in 1974 is the land on which we still live today.

6. Paul and I have fully intertwined finances. We have Powers of Attorney for Health Care and for Property and Finances. We've further protected our relationship

with wills, and we are both the named beneficiaries for each other's retirement and investment accounts.

7. No aspect of the registry is more important to me than the rights relating to medical care. Paul has been my companion for over forty years. He knows me better than anyone, and there is no one more important to have by my side if something were to happen. The registry guarantees our right to such visitation, and further ensures that Paul, who knows my medical history, would be recognized as the person with the authority to make certain decisions on behalf, such as whether or not I should be admitted to a hospice.

8. I am acutely aware of how, in the absence of the registry, our most personal and human needs in a hospital emergency would be vulnerable to the whims of individual nurses or staff members. In 1980, Paul was horribly burned while combating a grass fire that had broken out near the barn on our property. As I rushed him to the hospital, I realized that we didn't have any way of demonstrating the significance or meaning of our relationship. On the ride to the hospital, the uncertainty of how the staff would react to my presence filled me with a sense of dread, and I was distracted by the thoughts of all the worst-case scenarios of discriminatory treatment. Gratefully, the doctors and nurses were compassionate and welcoming, and not once during Paul's month-long stay in the burn unit did they question my right to visit him. Nonetheless, the comprehension that nothing would have prevented them from denying me access to Paul is frightening.

9. I compare that experience to our most recent visit to a hospital. In August 2010, Paul had to have some minor surgery. It was comforting to know that we had the

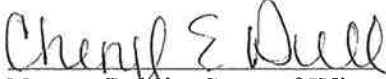
visitation rights associated with the domestic partnership registry and that we weren't dependent on the good mood of administrators. We had a term, "domestic partner", to immediately and unambiguously explain our relationship and communicate our right to be together. Instead of worrying about what we would do if our papers were somehow not in order or how we would be able to convince a skeptical or hostile nurse, I was able to focus on what was most important – Paul.

10. Paul and I realize that there may come a time when we are no longer able to take care of each other while living in our current home. Should one or both of us require full-time assistance in a nursing home facility, our registration guarantees our right to stay together in the same room. We have heard stories of couples who have been forcefully separated at nursing homes, and we are relieved to know that, even at our most vulnerable, we'll still be able to be together.

11. While Paul and I value the limited rights and benefits that come from registering as domestic partners, it's not marriage. We didn't celebrate our registration, or think of it as a solemn occasion that ought to be witnessed by friends and family. Domestic partners don't enjoy any of the income tax benefits that married couples enjoy, nor do we enjoy the hundreds of other privileges afforded married couples under the law.


David Kopitzke

Sworn to before me this
27 day of Sept, 2010


Notary Public, State of Wisconsin
My commission expires: 6-19-11

IN THE CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAIN APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

v.

JAMES E. DOYLE, in his official capacity
as Governor of the State of Wisconsin,

Case No. 2010 CV 004434

Judge Daniel R. Moeser

KAREN TIMBERLAKE, in her official
capacity as Secretary of the Wisconsin
Department of Health Services, and

JOHN KIESOW, in his official capacity as
State Registrar of Vital Statistics,

Defendants,

and

FAIR WISCONSIN, Inc.,
Glenn Carlson & Michael Childers,
Crystal Hyslop & Janice Czynscon,
Kathy Flores & Ann Kendzierski,
David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF PAUL KLAWITER IN SUPPORT OF PROPOSED
INTERVENING RESPONDENTS' MOTION TO INTERVENE

I, Paul Klawiter, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.
2. I was born on January 7, 1940, and I am 70 years old. I live with my life partner, David Kopitzke, in rural Richland County, Wisconsin.
3. David and I registered as domestic partners in Richland County on August 10, 2009. I believe we were the first same-sex couple to register as domestic partners in Richland County. A notice of our registration was printed in our local newspaper.
4. I was born in Eau Claire, Wisconsin. I studied art and art education and earned a Masters of Fine Arts from the University of Wisconsin – Madison. After teaching art in the public school system and working on graphic design for the University of Wisconsin – Whitewater, I began work in 1974 as a draftsman for a pole building company in Richland County. Since 1983, I've served as Richland County's Real Property Lister, the official responsible for keeping an accurate record of all property in the county and confirming new ownership when property is conveyed.
5. David and I met in 1969 through mutual friends in Madison. The land that we first purchased together in 1974 is the land on which we still live today.
6. The domestic partnership registry is important to me because it provides important rights to me and David with respect to health care. I have always been worried about what would happen if the staff member of some hospital were to refuse to recognize the importance that David and I play in each other's lives. This fear struck home for me a few years ago when David's ninety-two-year-old mother fell and broke her hip at her home in Indiana. We just happened to have been visiting for two or three days, and were on the way home when David got the call on his cell phone. We turned

right around and rushed to the hospital, but the nurses were emphatic that only “immediate family” could see her. I had no way of knowing whether they included me in their definition of “immediate family,” and I didn’t have any idea how I could prove who I was amid the confusion and uncertainty and noise of the ER setting. I resolved to enter the room along with David’s siblings and their spouses, but I was relieved that no one asked any questions. I still reflect on the event sometimes – I wouldn’t want me and David to be prevented from seeing each other because we’re not “immediate family.”

7. I understand that the domestic partnership registry protects our ability to make certain medical decisions on each other’s behalf. I also understand that we have a right to hospital visitation. These assurances were of immense comfort to me when I recently had to have surgery. Trips into the hospital are stressful enough without having to strategize how best to present yourself to hospital staff so that they don’t question the propriety of having your partner by your side.

8. After forty-one years as my companion and partner, David is the person I trust to make the tough medical choices that some families are required to make. In the event that I am incapacitated, David has the authority as my domestic partner to decide whether I should be admitted to a nursing facility or perhaps enter into hospice care.

9. I understand that registering as domestic partners gave us a limited set of important rights and protections, but it’s hardly marriage. Marriage is not only the highest proclamation of commitment that two people can make – it’s also the community’s highest recognition of the value of that commitment. That’s part of the reason we’ve never gone to Iowa or Massachusetts to get married. Wisconsin has been our home our entire lives, and it just wouldn’t really be marriage if it wasn’t here.

10. Our registration date wasn't an important occasion or a reason to celebrate. It hasn't changed how I view our relationship, and it hasn't changed our commitment to each other. The limited legal protections we have as registered domestic partners, however, are still very important to us.

Paul Klawiter
Paul Klawiter

Sworn to before me this
27 day of Sept, 2010

Cheryl E. Dull
Notary Public, State of Wisconsin
My commission expires: 6-19-11

IN THE CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

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RICHARD KESSENICH and
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Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF CHAD WEGE IN SUPPORT OF PROPOSED INTERVENING
RESPONDENTS' MOTION TO INTERVENE

I, Chad Wege, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I was born on April 19, 1976, and I am 34 years old. I live with my partner, Andy Wege, in our home in Appleton, Wisconsin.

3. Andy and I registered as domestic partners in Outagamie County on August 10, 2009.

4. I was born and raised in Neenah, Wisconsin. In 2006 I received a Bachelor of Arts degree in Computer Science from Lakeland College. For the past couple years I've worked at United Health Group, the health care company. As Senior Business Analyst, I act as the liaison between our employees who have technological needs and our internal computer programmers; if a team wants a new database configuration, for example, I manage the project and ensure that the new database conforms to the team's expectations. I also spent four years working a similar position at J.J. Keller & Associates, a Wisconsin-based corporation that provides safety training materials to businesses to help them comply with safety regulations and lower their insurance premiums.

5. Andy and I met almost sixteen years ago. After about a year we began dating, and we have since built a life together.

6. Andy and I have completely intertwined finances. We share credit cards and bank accounts, and we are each the beneficiaries on each other's IRA accounts and life insurance policies. Our current home in Appleton is the second one we've owned together.

7. I understand that the domestic partnership registry provides me and Andy with certain legal protections that ensure stability in the event something were to happen to one of us. Andy and I long ago took practical steps to protect our relationship. We've executed powers of attorney documents, but even these, as we've experienced, are sometimes not enough.

8. Five or six years ago, Andy was at a local hospital on the verge of undergoing a scheduled spinal surgery. Because the surgery was going to require the doctors to give Andy anesthesia, we had been extra careful with all of the documents and consent forms. Nonetheless, when Andy was already up on the ward and about to be taken for final surgical prep, a nurse informed us that the hospital didn't have a record of my authority to make medical decisions on his behalf. Even though we'd provided the power of attorney documents when Andy pre-registered, and even though later we'd submitted second copies at the morning prep, just in case, we were only minutes away from a potential disaster. Andy was already anxious, as anyone would be before a major surgery, and delaying the procedure so we could run around and find more documents only added to the stress and anxiety of the situation.

9. I don't like to think about what would have happened if a decision had to have been made in the absence of those documents, and I know we were lucky that the hospital's error was caught in the nick of time. This experience is my lens for appreciating our rights under the domestic partnership registry. It's beyond comforting to know that certain rights are no longer so easily jeopardized by clerical mistake, and that our information can be checked against the registry list with a simple phone call.

10. I had to take vacation time at work to be with Andy at the hospital. In the future, as registered domestic partners, I am eligible for paid medical leave under the Wisconsin Family and Medical Leave Act.

11. Andy and I have done some estate planning, and we each have had wills drawn up and executed. I understand that, as domestic partners, we now have certain rights that will help ease the difficulties of the probate process.

12. Although the limited rights afforded by the registry are important, they don't amount to anything close to marriage. For example, Andy and I have been in the process of trying to adopt a child. Registering as domestic partners has in no way simplified this process for us; we are still unable to avail ourselves of any of the rights and protections that married couples enjoy.


Chad Wege

Sworn to before me this
29 day of September, 2010


Notary Public, State of Wisconsin
My commission expires 12/22/2012



IN THE CIRCUIT COURT OF DANE COUNTY
BRANCH 11
STATE OF WISCONSIN

JULAIN APPLING, JO EGELHOFF,
JAREN E. HILLER,
RICHARD KESSENICH and
EDMUND L. WEBSTER,

Plaintiffs,

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David Kopitzke & Paul Klawiter,
Chad Wege & Andrew Wege,

Proposed Intervening
Defendants.

DECLARATION OF ANDY WEGE IN SUPPORT OF PROPOSED INTERVENING
RESPONDENTS' MOTION TO INTERVENE

I, Andy Wege, declare under oath and state as follows:

1. I submit this declaration in support of my motion to intervene in the above-captioned matter.

2. I was born on September 28, 1969, and I am 41 years old. I live with my partner, Chad Wege, in our home in Appleton, Wisconsin.

3. On August 10, 2009, Chad and I registered as domestic partners in Outagamie County. I believe we were the third couple to register in the county.

4. In September 2009, I legally changed my last name from Topcik to Wege as part of our efforts to adopt a child. The County Clerk's office has informed me that they are unwilling or unable to change the name on my domestic partnership record, so I am still listed in the registry under my former name.

5. I was born in Zion, Illinois. Because my stepfather was in the military, we traveled around a lot while I was young. I first moved to Wisconsin about eighteen years ago when I was working on a store opening team for General Mills Restaurants. We were planning a new venture in Appleton, but I decided to stay behind even after plans fell through. For the past sixteen years I've worked for Wisconsin Bell, now doing business as AT&T, as the Chief of Staff to a Director who oversees eight business centers.

6. Chad and I met almost sixteen years ago. We've built a life together. We share credit cards and bank accounts and live in the home we own together.

7. The health-care related protections that come with registration are very important to me. When I had spinal surgery some years ago, there was some sort of mix-up at the hospital with my power of attorney documents. It was only in the final minutes, when I was already up in the ward and about to be taken for final surgery prep, that we

learned that the nurses didn't have the forms. They didn't have any record of Chad's authority or of the identity of the legal decision maker if something went wrong in the surgery. I felt like we'd done everything we'd been told to do, even providing multiple members of the hospital staff with copies of our papers, but it just wasn't enough. Now that Chad and I are registered as domestic partners, I know our authority to make medical decisions for each other when one of us is incapacitated can be verified against the registry. Having experienced how documents can be lost in the confusion of the hospital setting, I take great comfort in knowing that Chad's right to visit me is also secure.

8. I value the minimal benefit that the registry provides, but its silence on adoption rights belies any comparison to marriage. Chad and I decided several years ago that we wanted to expand our family and adopt a child. Even though we both intend to be co-parents, even though we attended classes together and will raise our child together, Wisconsin case law doesn't permit us to adopt together. We'll have to choose one of us to be the parent, the other to be a mere "guardian". This is one of the most significant, most hurtful inequalities we face as a couple – and yet the domestic partnership registry has absolutely no impact on our hardship.


Andy Wege

Sworn to before me this
29 day of September, 2010


Notary Public, State of Wisconsin
My commission expires: 1/22/2012

