STATE OF WISCONSIN CIRCUIT COURT, BRANCH 11 DANE COUNTY

Julaine Appling, Jo Egelhoff, Jaren E. Hiller, Richard Kessenich, and Edmund L. Webster,

Plaintiffs,

vs.

James E. Doyle, Karen Timberlake, and John Kiesow,

Defendants.

Case No. 2010 CV 004434
Case Code: 30701, 30704
Honorable Daniel R. Moeser

And

Katharina Heyning, Judith Trampf, Wendy Woodruff, Mary Woodruff, Jayne Dunnum, Robin Timm, Virginia Wolf, Carol Schumacher, Diane Schermann, and Michelle Collins,

Proposed Intervening Defendants

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE OF PROPOSED INTERVENING DEFENDANTS

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INTRODUCTION

The Proposed Intervening Defendants ("Intervening Couples") are five same-sex couples registered as domestic partners in the State of Wisconsin.[1] As domestic partners under Chapter 770, Wis. Stat., each couple is afforded certain limited rights, such as family leave and hospital visitation. In the current action, five board members of Wisconsin Family Action claim that Chapter 770 violates Art. XVIII, sec. 13 of the Wisconsin Constitution.[2] The Court's decision in this case, therefore, will have a significant impact on the continued existence of the domestic partnership status and its corresponding protections. As such, the Intervening Couples seek to intervene in this action in order to protect their domestic partnerships and the specific legal safeguards they now receive as registered domestic partners.

I. THE PROPOSED INTERVENING DEFENDANTS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

A party has the right to intervene in an existing action under Wis. Stat. § 803.09(1) if four conditions are met: (i) the motion to intervene is made in a timely fashion; (ii) the movant claims an interest sufficiently related to the subject of the action; (iii) the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and (iv) the movant's interest is not adequately represented by the existing parties. *See* Wis. Stat. § 803.09(1); *Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1; *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357, 359-60 (1994); *State ex rel Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 545,

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[1] The Intervening Couples support the Motion for Leave to Intervene filed by Lambda Legal on behalf of Fair Wisconsin and several Fair Wisconsin member couples, contemporaneous with this motion.

[2] Chapter 770 establishes procedures related to domestic partnerships. The essence of Plaintiffs' claim, however, involves both Chapter 770 and the legal protections associated with domestic partnerships, which necessarily implicate additional chapters of the Wisconsin Statutes.

334 N.W.2d 252, 256 (1983). No precise formula exists for determining whether a potential intervenor meets the requirements of § 803.09(1). *Helgeland*, 2008 WI 9, ¶40. Rather, "[t]he analysis is holistic, flexible, and highly fact-specific." *Id.* (footnote omitted).

Wis. Stat. § 803.09(1) is based on Rule 24(a) of the Federal Rules of Civil Procedure. Charles D. Clausen and David P. Lowe, *The New Wisconsin Rules of Civil Procedure Chapters 801 – 803*, 59 Marq. L. Rev. 1, 108 (1976). As such, courts are to "look to cases and commentary relating to Rule 24(a)(2) for guidance in interpreting § 803.09(1)." *State ex rel Bilder v. Twp. Of Delavan*, 112 Wis. 2d 539, 547, 334 N.W.2d 252 (1983). Courts construing Rule 24 have noted that it is to be construed liberally, and doubts resolved in favor of the proposed intervenor. *See* 6 James William Moore, et al. *Moore's Federal Practice* § 24.03[1][a], at 24-24, 24-25 (3d ed. 2002) (hereinafter *Moore*). "[T]he requirements for intervention are to be construed in favor of intervention." *Am. Maritime Transp., Inc. v. United States*, 870 F.2d 1559, 1561 (Fed. Cir. 1989). The intervention inquiry must be flexible, involving a balancing and blending of requirements, often applying them as a group. *Moore, supra,* § 24.03[1][a], at 24-25. Intervention as of right may be granted if the applicant's claimed interest may be significantly impaired by the action, even if some uncertainty exists regarding that interest. *Id.*

The Intervening Couples meet each of the four factors and therefore are entitled to intervene as a matter of right. Having availed themselves of the protections afforded to domestic partners under Wisconsin Statute 770, the Intervening Couples have particularized and direct interests in this action. They have acted quickly to protect their rights, and they may lose their domestic partnerships and related protections if Plaintiffs prevail in this case. The Intervening Couples' personal stake in defending the limited protections offered them sets them apart from

the Defendants, who are charged with defending the statute itself but do not have a personal stake in the protections that it provides. Unless they are allowed to intervene, the Intervening Couples are left to watch while the question of whether they have a right to visit their domestic partner in the hospital or take family leave to care for her is decided – at a distance and in their absence.

A. The Intervening Couples' Motion Is Timely

The first prong of the four-part test is the timeliness of the motion filed by the proposed intervening party. This action was filed on August 18, 2010. The Intervening Couples are filing this Motion to Intervene and a proposed Answer prior to the deadline for the State defendants to answer. No action has been taken in this case, other than the filing of initial pleadings. In light of these circumstances, the Intervening Couples have acted promptly in filing the present motion to intervene. *Bilder*, 112 Wis. 2d at 550, 334 N.W.2d at 258 ("The critical factor is whether in view of all of the circumstances the proposed intervenor acted promptly.") Moreover, neither Plaintiffs nor Defendants could have been prejudiced by the timing of this motion to intervene. *Id.* ("A second factor is whether the intervention will prejudice the original parties to the lawsuit.").

B. The Intervening Couples Have Sufficient Interests In This Action

The Intervening Couples have sufficient interests in the issues being litigated, because they easily satisfy the Court's "broader, pragmatic approach to intervention as of right," in which the interest test serves "primarily [as] a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *Helgeland*, 2008 WI 9, ¶¶43-44 (quoting *Bilder*, 112 Wis. 2d at 548-49, 334 N.W.2d at 252). When considering whether an intervening party has stated a sufficient interest in the

underlying matter, the court should focus on "the facts and circumstances of the particular case before it as well as the stated interest in intervention and analyze[] these factors against the policies underlying the intervention statute." *Bilder*, 112 Wis. 2d at 548, 334 N.W.2d at 257. The overriding policy behind intervention is to strike a balance between allowing the original parties to conduct and conclude their own lawsuit and allowing persons to join a lawsuit in the interest of the speedy and economical resolution of controversies without rendering the lawsuit fruitlessly complex or unending[3]. *Id.*

Because Intervening Couples will be directly and personally injured if they lose domestic partner protections – a harm that no party currently before the Court will experience – the balance weighs strongly in favor of allowing them to intervene.

Wisconsin courts have come to similar conclusions with respect to intervenors who, like the current Intervening Couples, have direct interests that are distinct from those of the existing parties.

For example, in *Bilder*, newspapers were allowed to intervene in an employment dispute to challenge the stipulation reached by the police chief and town board to seal the court record, since "newspapers have a protectable legal interest in opening the [court] documents to public examination." *Id.* at 549, 334 N.W.2d at 258. Even though the newspapers could have filed a separate mandamus action to open the file, intervention was granted to "allow[] a final decision on a key issue to be reached in a single lawsuit rather than having multiple lawsuits and multiple judicial decisions on the same subject." *Id.* at 550, 334 N.W.2d at 258.

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[3] The Intervening Couples intend to coordinate, to the greatest extent possible, with Lambda Legal's clients, to avoid duplication of effort or increased complexity in this litigation.

Similarly, in *Armada Broadcasting, Inc.*, 183 Wis. 2d 463, 516 N.W.2d 357, a school teacher moved to intervene in a case filed by Armada Broadcasting against his school district to compel disclosure of a sexual harassment investigative report that discussed allegations made against him. The Court concluded, using the pragmatic approach to intervention articulated in *Bilder*, that the teacher had an interest sufficiently related to Armada's action. 112 Wis. 2d at 474, 516 N.W.2d at 361. Because disclosure of the report could cause great personal harm to the teacher's reputation and future career, the Court concluded that his "unique and significant interest" in protecting his privacy and reputation justified intervention. *Id.* The Court reasoned that granting intervention "promotes judicial efficiency in that all interested parties are involved, and it ensures Armada finality to the extent that [the teacher's] right will be exercised during the mandamus action rather than in later litigation." *Id.* at 475, 516 N.W.2d at 361. Although the school district was asserting the privacy interests of the teacher and defending against Armada's mandamus action, its interests were different from "someone who is directly affected by public disclosure of the report." *Id.* at 476, 516 N.W.2d at 362.

The Court of Appeals reached a similar conclusion in *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 749, 601 N.W.2d 301, 306 (Ct. App. 1999), when it allowed a town to intervene in a zoning case defended by a county, because the town had direct *and* different interests from the county, including its responsibility for "services such as fire protection, ambulance service, and law enforcement" for the property at issue.

Similar to the intervenors in *Bilder, Armada*, and *Wolff*, the Intervening Couples in the current action have direct interests that contrast with the interests of the existing parties. Like the intervenor in *Armada*, this action places them at risk of personal harm in the form of lost legal protections as compared to the government's official responsibility to defend the

domestic partner law. Just as the school district in *Armada* would not personally suffer the loss of privacy or damage to reputation as the school teacher, none of the Defendants in this case will be personally injured if the domestic partnership protections are stricken from Wisconsin law. They have a public obligation to defend Chapter 770, rather than a private interest in its preservation. The private injury that will befall Intervening Couples if Chapter 770 is declared unconstitutional inspires the Intervening Couples to defend their domestic partnerships and resulting protections with a vigor that sets them apart from the government. In addition, Chapter 770 itself evidences the legislature's recognition of lesbian and gay male citizens' interests in protecting their relationships with their domestic partners by granting them certain limited rights, such as the right to hospital visitation. That interest is different from the government's more general interest in defending the constitutionality of its laws.

In contrast, in *Helgeland,* 2008 WI 9, the Supreme Court denied the municipalities' motion to intervene, because it concluded that their interests were indirect and similar to those of the state parties already defending the case. In *Helgeland*, the municipalities sought to intervene in a constitutional challenge brought by state employees against various state defendants to the exclusion of domestic partners from the statutory definition of "dependent" for purposes of the health insurance and family leave benefits. *Id.* ¶22. The municipalities sought to intervene because they worried that a decision in that case might affect their municipal employee benefit plans. *Id.* ¶¶23-24. The Court, however, concluded that the municipalities failed to demonstrate that the interests they asserted "relate to the subject of the action in a direct and immediate fashion," *id.* ¶7, and that they had failed to show any special, personal, or unique interest as compared to the interests of the current parties in the case. *Id.* ¶116.

Unlike the municipalities in *Helgeland*, the Intervening Couples' interests in the present action are "direct and immediate," *see id.* ¶71, and the Intervening Couples possess the "special, personal, or unique interest" found lacking in *Helgeland*. The Intervening Couples are same-sex couples who registered as domestic partners under Chapter 770 of the Wisconsin statutes in order to take advantage of the legal protections afforded to domestic partners, such as family medical leave, limited medical decision-making authority, hospital visitation, and inheritance and survivor protections. In short, the Intervening Couples are the intended beneficiaries of the legislation currently at issue and thus have a personal interest in the outcome. *See id.* ¶116; *see also Armada Broad.*, 183 Wis. 2d at 474, 516 N.W.2d at 361 (referencing statutes protecting privacy interests of proposed intervenor as grounds for granting intervention); *see also, e.g., California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (granting intervention to persons who were "intended beneficiaries" of federal statute that was being challenged as unconstitutional).

It is also important for the court to hear from those directly impacted by Chapter 770. Without their participation in this lawsuit, there will be no way to hear of the actual impact on same-sex couples of this challenge to Chapter 770. In contrast to the existing parties to this lawsuit, only the Intervening Couples can fully explain to the court how Chapter 770 has affected them, their relationships and their families, and how the result of this challenge to Chapter 770 may adversely affect them.

The Intervening Couples stand to lose at least the following rights afforded to domestic partners as a result of this action:

- The ability to take family medical leave to care for their domestic partners or the parent of their domestic partner. (*See* Heyning Aff. ¶13, Trampf Aff. ¶ 14, Dunnum Aff. ¶ 6, Timm Aff. ¶ 6, Schermann Aff. ¶ 9, Collins Aff. ¶ 10)[4]

- The intestacy protections currently provided to domestic partners. (*See* Dunnum Aff. ¶ 7, Timm Aff. ¶ 7, Wolf Aff. ¶ 12, Schumacher Aff. ¶ 11, Schermann Aff. ¶ 10, Collins Aff. ¶ 9)

- The right to visit each other in the hospital or other medical care settings. (*See* W. Woodruff Aff. ¶ 8, M. Woodruff Aff. ¶ 7, Dunnum Aff. ¶ 8, Timm Aff. ¶ 8, Wolf Aff. ¶ 8, Schumacher Aff. ¶ 9,)

- The extra security they receive as domestic partners that they will be able to make important health care decisions for one another. (*See* Heyning Aff. ¶11, Trampf Aff. ¶ 12, Dunnum Aff. ¶ 9, Timm Aff. ¶ 9, Wolf Aff. ¶ 10, Schumacher Aff. ¶ 10, Schermann Aff. ¶ 11, Collins Aff. ¶ 11)

The affidavits of the Intervening Couples offer but a glimpse into the protections that could be lost as a result of this action.

For Intervening Couples, the ability to visit and care for a life partner and the capacity to provide financially for one's partner and children after death represent profoundly important interests, so their incentives to preserve the limited protections of the domestic partner law for hospital visitation, family leave to care for a domestic partner and the partner's parents, and inheritance rights are exceedingly high. The distinct and significant personal interests of Intervening Couples in holding onto their domestic partnerships and related benefits readily satisfy the interest prong of the intervention as-of-right standard.

C. The Intervening Couples Would Be Unable To Protect Their Interests

The third prong of the test is that the disposition of the action may impair or impede the interests of the intervening party. Unless they are permitted to intervene, the Intervening Couples would not be able to protect their interests using the tools available to

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[4] The affidavits cited herein refer to the Affidavits of Proposed Intervening Defendants in Support of this Motion for Leave to Intervene, filed with this brief.

parties, such as discovery, motion practice and trial. For example, they would not be in a position to present evidence on factual issues that may need to be resolved before reaching a conclusion on the constitutionality of the domestic partner provisions, by challenging the evidentiary support for Plaintiffs' assertions about what voters intended by the amendment, offering additional evidence from the complex record of the campaign for the marriage amendment, and participating in the trial process through which the disputes over what voters understood and intended are resolved.

The Intervening Couples can offer evidence from a personal perspective about the vast differences between the legal protections and social status afforded domestic partners as compared to married couples, as well as the perceptions of their domestic partnership status among their friends, co-workers, families and acquaintances. Two Intervenors were married to different-sex spouses in the past and have registered as domestic partners recently and therefore can testify first-hand to the differences between the two statuses. (*See* W. Woodruff Aff. ¶ 3; Schermann Aff. ¶ 4)

Intervening Couples are also well-positioned to offer evidence about the harms they would suffer if their domestic partner protections were taken from them. These are the harms the legislature aimed to address when it passed Chapter 770, so the evidence from Intervening Couples will support the presumption that the domestic partner law should be upheld as constitutional. Without the right to intervene, the Intervening Couples would be unable to protect their vital interests. Accordingly, disposition of this action without the Intervening Couples may impair or impede the Intervening Couples' ability to protect its interests in this dispute.

That other parties to the litigation purport to speak for Wisconsinites in domestic partnerships highlights the need for Intervening Couples to participate as parties to protect those interests.

D. The Intervening Couples' Interests Are Not Adequately Represented By The Current Parties

Finally, the Intervening Couples' interests are not adequately represented by the existing parties, because the Intervening Couples' interests in upholding the domestic partner law are personal, in contrast to the official duty of the government to defend it and because of the serious harm to Intervening Couples' interests caused by the Attorney General's refusal to defend the law. Additionally, while Governor Doyle, a defendant in this case, has expressed support of Chapter 770, he has chosen not to run for re-election, and the new governor may not be supportive of the domestic partner law.

The showing required to establish a lack of adequate representation is minimal. *Armada Broad.*, 183 Wis. 2d at 476, 516 N.W.2d at 361-62 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); *M&I Marshall & Ilsley Bank v. Urquhart Cos.*, 2005 WI App 225 ¶18, 287 Wis. 2d 623, 706 N.W.2d 335; *Wolff*, 229 Wis. 2d at, 747, 601 N.W.2d at 305. When there is a serious possibility that the representation of the proposed intervenor *may be* inadequate, "all reasonable doubts are to be resolved in favor of allowing the movant to intervene and be heard on [its] own behalf." *See* 1 Jean W. Di Motto, *Wisconsin Civil Procedure Before Trial* § 4.61, at 41 (2d ed. 2002) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989)).

Even though intervenors need only make a "minimal showing" of the inadequacy of representation, there is a presumption that the representation will be adequate when the

government is arguing for the result being sought by the putative intervenors. *See Helgeland*, 2008 WI 9, ¶91. However, that presumption does not apply here.

First, the distinct personal interests of the Intervening Couples as beneficiaries of the domestic partnership law shows that Defendants' representation is inadequate. The state should not be presumed to simultaneously and adequately represent both the public interest as well as the private interests of the Intervening Couples, particularly when one of the candidates for governor has spoken against domestic partner benefits. Intervening Couples have "special, personal [and] unique interest[s]," *id.* ¶116, as compared to the government Defendants, and their personal interests are likewise "more powerful than" the government Defendants. *Id.* ¶117. *See also id.* ¶204 ("Diversity of interest can be the conclusive factor when evaluating the adequacy of representation.") (Prosser, J., dissenting);[5] *Armada Broad.*, 183 Wis. 2d at 476, 516 N.W.2d at 362 (a governmental entity cannot be expected to defend an action with the same vehemence of the individual person whose personal interests are at stake); *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1255 (10th Cir. 2001) (quoting *Nat'l Farm Lines v. Interstate Commerce Comm'n*, 564 F.2d 381, 384 (10th Cir. 1977)) (applying Federal Rule of Civil Procedure 24(a)) ("We have here . . . the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible. The cases correctly hold that this kind of a conflict satisfies the minimal burden of showing inadequacy of representation.").

Where, as here, the interests of intervenors are unique to a subset of the general population, rather than the public as a whole, the presumption that government representation is

[5] The Intervening Couples are private beneficiaries of the domestic partnership law seeking to intervene in a case defended by the state. In contrast, the municipalities in *Helgeland* sought to assert another governmental perspective on why the employment benefits at issue in that case should be upheld.

adequate is overcome. *Mille Lacs Band of Chippewa Indians v. State of Minnesota,* 989 F.2d 994, 1000-01 (8th Cir. 1993) ("Because the counties and the landowners seek to protect local and individual interests not shared by the general citizenry of Minnesota, no presumption of adequate representation arises."); *Clark v. Putnam County*, 168 F.3d 458, 461-62(11th Cir. 1999) (black voters allowed to intervene in challenge to court-ordered voting plan defended by county commissioners, since commissioners represented all county citizens, including persons whose interests were adverse to proposed intervenors). The Intervening Couples have unique and personal interests in this case, distinct from those of the state and from the general population. The protections they may lose will affect and potentially harm some of the most valuable interests in their lives. The presumption of adequate representation by the state, therefore, is inappropriate and inapplicable in this action.

Similarly, the presumption of adequate representation when a movant and an existing party have the same ultimate objective does not apply in this case. *See Helgeland*, 2008 WI 9, ¶90. The factors that the Court must examine are the difference in the parties' respective incentives to defend the case and what each party has "at stake" depending on the outcome. *Wolff,* 229 Wis. 2d. at 748-50, 601 N.W.2d at 306-07. As persons actually registered in the state's domestic partner registry, the Intervening Couples should not have to sit on the sidelines while the validity of their rights is being challenged. The Intervening Couples are the persons with the most to lose in terms of rights and protections, and they should, therefore, be able to protect those rights directly as a party to this action. Like the proposed intervenor town in *Wolff*, the Intervening Couples "may be in a position to defend the board's decision more vigorously" than the other defendants. *Id.* at 749, 601 N.W.2d at 306. The state's incentives to defend the domestic partner law are different and potentially weaker than those of the Intervening Couples

given the personal harm that Intervening Couples would experience if the law is struck down. Likewise, the Intervening Couples may be "'in a better position . . . to provide a full ventilation of the legal and factual context' of the dispute." *Id.* at 748, 601 N.W.2d at 306 (quoting *Nuesse v. Camp*, 385 F. 2d 694, 704 (D.C. Cir. 1967)).

In addition, the adequacy of the existing party's representation was called into question when Attorney General J.B. Van Hollen announced that he would not defend the constitutionality of Chapter 770. *See, e.g.,* Stacy Forster, *Van Hollen Says He Won't Defend State's Domestic Partnerships*, Milwaukee Journal-Sentinel, Aug. 21, 2009, http://www.jsonline.com/news/statepolitics/ 53957072.html. Inadequate representation by an existing party is shown if that party "fails in the fulfillment of his duty." *Helgeland*, 2008 WI 9, ¶87. "[O]nce legislation is enacted it becomes the affirmative duty of the Attorney General to defend its constitutionality," *State v. City of Oak Creek*, 2000 WI 9, ¶23 n14, 232 Wis. 2d 612, 605 N.W.2d 526, so the Attorney General's refusal to defend Chapter 770 contributes to the showing that the representation is inadequate.

While the state will defend with other distinguished counsel, such outside representation is necessarily compromised. The Attorney General's office has more experience than any other firm in the country when it comes to representing the State of Wisconsin in a challenge to Wisconsin Statutes.

The Intervening Couples, therefore, have made the minimal showing necessary to establish a lack of adequate representation.

E. "Blending and Balancing" The Intervention Requirements Confirms The Right Of The Proposed Intervening Defendants to Intervene

The Intervening Couples meet the four criteria necessary to claim a right of intervention. *See* Wis. Stat. § 803.09(1); *Helgeland*, 2008 WI 9. The Intervening Couples'

showing is particularly strong given the fact that "the criteria need not be analyzed in isolation from one another, and a movant's strong showing with respect to one requirement may contribute to the movant's ability to meet other requirements as well." *Id.* ¶39 (footnote omitted). That is, "there is interplay between the requirements; the requirements must be blended and balanced . . . ." *Id.* In the current situation, the interplay abounds. For example, the difference between Intervening Couples' personal interests as compared to the government's official role to defend the statute demonstrates not only that Intervening Couples meet the interest requirement, but also goes to the adequacy of representation prong. Also, because Intervening Couples' interests are directly at issue in this case, they are able to meet the interest and impairment prongs of the intervention test. When considering such interplay, the showing of the Intervening Couples is even stronger.

Therefore, pursuant to Wis. Stat. § 803.09(1), the Intervening Couples are entitled as a matter of right to intervene in order to adequately protect their interests in the domestic partner registry.

II. IN THE ALTERNATIVE, THE COURT SHOULD EXERCISE ITS DISCRETION UNDER WIS. STAT. § 803.09(2) TO PERMIT THE PROPOSED INTERVENING DEFENDANTS TO INTERVENE

In addition to intervention as a matter of right, upon timely motion a court may exercise its discretion to permit a party to intervene when the movant's claim or defense and the main action have a question of law and fact in common and intervention will not delay or prejudice the adjudication of the rights of the original parties. Wis. Stat. § 803.09(2); *Helgeland*, 2008 WI 9, ¶¶119-20. As discussed under intervention as of right, this intervention motion is timely. The Intervening Couples meet the additional criteria for permissive intervention as well.

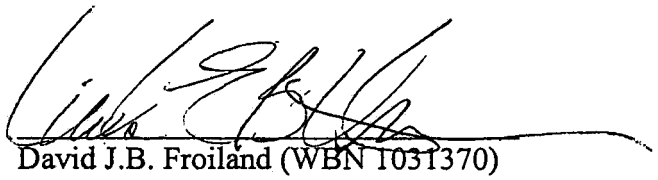
The primary claim in this lawsuit is that the domestic partnership statute creates a legal status substantially similar to marriage, violating Art. XIII, sec. 13 of the Wisconsin

Constitution. Here, applicants seek to intervene in order to respond to Plaintiffs' legal and factual allegations. Common questions of law and fact at issue in the main action that will be addressed by the Intervening Couples include whether the domestic partnership statute and/or the rights afforded to the Intervening Couples are substantially similar to marriage. If allowed to intervene, the Intervening Couples will "significantly contribute to [the] full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Spangler v. Pasadena Bd. of Educ.*, 552 F. 2d 1326, 1329 (9th Cir. 1977); *see also Daggett v. Comm'n on Gov't Ethics & Election Practices*, 172 F. 3d 104, 113 (1st Cir. 1999) (In exercising its discretion, a court may consider a variety of factors, including whether the intervenor's participation would "be helpful in fully developing the case"). Much of this critical information cannot be provided by the current parties. Simply put, it is in the interest of justice to allow the Intervening Couples to intervene.

CONCLUSION

For the reasons stated above, the Intervening Couples should be allowed to intervene as a matter of right pursuant to Wis. Stat. § 803.09(1). Alternatively, permissive intervention should be granted pursuant to Wis. Stat. § 803.09(2).

Dated this 1st day of October, 2010.



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