SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

and

Case No. 2009AP001860 - OA

KATHARINA HEYNING, JUDITH TRAMPF, WENDY WOODRUFF, MARY WOODRUFF, JAYNE DUNNUM, ROBIN TIMM, VIRGINIA WOLF, CAROL SCHUMACHER, DIANE SCHERMANN, and MICHELLE COLLINS,

Proposed Intervening Respondents

RESPONSE OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

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I. INTRODUCTION

Before the vote on Article XIII, Section 13 of the Wisconsin Constitution, commonly known as the Marriage Amendment, the Amendment's sponsors and supporters, and its opponents, each made a broad spectrum of statements about its purpose and meaning and gave a wide variety of answers to the question of what was meant by the Amendment's second sentence. Now that the Marriage Amendment is the law of Wisconsin, some of its proponents seek to undo the will of the Wisconsin legislature and to eliminate the few state rights that the legislature made available to domestic partners in the State by having the provisions of Chapter 770, Wis. Stat. ("Chapter 770") declared unconstitutional. To do so, they assert that the framers of and voters for the Amendment intended that result even though an abundance of evidence suggests otherwise.[1] Certainly, this Court cannot assume Petitioners' statement to be voter intent as a matter of law.

To make their case, Petitioners make numerous sweeping and unsupported assertions to suggest that voters were of like mind about what they intended the Amendment to do, about the meaning of marriage, and in voters'

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[1] For example, in response to a stated concern that the Marriage Amendment could jeopardize domestic partner benefits, Julaine Appling, a petitioner here, in 2006 stated that the Amendment was designed to prevent same-sex marriage, not to affect domestic partner benefits. *Critic questions gay marriage explanation*, Capital Times, August 5, 2006, A1, A8,.

understanding of and openness to domestic partnership status. Petitioners' reductive and oversimplified assertion that the "view of the amendments' proponents" was "a view endorsed by the overwhelming majority of Wisconsin citizens" ignores the diversity of statements offered by a variety of different proponents in a campaign that spanned nearly three years, and in which the Amendment's supporters spent more than $675,000 in 2006, alone.[2] It also assumes, incorrectly, that the campaign messengers always used the same message with each audience, and each member of each audience understood the message in the same way.

During the campaign for the Amendment, voters received information about it in a variety of ways, including on television, in newspapers, on the radio, over the internet, by telephone, on DVD, in literature distributed by mail, in pamphlets and postings and in person. Every marketing tool was used, including an effort to craft messages that would appeal to the particular audience to whom the appeal was offered. This vast array of conflicting evidence must be sorted out and analyzed before one can decide what voters intended in voting for the Marriage Amendment. From this vast campaign record, Petitioners hand pick only two communications – a DVD and a television advertisement – to support

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[2] *See* Wisconsin Democracy Campaign, www.wisdc.org/referendumgroups2006.php (last visited Sept. 21, 2009)

their assertions. Even considering these two communications raises a vast set of questions about their content, distribution and impact. These complex questions of fact need to be resolved, which of necessity, will take significant time, and which is best accomplished by relying on the traditional judicial fact finder – the circuit court. Especially because there is no need for rapid resolution here, it is best that this case be handled by the circuit court, since it is the circuit courts that routinely and expertly wade through complex factual evidence to develop the appropriate record for a case.

Petitioners have a high burden to meet, as the party challenging the constitutionality of a statute must show the statute to be unconstitutional beyond a reasonable doubt. *State v. Quintana*, 2008 WI 33, ¶76, 308 Wis. 2d 615, 748 N.W.2d 447. Petitioners also must meet a high burden to show that this is the rare case where original jurisdiction is appropriate. Neither burden is met here. Instead, the petition relies primarily on unsupported facts and a distortion of the large and diverse campaign record. In this brief, Proposed Intervening Respondents ("Intervenors") will review the law regarding direct intervention, identify the many disputed fact questions raised by this petition, and note that Petitioners' own allegations show that any supposed impact of domestic partnership will occur only "over time." Thus, this is not a case where an immediate exercise by this Court of its jurisdiction is necessary or appropriate, and this Court should not take on the monumental effort of reviewing an

enormous record, overseeing discovery, and resolving multiple disputes of fact. This case fails to satisfy the strict standard for taking the case directly as a matter of original jurisdiction.

Intervenors are five lesbian couples from different parts of Wisconsin who have registered as domestic partners in the counties where they live and will be harmed if they lose the protections for domestic partners that Chapter 770 presently accords to them. As the brief describes, they can testify based on their experiences as domestic partners about the vast difference between the status of domestic partnership and the status of marriage.

Petitioners themselves acknowledge that any purported impact of domestic partnership will only occur "over time." Intervenors dispute Petitioners' assertion that Intervenors and other registered domestic partners will "benefit from a prompt determination of whether the legal arrangements [resulting from Chapter 770] are valid," since the question before the Court is vitally important to them and factually complex. Intervenors respectfully ask this Court to deny Petitioners' request for original jurisdiction in the Wisconsin Supreme Court.

II. THE PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION SHOULD BE DENIED

There are at least two reasons to deny Petitioners' request that this Court take original jurisdiction of this matter. Each reason, on its own, is a sufficient basis on which the Court should deny the petition. Together, they

compel the conclusion that Petitioners should seek their remedy in the circuit court.

1. The petition raises many issues of fact that must be resolved before this case can be decided; and
2. Petitioners admit that there is no need to rush the judicial process, as the harms Petitioners identify will occur (if at all), only "over time."

Petitioners seek extraordinary action by this Court in two respects: first, that it accept original jurisdiction; and second, that it find a legislative enactment unconstitutional. This brief focuses on the first issue, as an exercise of original jurisdiction would not be the optimal means for resolving the question of Chapter 770's constitutionality. Rather, this is a fact-laden inquiry best performed by the circuit court.

Original jurisdiction is rare; this Court limits its exercise of original jurisdiction to exceptional cases. *Wis. Prof'l Police Ass'n, v. Lightbourn*, 2001 WI 59 ¶4, 243 Wis. 2d 512, 627 N.W.2d 807; *In re Heil*, 230 Wis. 428, 448, 284 N.W. 42, 46 (1939). Although the Court's original jurisdiction is "clearly plenary," *State ex rel. Swan v. Elections Bd.*, 133 Wis. 2d 87, 93, 394 N.W.2d 732, 734 (1986), for the Court to actually exercise that jurisdiction there must be a "present or pressing emergency that justifies the extraordinary intervention of an original action." *State ex rel. State Cent. Comm. v. Bd. Of Elections Commr's,*

240 Wis. 204, 214, 3 N.W.2d 123, 127 (1942) (finding that resolution of an issue of statutory construction was not a "present or pressing emergency that justifies the extraordinary intervention of an original action").

Just as a grant of original jurisdiction is rare, so too is a finding that a statute is unconstitutional. As this Court recognized in *State v. Cole*, 2003 WI 112, ¶11, 264 Wis. 2d 520, 665 N.W.2d 328, legislative enactments are presumed to be constitutional. "Moreover, the heavy burden of overcoming this presumption lies with the person attacking the statute. A party bringing the challenge must show the statute to be unconstitutional beyond a reasonable doubt." *Quintana*, 2008 WI 33, ¶76 (internal quotation marks and quoting citations omitted). "Our duty is to uphold a legislative act if at all possible." *Bilda v. Milwaukee County*, 2006 WI App 159, ¶31, 295 Wis. 2d 673, 722 N.W.2d 116 (quoting *Prof. Police Ass'n*, 2001 WI 59). "This court has often affirmed the well-established presumption of constitutionality that attaches itself to all legislative acts." *Cole*, 2003 WI 112, ¶11 (quoting *In re Guardianships of Ruth E.J.*, 196 Wis. 2d 794, 801, 540 N.W.2d 213, 215 (Ct. App. 1995)).

If this Court grants original jurisdiction in order to decide a statute's constitutionality, without permitting the circuit court to resolve the myriad factual issues, it will have sacrificed the benefits of a fully-developed evidentiary record in favor of unnecessary speed. The multiple levels of judicial review, with the circuit court as fact-finder, and the three branches of government,

with the presumption that the actions of the legislature are constitutional, are central features of our government, and should not be lightly discarded. Here, this Court should decline original jurisdiction, which will permit a trial court to fully analyze the issues of fact that are so important to deciding the constitutionality of the domestic partner registry.

A. This Court Should Refuse Original Jurisdiction Over This Case Because Petitioners' Assertions About Voters' Intentions In Passing The Marriage Amendment And About The Nature And Scope Of Domestic Partnerships Under Wis. Stat. Ch. 770 Raise Complex Issues Of Fact

A constitutional amendment is construed, "to give effect to the intent of the framers and of the people who adopted it ... ." *Dairyland Greyhound Park, Inc. v. Doyle*, 2006 WI 107, ¶24, 295 Wis. 2d 1, 719 N.W.2d 408. Such an analysis includes examination of legislative debates and the ratification campaign. *Id.* ¶24. It also properly includes review of public statements and news accounts leading to the vote, and polls near the time of the vote. *Id.* ¶38. A decision here will require the Court to review facts to analyze the intent of the framers and voters regarding the Marriage Amendment and the nature and scope of the domestic partner provisions in Chapter 770 and elsewhere in Wisconsin statutes.

The factual issues raised by Petitioners show that original jurisdiction is inappropriate here. This Court only takes original actions when the facts are undisputed. *See Citizens Util. Bd. v. Klauser*, 194 Wis. 2d 484, 488, 534 N.W.2d 608 (1995). In the past, this Court's review of constitutional amendments

has been based on undisputed factual records. *See, e.g., Dairyland; Wis. Prof'l Police Ass'n,* 243 Wis. 2d 512, 627 N.W.2d 807 (facts stipulated to under supervision of reserve judge); *Norquist v. Zeuske*, 211 Wis. 2d 241, 564 N.W.2d 748 (1997) (facts undisputed); *Joni B. v. State*, 202 Wis. 2d 1, 549 N.W.2d 411 (1996) (facts undisputed).

Here, however, the factual record is complicated and Petitioners' assertions, which Intervenors largely contest, highlight the many factual disputes that must be resolved. Petitioners rely on the following allegations to make their claim that Chapter 770 is unconstitutional: 1) that the framers and voters on the Amendment purportedly intended to deny same-sex couples legal protections that overstepped in any way those provided through civil marriage; 2) that Chapter 770 will result in extra costs to the state; and 3) that Chapter 770 will have an impact on families and marriages within the State. Petitioners provide no support for these allegations, all of which raise questions of fact.

Petitioners' claims regarding the intent of the voters (Petition, ¶¶ 20-26) acknowledge the importance of this factual issue, and are based on an overly simplified, if not distorted, version of an extremely complicated factual record. Intervenors dispute Petitioners' assertions and seek an opportunity to challenge their view of the facts. Public statements of the proponents, including Petitioners, will need to be reviewed. Petitioners will need to be deposed. The marketing of the Marriage Amendment during the 2006 campaign, including its

content, reach and impact, will need to be analyzed. The resolution of the many factual issues raised by Petitioners' claims will necessitate review of dozens of newspaper articles, television reports, commercials, speeches, public statements, pamphlets, blogs, websites, press releases, as well the various polls that were taken about the public's views on marriage, civil unions, and domestic partnerships that preceded the passage of the Marriage Amendment, with sometimes seemingly inconsistent results. (*Cf. Dairyland Greyhound Park,* ¶¶ 38-44). Experts may be needed to analyze the impact of various messages about the Amendment and to elucidate the ways in which the polls are relevant to the question of voter intent. As the Marriage Amendment was strenuously and publicly fought, the factual record will be considerable. Circuit courts are best equipped to undertake this task.

The assertions of Petitioners about the domestic partnership status under Chapter 770 raise a second factual inquiry that involves numerous facts about the public understanding of the new domestic partner status and the extent of its protections. *See* Petition, ¶¶ 16-32. As shown below, the development of the factual record with respect to voter intent and the perceptions of the new domestic partner status will require extensive court supervision. This, again, is the province of a circuit court in this state, not the Supreme Court.

1. This Court does not take original jurisdiction when there are factual disputes that must be resolved

This Court takes original jurisdiction reluctantly, and only when the facts are stipulated to or otherwise not in dispute. *See Citizens Utit. Bd.*, 194 Wis. 2d at 488, 534 N.W.2d at 608 (noting the Court's "reluctance to take these cases as a matter of course," but accepting original jurisdiction where "the material facts are agreed to by the parties"); *State v. City of Oak Creek*, 2000 WI 9, ¶ 108, 232 Wis. 2d 612, 605 N.W.2d 526 (Abrahamson, C.J., dissenting); *Green for Wis. v. State of Wis. Elections Bd.*, 2006 WI 120, 297 Wis. 2d 300, 302, 303, 723 N.W.2d 418, 419, 420 (noting "this [C]ourt is not a fact-finding tribunal" and "generally will not exercise its original jurisdiction in matters involving contested issues of fact," *id.*, and that original jurisdiction "is designed to resolve important legal questions but not to referee factual disputes"). *See also State ex rel. Attorney General v. John F. Jelke Co.*, 230 Wis. 497, 502, 284 N.W.494, 496 (1939) (original action rejected because of fact "which can be appropriately tried in the circuit and other trial courts.")

In *Norquist*, this Court accepted original jurisdiction of an action where the petitioners challenged the constitutionality of a statute and the facts were undisputed. After analysis, this Court determined that the record was not sufficiently developed, and dismissed the case without resolving the constitutional issue.

Just as in *Norquist*, the record here is not yet sufficiently developed, and there are many issues of fact that will need to be resolved prior to a ruling on the constitutionality of Chapter 770. Issues of fact about the complex record of the Marriage Amendment will be relevant to resolving the legal issues on which the constitutionality of Chapter 770 will turn – the meaning of the Marriage Amendment and whether domestic partnerships established by Chapter 770 may coexist with this Amendment. A case with so many fact issues is not appropriate for this Court's original jurisdiction.

2. Deciding the meaning of the Marriage Amendment requires a careful review of the historical record as reflected in testimony, numerous documents, and different media

The fundamental question before this Court is whether Chapter 770 is unconstitutional in light of Article XIII, Sec. 13 of the Wisconsin Constitution. This turns on whether domestic partnership registration creates "a legal status identical or substantially similar to that of marriage for unmarried individuals" such that it violates the Marriage Amendment of the Wisconsin Constitution, which 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.

As Petitioners themselves acknowledge, in interpreting this constitutional amendment, the Court must determine if the intent of the framers

and the people who adopted this amendment was to prohibit the registration of domestic partners as authorized by Chapter 770. (Petition, ¶ 9, citing *State v. Cole*, 2003 WI 112, ¶10).

According to *Cole*, the Court consults three sources when determining the meaning of a constitutional provision:

> [T]he plain meaning of the words in the context used; *the constitutional debates and the practices in existence at the time of the writing of the constitution*; and the earliest interpretation of the provision by the legislature as manifested in the first law passed following adoption.

Id. at ¶10 (emphasis supplied). Wisconsin courts may consider extrinsic evidence in interpreting constitutional amendments even if they find the language unambiguous. *Dairyland Greyhound Park,* 2006 WI 107, ¶¶114-17. They conduct a "historical analysis" of the amendment being construed by examining "the legislative debates and the ratification campaign," *id.* ¶24, and by reviewing "the information used to educate the voters during the ratification campaign" as "evidence of the voters' intent." *Id.* ¶37. News articles, polling results, and statements of the amendment's proponents found in other sources also must be considered. *Id.* ¶38.

An analysis of "the constitutional debates and the practices in existence at the time of the writing of the constitution," therefore, involves the review of and resolution of disputes about a number of different types of evidence

of what voters intended. Petitioners' reliance on selected evidence to support their view of voter intent, (Petition, ¶ 24), concedes the factual nature of this dispute.

Although constitutional interpretation is an issue of law, *Dairyland Greyhound Park*, 2006 WI 107, ¶ 16, resolving the question of what voters intended involves the resolution of numerous fact issues. The intention of voters is, therefore, a matter of constitutional fact in which this Court upholds "a circuit court's findings of historical or evidentiary fact unless they are clearly erroneous," *State v. McMorris,* 213 Wis. 2d 156, 165, 570 N.W.2d 384, 388 (1997), before considering "whether the historical or evidentiary facts satisfy the relevant constitutional standard," a question of law the appellate courts review de novo. *Id.*

A case like this, where numerous factual issues must be decided, should begin at the circuit court for fact-finding. The central purpose of a circuit court is to find facts and develop a case for appellate review. Such a court can most competently handle the many factual issues as issue. *See* Wis. Stat. §§ 751.09, 752.39, 753.03. Appellate courts defer to the fact-finding of trial courts because such courts have direct, first-hand experience with volumes of evidence. Trial courts do the initial fact-finding because their experience managing discovery, assessing credibility, and deciding between competing factual scenarios makes them better suited to these tasks than are appellate courts.

3. Petitioners' claims about what voters intended by "a legal status identical or substantially similar to that of marriage" and the meaning of domestic partnerships under Wis. Stat. Ch. 770 reveal and acknowledge multiple disputes of fact

The historical record leading up to passage of the Marriage Amendment includes numerous evidentiary records, such as several legislative reports, television commercials, web pages, radio spots, pamphlets, public opinion polls, and dozens of newspaper articles. Petitioners' assertions about what voters intended and why Chapter 770 falls within the scope of what they intended to prohibit are based on a tiny, arbitrary and self-selected subset of this evidence – a DVD, one television commercial by Amendment proponents, and conclusory assertions about what Ms. Appling and other proponents said. Petition, ¶¶ 23, 24. A review of their assertions about voters' intent confirms the need for extensive factual development and analysis. A second set of factual assertions concerns the "social meaning" of the new domestic partnership status for purposes of determining whether that status violates the Marriage Amendment.

a. Petitioners' assertions about voters' intentions raise factual questions

The petition rests upon a variety of assertions about what voters intended. Petition, ¶¶ 21, 22, 25, 32, 33. Petitioner's reliance on these contested allegations of fact underscores the need for resolution of the relevant facts. For example, citing only a 2005 book by the Council on Family Law, Petitioners contend that the people of Wisconsin "intended to prohibit the creation of a

marital-like status for relationships that, while similar in some ways, differ from marriage in ways that will, over time, alter key cultural and legal components of marriage stemming from the unique nature of opposite-sex relationships and, therefore, undermine the 'conjugal model' of marriage." Petition, ¶ 21. Petitioners do not explain how the authors of a book published in 2005 could know the intent of Wisconsin's voters in November of 2006 nor do they show how that book could have influenced Marriage Amendment voters. Petitioners' assertion about voter intent based on this book raises factual questions about the book's relevance and what, if any, weight it should be given.

The petition describes in broad strokes the "view of the amendments' proponents" which purportedly was "endorsed by the overwhelming majority of Wisconsin citizens" Petition, ¶ 25. As evidence for this assertion, Petitioners describe the arguments of Ms. Appling, other unnamed proponents, a DVD, and a television commercial.

Ms. Appling said many things during the campaign that are not consistent with her position now. For example, in response to a stated concern that the Marriage Amendment could jeopardize domestic partner benefits, she stated that the Amendment was designed to prevent same-sex marriage, not to affect domestic partner benefits. *Critic questions gay marriage explanation*, Capital Times, August 5, 2006, at A1, A8.

Amendment proponents other than Ms. Appling took many different positions about the Amendment's meaning, and opponents of the Amendment challenged those positions on multiple occasions. The statements of proponents have been recorded in newspaper reports, press releases, television and radio recordings, and YouTube videos, among other media. The Petitioners should be deposed to expose the full range of their statements to voters and to examine the factual basis for their assertions about voter intent.

In addition to the public statements of proponents, evidence of the materials they circulated to seek the passage of the Marriage Amendment is also relevant to the court's inquiry. Proponents refer to such material and assert that it supports their view of the Wisconsin voters' intent. Petition, ¶ 24. However, Petitioners provide no information regarding the number of voters, if any, who saw these materials, whether these materials influenced voters, or whether these materials even reference the provision of benefits to domestic partners. The two items described by Petitioners are a tiny part of an enormous body of voter materials offering diverse messages that ought to be reviewed to determine voter intent. Polling information from the lead-up to the election, on both the Marriage Amendment and closely related issues such as civil unions and domestic partnerships is also relevant.

A court will have to sort through this vast record, resolve disputes about its meaning, oversee discovery disputes, and evaluate the admissibility and

weight of witness and expert testimony. The questions of what voters intended by passing the Marriage Amendment are difficult and hotly contested and cannot be decided as a matter of law on a set of briefs.

b. Petitioners' assertions about the scope and meaning of domestic partnerships as compared to marriage raise issues of fact.

First, Petitioners argue that domestic partnerships "share enough of the core legal incidents of marriage to be seen by a reasonable observer as a form of marriage." Petition, ¶ 18. They also argue that the legal status of domestic partners is "substantially similar" to that of marriage because domestic partnerships "differ from marriage in ways that will, over time, alter key cultural and legal components of marriage … ." Petition, ¶¶ 21 – 32. This argument raises questions about how domestic partnerships created pursuant to Chapter 770 are viewed and will be perceived in the future, as well as an understanding of whether Marriage Amendment voters intended to prevent the state from recognizing such a status. Finally, they argue that the violation of the Marriage Amendment by the new domestic partnership status "turns on the new status' social meaning and public perception – not on a detailed examination of what statutory benefits and duties associated with it are 'in' or 'out...'" Petition, ¶ 32. All of these assertions about domestic partnerships entered into under Chapter 770 raise numerous factual questions about Wisconsinites' perception of domestic partnerships which will require factual development.

(i) Even under Petitioners' proposed test, there are questions of fact to determine whether domestic partnerships pursuant to Chapter 770 "share enough of the core legal incidents of marriage to be seen by a reasonable observer as a form of marriage"

Petitioners argue that a reasonable observer would see domestic partnerships as marriage, because they "share enough of the core legal incidents of marriage." This assertion raises numerous questions of fact. There are, for example, factual questions about voters' understanding of "core legal incidents" of marriage. Resolving that question will likely require testimony from family law experts, marriage historians, and/or public opinion experts. There will need to be a careful review of the Amendment's factual record to determine whether a "reasonable observer" test regarding the core legal incidents of marriage was what the framers and voters intended when they passed the Marriage Amendment, and, if so, how they intended the test to be applied.

An additional factual inquiry raised by Petitioners (Petition, ¶ 18) is whether a "reasonable observer" would find that domestic partnerships under Chapter 770 share sufficient core legal incidents to be "substantially similar" to marriage.

(ii) Petitioners contention that domestic partnerships under Chapter 770 "differ from marriage in ways that will, over time, alter key cultural and legal components of marriage" involves factual issues

Petitioners' alternative view of voter intent focuses on the differences between domestic partnerships and marriage. There are many differences, of course, since married couples are granted benefits under approximately 155 state code sections, while domestic partner are allowed approximately 35. Memorandum from Scott B. Thornton and Caitlin Morgan Frederick of the State Budget Office to Cari Anne Renlund, Chief Legal Counsel of the Wisconsin Department of Administration (March 4, 2009). The two significant factual questions raised by this argument are whether voters intended to prevent the state from recognizing domestic partnerships that were different in certain ways from marriages. If so, this Court would have to reach conclusions about which differences would cause a violation of the Amendment, and then determine whether Chapter 770 domestic partnerships fail that test. Resolving these facts also requires analysis of the Marriage Amendment campaign record and the differences between domestic partnerships and marriage in the lives of Wisconsin citizens.

(iii) Petitioners' allegation that the legal status of domestic partnerships is determined by their "social meaning and public perception" raises additional factual issues

After asserting that the similarities between the entry mechanism and legal incidents of domestic partnerships and marriage violate Article XIII, § 13, Petitioners assert that whether domestic partnerships are "substantially similar to marriage" does not turn "on a detailed examination of what statutory benefits and duties associated with it are 'in' or 'out.'" Petition, ¶ 32. Rather, Petitioners argue, the legal status of domestic partnerships is determined by whether the "social meaning and public perception" of domestic partnerships undermines the "conjugal model" of marriage. Petition, ¶¶ 22 – 32.

To decide whether voters were concerned about the social meaning of domestic partnership when they voted for the Marriage Amendment, the Amendment record must be reviewed. Further, a court will have to discern what voters intended by substantial similarity in social meaning and public perception so that it can determine at what point the social meaning of a domestic partnership becomes substantially similar to the social meaning of marriage. If, in fact, voters intended for the meaning of "substantially similar" to be measured under Petitioners' "social meaning" theory, analysis of the similarities and differences between the social meaning and public perception of the new domestic partnerships entered under Chapter 770 and marriage raises numerous fact issues

that require analysis, likely including social science expert testimony about the meaning of marriage and the new domestic partnership status.

4. Intervenors testimony demonstrates how domestic partnerships pursuant to Chapter 770 assist them, and the vast differences between domestic partnership and marriage

Intervenors Judi Trampf and Katy Heyning; Wendy and Mary Woodruff; Jayne Dunnum and Robin Timm; Virginia Wolf and Carol Schumacher; Diane Schermann and Michelle Collins; are lesbian couples who have been together from six (Diane and Michelle) to thirty-four (Virginia and Carol) years. I. App. 12, ¶ 3; I. App. 26, ¶ 2. All have registered as domestic partners in their home county. I. App. 8, ¶ 1; I. App. 22, ¶ 1; I. App. 29, ¶ 1; I. App. 32, ¶ 1; I. App. 5, ¶ 2; I. App. 19, ¶ 2; I. App. 26, ¶ 3; I. App. 16, ¶ 3; I. App. 12, ¶ 2; I. App. 1, ¶ 2.

Intervenors can offer testimony about the vast differences between marriage and domestic partnerships, such as the fact that domestic partnerships are not recognized or even well understood outside of Wisconsin, (I. App. 10, ¶ 15; I. App. 24, ¶ 16; 33, ¶ 9; I. App. 30 ¶ 7; I. App. 7, ¶ 12; I. App. 21, ¶ 12; I. App. 28, ¶ 15; I. App. 18, ¶ 14; I. App. 14, ¶ 15; I. App. 3, ¶¶ 13, 14), as well as the fact that there are many important protections provided to married couples that are not offered domestic partners under both state and federal law. I. App. 10, ¶¶ 14, 15, 18; I. App. 24, ¶¶ 15, 16, 19; I. App. 34, ¶¶ 12, 13; I. App. 30, ¶¶ 9, 10; I.

App. 6, ¶ 11; I. App. 21, ¶ 11; I. App. 28, ¶ 15; I. App. 18, ¶ 14; I. App. 14, ¶ 13; I. App. 3, ¶ 13.

Based on their experiences as domestic partners, Intervenors can testify about the fact that such status is not well-understood even within Wisconsin that it does not prompt the kind of respect accorded to a marital relationship. I. App. 19, ¶¶ 16, 17; I. App. 24, ¶¶ 17, 18; I. App. 28, ¶ 15; I. App. 18, ¶ 14. Intervenors' relationship may be well-understood and respected by their friends and family (I. App. 14, ¶ 12; I. App. 3, ¶ 12), however, Intervenors believe that persons outside that circle will ask them to explain their relationship, because they do not understand domestic partnership the way the do marriage. If Virginia Wolf and Carol Schumacher could marry, for example, they believe their relationship would be much easier for grandchildren to explain to friends. I. App. 28, ¶ 15; I. App. 18, ¶ 14. Marriage would similarly assist Diane Schermann and Michelle Collins. I. App. 14, ¶ 14; I. App. 3, ¶ 14. The Intervenors who were once married can speak first-hand of the differences between how their marriage was treated as compared to their domestic partnership in both concrete and less tangible ways. I App. 14, ¶ 15; I. App. 33, ¶ 10; I. App. 34, ¶ 13.

Intervenors can also show first-hand the harm that would be inflicted on them if they were to lose the limited domestic partner protections provided by Chapter 770 as well as the many ways in which domestic partnerships differ from marriage. Descriptions of some of these benefits and

differences between domestic partnership and marriage are set out in the affidavits in the appendix to this brief. Intervenors will introduce facts showing that the benefits offered to domestic partners, while they help them in significant ways, are a mere fraction of those afforded to married couples. Intervenors also will show that there is a substantial difference between the social status that domestic partnerships provide for their relationships and the status provided by marriage.

Several of these couples have had experiences in which the status of their relationship was challenged, such as a hospital refusing to allow Judi Trampf to make decisions for her partner, Katy Heyning, since Judi could not produce a health care power of attorney. I App. 9, ¶¶ 6-8; I App. 23, ¶¶ 7-9. Virginia Wolf and Carol Schumacher had a similar experience when Carol had to be taken to an emergency room and the nurse initially refused to allow Virginia to be with her because she was "not family." I App. 27, ¶ 9; I App. 17, ¶ 9. Similarly, Wendy and Mary Woodruff's relationship was questioned when Mary was hospitalized. I App. 30, ¶ 8; I App. 33, ¶ 10.

All Intervenor couples draw a sense of security from the protections their domestic partnerships provide them and would be injured by their loss. They would offer testimony about the importance of hospital visitation (I App. 30, ¶ 8; I App. 33, ¶ 10); intestacy rights, (I App. 13, ¶ 10; I App. 2, ¶ 9); family leave to take care of their seriously ill partner or their partner's parents, (I

App. 10, ¶ 13; I App. 24, ¶ 14; I App. 13, ¶ 9; I App. 2, ¶ 10; I App. 20, ¶ 6; I App. 6, ¶ 6), the right to share a nursing home room, (Wolf, ¶ 13; Schumacher, ¶ 12), and the ability to consent to their partner's admission to a hospice for end-of-life care. I App. 30, ¶ 5; I App. 33, ¶ 5; I App. 20, ¶ 9; I App. 6, ¶ 9; I App. 27, ¶ 10; I App. 17, ¶ 10; I App. 14, ¶ 11; I App. 3, ¶ 11.

B. Petitioners Have Conceded That The Harm They Allege Will Happen Only "Over Time," So There Is No Need For The Court To Take Original Jurisdiction Or To Bypass The Customary Trial And Appellate Process

Despite demanding speed, Petitioners themselves acknowledge that there is no immediate risk to the institution of marriage caused by the registration of domestic partnerships. In the words of their own Petition, they argue that the harm to be avoided is that declarations of domestic partnership "threaten to undermine the conjugal model of marriage." Petition, ¶ 15. They argue that the Amendment sought to avoid "the legal sanctioning and social normalization of an alternative, 'look-alike' form of marriage which ... would, *over time*, necessarily alter the cultural and legal incidents of conjugal marriage." Petition, ¶ 33 (emphasis added). Because the harm alleged – a harm to the "social meaning" of marriage – will emerge only over time, if at all, there is no urgency justifying the invocation of this Court's original jurisdiction.

All of the purported harms alleged by Petitioners, impact on marriage, impact on families, and costs to the state, are at best conjecture, and

may never occur. Permitting this case to proceed before the circuit court will provide the time necessary to determine whether Petitioners can support their predictions.

If Petitioners' claim that resolving whether domestic partnerships are substantially similar to marriage "turns on the … social meaning and public perception – not on a detailed examination of what statutory benefits and duties associated with it are 'in' or 'out'" (Petition, ¶ 32), then the passage of time will help illuminate the social meaning and public perception of domestic partnerships in Wisconsin. A premature presentation of this issue to the Supreme Court, before any effects on the social meaning and perception of marriage can emerge, will undermine an accurate and lasting determination of the question presented by Petitioners.

Wisconsin's circuit courts have expertise in and a long history of handling factual issues of the sort presented here. Original jurisdiction in the Supreme Court is rare because it is not often necessary: Wisconsin's constitutionally-based (Article VII, § 2), three-tier court system is ideally suited to handle important constitutional cases raising complicated factual issues. Except as otherwise provided by law, the circuit court has original jurisdiction of all civil matters filed in this state. (Article VII, § 8).

"As a general rule, the original jurisdiction of the Supreme Court may not be invoked if there is an adequate and speedy remedy in some other

competent tribunal." 1 Jay E. Grenig, *Wisconsin Pleading and Practice* § 2:37 (5th ed. 2009) (citing *State ex rel. Attorney Gen. v. John F. Jelke Co.*, 230 Wis. 497, 284 N.W. 494 (1939)). Although expediency is an important consideration for the court, "[t]he mere expedition of causes, convenience of parties to actions, and the prevention of a multiplicity of actions do not form a basis for the Supreme Court to exercise original jurisdiction." *Id.* (citing *State ex rel. Cash v. Juneau County Supervisors*, 38 Wis. 554 (1875)).

Petitioners' only explanation of their demand for a quick result is the conclusory and unsubstantiated claim that the grant of domestic partner benefits will violate the constitution, and "permitting constitutional violations any longer than practically necessary is unacceptable." Petition, ¶¶ 41, 42. This ignores the presumption of constitutionality to which Chapter 770 is entitled. Petitioners' request for original jurisdiction incorrectly assumes that no one will challenge the "facts" they set forth or the conclusions that they draw from those facts.

Petitioners attempt to elide the substantial issues of fact raised by their own petition and the procedural complications this Court would face in resolving them. Although a statutory provision permits the Supreme Court to appoint a referee or refer the matter to a circuit judge to resolve issues of fact, this Court has avoided doing so when issues of fact exist. Wis. Stat. § 751.09. In *Green for Wis.*, 2006 WI 120, the parties initially stipulated to a set of facts, but

then later disagreed about the existence of factual issues. This Court acknowledged that the case might implicate important and complex issues including due process, freedom of speech, and federal campaign statutes, but the case would only be in an appropriate posture for an original action if the factual disputes were settled, the legal issues adequately set forth and the jurisdictional issues resolved. *Id.* at. 303-4, 723 N.W.2d at 420.

In light of the clear need for some fact-finding mechanism, it makes more sense to follow the usual procedure of allowing the circuit court to determine the facts and apply the law, the court of appeals to correct any legal errors or clearly erroneous factual findings, and the Supreme Court to make a final determination on a fully-developed record. Circuit courts are fully capable of granting any remedy Petitioners seek. A grant of original jurisdiction by this Court is not necessary because a circuit court judge is perfectly capable of issuing orders and injunctions as needed to effectuate his or her rulings. By permitting the case to proceed through Wisconsin's three-tiered court system, the parties – and the public – would be assured that the issues were ripe for determination by the time the case reached this Court.

In addition to the fact that there is no need for an immediate resolution of the many factual issues present, judicial resources may be preserved if this matter is sent to the circuit court for resolution of the factual issues identified above.

On May 12, 2009, this Court accepted the case of *McConkey v. Van Hollen* on certification by the Wisconsin Court of Appeals. One of the questions certified to this Court is "whether Article XIII, Section 13 of the Wisconsin Constitution, commonly known as the marriage amendment, was enacted in violation of the single-subject rule set forth in Article XII, Section 1 of the Wisconsin Constitution." Certification by Wisconsin Court of Appeals, Ap. No. 2008AP1868, April 9, 2009.

The decision in *McConkey* may impact the resolution of this case. If this Court determines in *McConkey* that the Marriage Amendment was enacted in violation of the Wisconsin Constitution, Chapter 770 cannot be the subject of a constitutional challenge, and this case will be moot. It would be premature to decide the constitutionality of legislation under a constitutional provision that is currently the subject of litigation and may itself be invalid. Absent a need for emergency action that Petitioners have failed to show, accepting original jurisdiction of the present action is an inefficient use of the judicial resources of the Wisconsin Supreme Court.

The issues in this case are important enough to deserve the careful treatment of Wisconsin's judicial system, beginning with the fact-finding expertise of the circuit court. It is far from clear that the harms alleged are even occurring or will ever occur. A full factual record of any effects on marriage in Wisconsin over time and whether recognition of domestic partnerships affected

marriage in other states could be developed in the circuit court to help the judicial system arrive at a legitimate conclusion on this contested question. By permitting the circuit court to undertake a full development of the facts, and vetting and analysis of the complex issues raised in the petition, this case is more likely to be ready for final analysis by this Court at some time in the future than it is today.

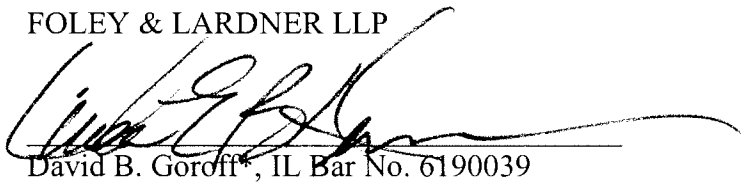
III. CONCLUSION

Petitioners fail to demonstrate that this case requires a grant of original jurisdiction. Many issues of fact are raised in the petition, making the circuit court a more appropriate setting. Additionally, there is no need for a quick resolution of this matter. Even Petitioners agree that the harms they allege are at best theoretical, and may not occur until some time in the future, if ever. Finally, the case may be resolved by this Court's decision in *McConkey*.

Accordingly, Intervenors request that the Supreme Court not accept original jurisdiction of this matter, and permit it to follow its course at the circuit court level.

[SIGNATURE BLOCK ON NEXT PAGE]

FOLEY & LARDNER LLP



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Appendix of Proposed Intervening Respondents

Appendix

Affidavit of Michelle Collins.....I. App. 1-4

Affidavit of Jayne Dunnum.....I. App. 5-7

Affidavit of Katharina Heyning.....I. App. 8-11

Affidavit of Diane Schermann.....I. App. 12-15

Affidavit of Carol Schumacher.....I. App. 16-18

Affidavit of Robin Timm.....I. App. 19-21

Affidavit of Judith Trampf.....I. App. 22-25

Affidavit of Virginia Wolf.....I. App. 26-28

Affidavit of Mary Woodruff.....I. App. 29-31

Affidavit of Wendy Woodruff.....I. App. 32-34

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

Case No. 2009AP001860 - OA

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF MICHELLE COLLINS IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Michelle Collins, being first duly sworn on oath, depose and say:

1. I live in Eau Claire, Wisconsin, with my life partner, Diane Schermann. I am 38 years old.

2. Diane and I registered as domestic partners at the Eau Claire County Courthouse on August 25, 2009. We paid $10 to waive the five-day waiting period, so our registration took effect immediately.

3. Diane and I were close friends for over five years before we became romantically involved more than six years ago. On September 25, 2004, Diane and I celebrated our relationship in a commitment ceremony.

4. Diane has two children from a previous marriage. One is in college now and the younger one lives with us. Diane and I jointly parent these children. As a result, Diane signed a medical consent authorizing me to make medical decisions for the children. Diane and I decided to co-parent a child, so I became pregnant through *in vitro* fertilization and in April 2008 I gave birth to a boy. I signed agreements to document and protect the parental relationship that Diane has with our baby by naming her as a guardian should I die or become incapacitated and authorizing

Diane to visit our child in medical facilities and at school, to see our child's school and medical records, and to make decisions for our child regarding medical care and school.

5. Diane and I have been jointly licensed by the State of Wisconsin as foster parents. For more than five years, we have been able to provide foster care for several children until they aged out of the foster care system at age eighteen. We have remained in contact with our former foster children who form a part of our extended family. We are currently caring for two teenage foster children in our home.

6. Diane and I spend our time outside of work caring for our children and offering our support to community groups. We regularly volunteer at our children's schools and completed six months of training run by the Wisconsin Department of Public Instruction to learn to support, educate and advocate for better treatment and services for special needs children and their parents. Before I became pregnant, I coached sports and will again in the near future. Diane has received awards for her community service volunteering in outreach programs for youths.

7. I received my Bachelors in Social Work in May 2009. In July, I started a position with Lutheran Social Services of Wisconsin and Upper Michigan, Inc., a private non-profit social service agency. In that position, I license and train foster families to care for children who are in need of exceptional care.

8. Diane and I share household expenses, have shared bank accounts, and jointly own a truck. Diane and I have named each other as beneficiaries for our respective retirement plans and life insurance policies. Diane and I have also named each other as the responsible party on financial powers of attorney documents.

9. Diane and I have each prepared power of attorney for health care documents in which we each appointed the other as our health care decision-maker. We have not yet prepared wills to protect our desire that each of us be the primary beneficiary of the other's property, because we have not had the financial resources to pay a lawyer to draft our wills. The domestic partnership law will assist us in the event that either of us were to die before completing a will, since the intestacy provisions in it will guarantee that at least one-half of our estate passes to the other. I also understand that even after I complete a will, Diane will have additional rights in the probate process, such as her ability to seek temporary support during the estate administration process, because of the fact that we are domestic partners.

10. If Diane were to become seriously ill and need me to stay home and care for her, I feel safer knowing that the family medical leave act protects my ability to care for Diane, because we have registered as domestic partners.

11. Diane is the person who knows me best, including my health history, medical conditions, and views about end-of-life decisions. If for some reason my power of attorney were to be unavailable to Diane or a medical provider were to refuse to follow it, the legal protections to us as domestic partners make me feel safer. For example, I understand that Diane could consent to my admission to a hospice for end-of-life care and could agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Diane would be able to make medical decisions for me during my stay there. Since there is no one in my family better suited to make those decisions, these protections are very important to me.

12. Wisconsin's Domestic Partner law does not change the deep personal commitment Diane and I feel to one another, and it does not affect the ways in which our friends and family support our relationship. However, the limited legal protections for us as domestic partners make me feel more secure about my future with Diane.

13. Marriage, however, is different from a domestic partnership in very important ways. There are hundreds of state and federal protections the come from marriage, while domestic partnership provides just a few. The most important protection that Diane and I would secure if we could marry would be my ability to adopt our child born in April 2008. I have named Diane to be the guardian for our child if I were to die or become incapacitated, but Diane is unable to secure her parental rights and our child's future financial and emotional security through an adoption as she could if Diane and I were married.

14. In addition to the numerous important differences between the protections available to married couples in comparison to domestic partners, marriage would be understood and respected by people outside of our group of friends and family much more than is a domestic partnership. Marriage is something that others understand without our having to explain it. Our inability to marry in order to gain the esteem that society reserves for that relationship is something that would especially benefit our children who would no longer have to struggle explain our relationship to their friends and acquaintances. Diane and I work hard to make our family a secure and loving place for our children and we believe that marriage would reinforce our children's well being much more than our registration as domestic partners.

Dated September 18, 2009

Michelle Collins

Subscribed and sworn to before me
this 18th day of September, 2009

Notary Public, State of Wisconsin
My commission expires: 10/02/11

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

Original Action Case No. _____

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF JAYNE DUNNUM IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Jayne Dunnum, being first duly sworn on oath, depose and say:

1. I live in Platteville, Wisconsin, with my life partner, Robin Timm. I was born in Wisconsin and am 52 years old.

2. Robin and I registered as domestic partners at the Grant County Courthouse on August 11, 2009. We paid $10 to waive the five-day waiting period, so our registration took effect immediately.

3. Robin and I met in 1992, and had a private commitment ceremony on November 13, 1992.

4. I am currently employed as the Director of Training and Staff Development at the Wisconsin Department of Corrections, where I have worked in various capacities since 1990. I also work part-time on the farm that Robin and I purchased in 1996 and at a natural food store that we own with two other families. The store opened recently and is not yet generating a profit.

5. Robin and I jointly own our farm, where we also live. We are both named on the deed, the mortgage and the mortgage note. We also jointly own three cars, one farm truck, and bank accounts.

6. Robin's mother, who is 76 years old, has chronic obstructive pulmonary disease. We anticipate that as she ages we will need to take a more active role in her life, which may require me to take Family Medical Leave time.

7. Robin and I have each prepared Power of Attorney for Health Care documents, and we each appointed the other as our health care decision-maker. We also have wills naming one another as primary beneficiaries. The inheritance rights in the Domestic Partnership law will guarantee that, even if our wills are challenged, our wishes to protect one another in the event of death will still be carried out. Even if my will is not challenged, I understand Robin has additional rights in the probate process, such as her ability to seek temporary support during the estate administration process, because of the fact that we are domestic partners.

8. Two years ago, Robin had a head injury while working on the farm. I called 911 and followed the ambulance to the hospital. Although Robin remained conscious and able to communicate with hospital staff, I was able to help answer questions and provide insurance information. Although we did not have problems with visitation or need to invoke the power of attorney, the visit made us realize our vulnerability and how important health care visitation and decision-making rights are to us. Although other family members are caring and supportive of us, we know one another's wishes better than anyone else.

9. Robin is the person who knows me best, including my health history, medical conditions, and views about end-of-life decisions. If for some reason my power of attorney were to be unavailable to Robin or a medical provider were to refuse to follow it, the legal protections to us as domestic partners make me feel safer. For example, I understand that Robin could consent to my admission to a hospice for end-of-life care and could agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Robin would be able to make medical decisions for me during my stay there. Since there is no one in my family better suited to make those decisions, these protections are very important to me.

10. When Robin and I learned of the enactment of Wisconsin's Domestic Partner law, we planned to register. At first, we viewed registration as a formality, a matter of doing the paperwork to secure the limited but important rights and benefits under the law. But as we went through the process, it took on greater importance.

11. However, Domestic Partnership recognition is not equivalent, in my view. The limited tangible rights and benefits of partnership, while helpful in our lives, represent only a small fraction of the rights and benefits of married couples. Often we do not know what rights we can or cannot secure as a lesbian couple until we need them and it is often too late to do so. That uncertainty is one of the

differences between domestic partnerships and marriage – thousands of rights and benefits small and large that we do not even know about and that married people may not even realize they have until they need them.

12. Beyond the obvious differences in tangible rights and benefits between marriage and domestic partnerships, the recognition of our domestic partnership carries a different meaning for us, our family, our friends and our community than a marriage would. Robin and I have a profound personal commitment to one another that does not depend on our being married or in a formal domestic partnership. Still, Robin and I would marry if we could, because our marriage would be respected by our family, friends and our community much more than is our domestic partnership. To us, marriage would signify true social equality in our relationship that a domestic partnership cannot provide.

Dated August 26, 2009

Jayne Dupnum

Subscribed and sworn to before me
this 26th day of August, 2009

Deborah March
Notary Public, State of Wisconsin
My commission expires: 12-5-2010

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs. Original Action Case No. _____

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF KATHARINA HEYNING IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Katharina Heyning, being first duly sworn on oath, depose and say:

1. I live in Madison, Wisconsin, with my domestic partner, Judith Trampf (Judi). We registered as domestic partners at the Dane County Courthouse on August 5, 2009. On June 19, 2009, we celebrated 20 years together as partners.

2. I am the Dean of the College of Education at the University of Wisconsin, Whitewater. I have a Ph.D. in Curriculum and Instruction from the University of Wisconsin, Madison, and also have a Master of Education in Educational Leadership and a Bachelor of Science in Elementary Education.

3. Judi and I jointly own our home in Madison. We also jointly own two cars, bank accounts, and our dog, Mazey. While the ability to hold property as joint tenants is one of the domestic partnership benefits now available in Wisconsin, Judi and I owned property jointly before domestic partnership registration began.

4. Judi's father, who lived in Ripon, Wisconsin, was ill in 1994. During his illness, Judi and I traveled 70 miles each way, three times a week, to help her parents. During that time, I ran her father's business, as he was unable to do so.

5. Judi and I have each prepared Power of Attorney for Health Care documents, and we each appointed the other as our health care decision-maker. We do have wills in which we identify each other as primary beneficiary.

6. In 2002, while traveling in New Orleans, I had a seizure. When I regained consciousness, I was in the hospital. The hospital requested that I give them my signed health care power of attorney document so that Judi could make decisions in the event that I was unable to. We did not have a copy of the health care power of attorney document with us at the time. My brother was my closest relative at that time, and in the event that I was unable to make my own health care decisions, I preferred to have Judi making my health care decisions rather than my brother. My brother was not as aware of my wishes as Judi, so I felt more comfortable with her making those decisions.

7. Although I had trouble concentrating and responding to questions after my seizure, the medical providers continued to ask me questions, and did not address any questions to Judi. Despite the fact that questions were not addressed to her, Judi helped me by responding to the questions, as I was having difficulty responding.

8. Because we did not have my signed health care power of attorney documentation with us, Judi and I decided to return to Wisconsin. I was concerned that if I had another seizure and was unable to make my own health care decisions, Judi might not be permitted to make those decisions for me without the proper documentation. We would have stayed longer in New Orleans if it were not for my health issue and the fact that we did not have the signed health care power of attorney documentation with us.

9. As a result of our experience with the health care system when I had my seizure, I have sent e-mails to friends in same-sex relationships advising them to carry copies of their health care power of attorney documents when they travel, and I now do the same.

10. I recognize that our registration as domestic partners in Wisconsin will not eliminate the need to carry our health care power of attorney documents with us when we travel, as our registration as domestic partners is only effective in Wisconsin.

11. Because we now have domestic partner benefits in Wisconsin, I believe that we will be able to make health care decisions for one another, if needed, even without having documentation with us, so long as we are in Wisconsin. I believe that having domestic partner benefits makes it more likely that a hospital will respect our ability to make health care decisions for one another. I anticipate that it will

not be as easy as it would be if we were married, because domestic partner benefits are new, and may not yet be widely understood in Wisconsin.

12. Because of my seizure, I was unable to drive for three months. At that time, part of my job involved travel, as I was supervising students in the field. Judi used her vacation time and sick time to take me to doctor's appointments and drive me to and from work. It was our understanding that she had no legal right to take time off of work to care for me.

13. I am presently scheduled to have minor surgery in November, 2009. It is my understanding that because Judi and I registered as domestic partners, at the time of my surgery, Judi will be able to take time off of work to be with me, and to take up to two weeks off of work under Wisconsin's Family Medical Leave act, if necessary, to assist me during my recovery.

14. I understand that our registration as domestic partners does not entitle Judi and I to get federal benefits such as social security survivor benefits, as a married couple would. I have contributed to social security during my entire career.

15. I understand that in Wisconsin, Judi and I are not able to marry. As domestic partners, we lack most of the legal rights available to married couples. Additionally, our relationship is only recognized in Wisconsin, although marriage is recognized in every state.

16. I believe that the term "marriage" carries connotations of full commitment and recognition as a family. To me, "domestic partner" sounds more temporary and contingent. By registering as Judi's domestic partner, I fully recognize that our status as domestic partners is distinct, separate and unique from the status of marriage.

17. When Judi and I registered as domestic partners, no one officiated; we merely signed some papers and had them filed with the Register of Deeds a few days later. There was no ceremony, as there would be with a marriage, even a civil marriage. Marriage is different than a domestic partnership, in part, because of the long tradition behind marriage, the universal understanding of what it is, and the general respect that marriage is given. Domestic partnerships in Wisconsin are new, and the implications of the relationship do not yet seem to be well understood.

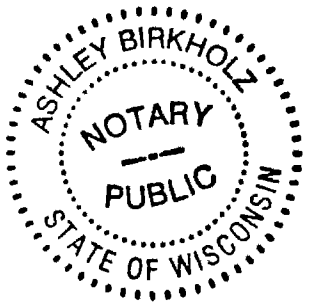
18. I am a citizen of the State of Wisconsin, I pay taxes as a citizen, and follow the laws. Despite that, as a person in a domestic partnership, I am unable to attain many of the same rights that are available to married couples. Although Katy and I do not qualify for the majority of benefits available to people who are married, and although I believe that our domestic partnership does not get the same respect as a marriage, Judi and I would be harmed if the domestic partnership benefits are taken away from us. We would lose the official recognition of our relationship, and the few benefits it provides.

Dated September 9, 2009

Katharina Heyning

Subscribed and sworn to before me
this 9th day of September, 2009

Notary Public, State of Wisconsin
My commission expires: 9/2/2012



SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

Original Action Case No. 2009AP001860-OA

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF DIANE SCHERMANN IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Diane Schermann, being first duly sworn on oath, depose and say:

1. I live in Eau Claire, Wisconsin, with my life partner, Michelle Collins. I am 47 years old.

2. Michelle and I registered as domestic partners at the Eau Claire County Courthouse on August 26, 2009. We paid $10 to waive the five-day waiting period, so our registration took effect immediately.

3. Michelle and I were close friends for over five years before we became romantically involved more than six years ago. On September 25, 2004, Michelle and I celebrated our relationship in a commitment ceremony.

4. I have two children from a previous marriage. One is in college now and the younger one lives with us. Michelle and I jointly parent these children. As a result, I signed a medical consent authorizing Michelle to make medical decisions for the children. Michelle and I decided to co-parent a child, so Michelle became pregnant through *in vitro* fertilization and in April 2008 gave birth to our son. Michelle signed agreements to document and protect the parental relationship that she and I have with our baby by naming me as a guardian should Michelle die or

become incapacitated and authorizing me to visit our child in medical facilities and at school, to see our child's school and medical records, and to make decisions for our child regarding medical care and school.

5. Michelle and I have been jointly licensed by the State of Wisconsin as foster parents. For more than five years, we have been able to provide foster care for several children until they aged out of the foster care system at age eighteen. We have remained in contact with our former foster children who form a part of our extended family. We are currently caring for two teenage foster children in our home.

6. Michelle and I spend our time outside of work caring for our children and offering our support to community groups. We regularly volunteer at our children's schools and completed six months of training run by the Wisconsin Department of Public Instruction to learn to support, educate and advocate for better treatment and services for special needs children and their parents. Before I became pregnant, I coached sports and will again in the near future. I have received awards for community service volunteering in outreach programs for youths.

7. I have worked for the Wisconsin Department of Transportation for fifteen years. I am currently an Engineering Specialist Advanced and have over twenty-seven years of experience in civil engineering. I am responsible for the emergency and routine maintenance of the state highways in three counties in northwest Wisconsin.

8. Michelle and I share household expenses, have shared bank accounts, and jointly own a truck. I have named Michelle as my beneficiary for my State of Wisconsin pension benefits, and Michelle and I have named each other as beneficiaries on our respective life insurance policies.

9. Michelle's parents are actively engaged grandparents to all our children. We anticipate that as they age we will need to take a more active role in their lives, which may require me to take Family Medical Leave time. Our registration as domestic partners helps ensure that I will be able to take such leave to care for one or both of them if and when it becomes necessary.

10. Michelle and I have each prepared power of attorney for health care documents in which we each appointed the other as our health care decision-maker. We have not yet prepared wills to protect our desire that each of us be the primary beneficiary of the other's property, because we have not had the financial resources to pay for wills. The domestic partnership law will assist us in the event that either of us were to die before completing a will, since the intestacy provisions in it will guarantee that at least one-half of our estate passes to the other. I also understand that even after I complete a will, Michelle will have additional rights in the probate process, such as her ability to seek temporary support during the estate administration process, because of the fact that we are registered as domestic partners.

11. Michelle is the person who knows me best, including my health history, medical conditions, and views about end-of-life decisions. If for some reason my power of attorney were to be unavailable to Michelle or a medical provider were to refuse to follow it, the legal protections to us as domestic partners make me feel safer. For example, I understand that Michelle could consent to my admission to a hospice for end-of-life care and could agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Michelle would be able to make medical decisions for me during my stay there. Since there is no one in my family better suited to make those decisions, these protections are very important to me.

12. Wisconsin's Domestic Partner law does not change the deep personal commitment Michelle and I feel to one another, and it does not affect the ways in which our friends and family support our relationship. However, the limited legal protections for us as domestic partners help me feel more secure about my future with Michelle.

13. Marriage, however, is different from a domestic partnership in very important ways. There are hundreds of state and federal protections that come from marriage, while domestic partnership provides just a few. The most important protection that Michelle and I would secure if we could marry would be my ability to adopt our child born in April 2008. Michelle has named me to be the guardian for our child in the event she were to die or become incapacitated, but I am unable to secure my parental rights and our child's future financial and emotional security through an adoption as I could if Michelle and I were married.

14. In addition to the numerous important differences between the protections available to married couples in comparison to domestic partners, marriage would be understood and respected by people outside of our group of friends and family much more than is a domestic partnership. Marriage is something that others understand without our having to explain it. Our inability to marry in order to gain the esteem that society reserves for that relationship is something that would especially benefit our children who would no longer have to struggle to explain our relationship to their friends and acquaintances. Michelle and I work hard to make our family a secure and loving place for our children and we believe that marriage would reinforce our children's well-being much more than our registration as domestic partners.

15. I was married from 1989 until 1997, so I know from first-hand experience that marriage is treated differently than is my domestic partnership. People understood my marriage, while I often have to explain to others what it means to be in a domestic partnership. When I was married, people respected that relationship and assumed that it fulfilled a certain model, even though my marriage did not always live up to that ideal.

Dated September 18, 2009

Diane Schermann

Diane Schermann

Subscribed and sworn to before me
this 18th day of September, 2009

Notary Public, State of Wisconsin
My commission expires: 10/02/11

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

Case No. 2009AP001860 - OA

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents.

AFFIDAVIT OF CAROL SCHUMACHER IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Carol Schumacher, being first duly sworn on oath, depose and say:

1. I am a 55-year old resident of Eau Claire, Wisconsin, where I live with my life partner, Virginia Wolf.

2. Virginia and I have been in an intimate, loving, committed relationship for thirty-four years. On December 21, 1990, we were joined in a Unitarian Universalist marriage ceremony.

3. Virginia and I registered as domestic partners at the Eau Claire County Courthouse on August 3, 2009 and our domestic partnership became effective on August 10, 2009. We would instead have entered into a civil marriage if it were legal.

4. Virginia and I moved together to Wisconsin in 1977, when Virginia became an English professor at the University of Wisconsin at Stout. We have lived in Eau Claire since then.

5. I worked as an election specialist for the City of Eau Claire until I retired from that position on September 9, 2008.

6. Virginia has two adult children whom Virginia and I together raised starting when they were four and eight years old. Virginia and I now have two granddaughters.

7. Virginia and I own our home together as joint tenants with a right of survivorship. We jointly own two automobiles and have joint checking and savings accounts.

8. Virginia and I have taken what steps we can to ensure that our relationship has legal protections. We have each named the other as the primary beneficiary in our wills and as the beneficiary for our retirement benefits and life insurance policies. We have also named each other in financial and health care powers of attorney.

9. Several years ago, Virginia was taken to the emergency room and the nurse refused to allow me to be with her. I insisted that I was Virginia's partner and eventually the nurse relented. However, I have worried since then that I would be denied access to Virginia when she most needs me. For that reason, the new legal protections for domestic partners' right to visit each other in the hospital and in other care facilities are very important to me.

10. Virginia is the person who knows me best, including my health history, medical conditions, and views about end-of-life decisions. If for some reason my power of attorney were to be unavailable to Virginia or a medical provider were to refuse to follow it, the legal protections to us as domestic partners make me feel safer. For example, I understand that Virginia could consent to my admission to a hospice for end-of-life care and could agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Virginia would be able to make medical decisions for me during my stay there. Since there is no one in my family better suited to make those decisions, these protections are very important to me.

11. Under my will, Virginia will receive the bulk of my property if I die before her. If my will were to be successfully challenged by someone in my extended family, I take great comfort in knowing that Virginia, as my domestic partner, would still receive my assets. Even if my will is not challenged, I understand Virginia has additional rights in the probate process, such as her ability to seek temporary support during the estate administration process, because of the fact that we are domestic partners.

12. Virginia and I are both old enough to know that there may come a day when we are unable to stay at home and care for ourselves. It comforts us to know that our domestic partner status gives us the right to share a nursing home room if we both need nursing home care and do not have any medical reasons why we cannot be in the same room.

13. It means a great deal to Virginia and me that we are registered as domestic partners, because it means to us that the state has recognized the existence of our

relationship in a few ways. Knowing that we are in a domestic partnership makes me feel more secure and safe about growing older.

14. However, the meaning and status of our domestic partnership is quite different from marriage. Virginia and I will still have to explain to people who do not know us what it means that we are domestic partners. If we were able to marry, this explanation would not be required. Marriage would be helpful to our grandchildren who would no longer have to explain to their friends our relationship. Marriage would provide Virginia and me with a great many other legal protections than our domestic partnership. In addition, our marriage would be understood, if not necessarily recognized, when we travel outside of Wisconsin. Our domestic partnership, in contrast, will not be easily understood outside of Wisconsin.

Dated August 27, 2009

Carol Schumacher

Subscribed and sworn to before me
this 27 day of August, 2009

Notary Public, State of Wisconsin
My commission expires: 1-23-11

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

Original Action Case No. _____

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF ROBIN TIMM IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Robin Timm, being first duly sworn on oath, depose and say:

1. I live in Platteville, Wisconsin, with my life partner, Jayne Dunnum. I was born in Wisconsin and am 51 years old.

2. Jayne and I registered as domestic partners at the Grant County Courthouse on August 11, 2009. We paid $10 to waive the five-day waiting period, so our registration took effect immediately.

3. Jayne and I met in 1992, and had a private commitment ceremony on November 13, 1992.

4. I previously worked as a public health nurse, but now work full-time on the farm that Jayne and I purchased in 1996 and at a natural food store that we own with two other families. The store opened recently and is not yet generating a profit. I am largely dependent on Jayne's income as an employee of the Wisconsin Department of Corrections.

5. Jayne and I jointly own our farm, where we also live. We are both named on the deed, the mortgage and the mortgage note. We also jointly own two cars, one farm truck and bank accounts.

6. My mother, who is 76 years old, now lives alone in an apartment in Dodgeville, not far from our farm. She has chronic obstructive pulmonary disease. We anticipate that as she ages we will need to take a more active role in her life, which may require Family Medical Leave time for Jayne.

7. Jayne and I have each prepared Power of Attorney for Health Care documents, and we each appointed the other as our health care decision-maker. We also have wills naming one another as primary beneficiaries. The inheritance rights in the Domestic Partnership law will guarantee that, even if our wills are challenged, our wishes to protect one another in the event of death will still be carried out. Even if my will is not challenged, I understand Jayne has additional rights in the probate process, such as her ability to seek temporary support during the estate administration process, because of the fact that we are domestic partners.

8. Two years ago, I had a head injury while working on the farm. Jayne called 911 and followed the ambulance to the hospital. I remained conscious and able to communicate with hospital staff, but Jayne was able to help answer questions and provide insurance information. Although we did not have problems with visitation or need to invoke Jayne's power of attorney, the visit made us realize our vulnerability and how important health care visitation and decision-making rights are to us. Although other family members are caring and supportive of us, we know one another's wishes better than anyone else.

9. Jayne is the person who knows me best, including my health history, medical conditions, and views about end-of-life decisions. If for some reason my power of attorney were to be unavailable to Jayne or a medical provider were to refuse to follow it, the legal protections to us as domestic partners make me feel safer. For example, I understand that Jayne could consent to my admission to a hospice for end-of-life care and could agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Jayne would be able to make medical decisions for me during my stay there. Since there is no one in my family better suited to make those decisions, these protections are very important to me.

10. When Jayne and I learned of the enactment of Wisconsin's Domestic Partner law, we planned to register. At first, we viewed registration as a formality, a matter of doing the paperwork to secure the limited but important rights and benefits under the law. But as we went through the process, it took on greater importance. For what seemed like the first time, a government bureaucracy was helping protect our relationship, rather than making our lives more complicated and difficult. The county employees were working hard to get the process done right. We realized that Wisconsin has come a long way after all.

11. Domestic Partnership recognition, however important as a step toward equality, is a far cry from marriage recognition. The limited tangible rights and benefits of partnership, while helpful in our lives, represent only a small fraction of the rights and benefits of married couples.

12. Beyond the obvious differences in tangible rights and benefits between marriage and domestic partnerships, the recognition of our domestic partnership carries a different meaning for us, our family, our friends and our community than a marriage would. Unlike civil marriage, which has a long history, domestic partnerships are the result of recent legislation that seems vulnerable to repeal at the whim of the legislature. Similarly, while marriage is recognized everywhere, a Wisconsin domestic partnership will carry no weight in other states. And while our friends and family are happy that we have the additional protections that come with the registry and will be invited to a party to celebrate, they do not view partnership recognition as equivalent to marriage recognition and no-one will mistake our party for a wedding. Although the registry represents a step toward government acknowledgement and protection of our relationship, it does not constitute the sort of external governmental and societal affirmation of equality and worthiness that marriage would provide.

Dated August 26, 2009

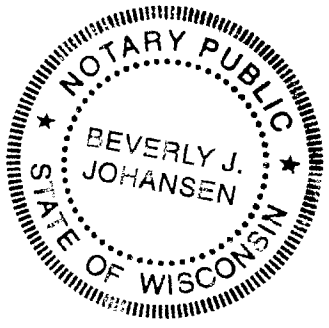
Robin R Timm

Robin Timm

Subscribed and sworn to before me
this 26th day of August, 2009

Beverly J Johansen

Notary Public, State of Wisconsin
My commission ~~expires~~: is permanent



SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs. Original Action Case No. _____

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF JUDITH TRAMPF IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Judith Trampf, being first duly sworn on oath, depose and say:

1. I live in Madison, Wisconsin, with my domestic partner, Katharina Heyning (Katy). We registered as domestic partners at the Dane County Courthouse on August 5, 2009. On June 19, 2009, we celebrated 20 years together as partners.

2. I was born in Wisconsin, and have spent most of my life in Wisconsin. I grew up in Wisconsin, was educated in Wisconsin, and work in Wisconsin.

3. I am the Director of Workplace Diversity for the University of Wisconsin. I have a Bachelor of Science from the University of Wisconsin, Platteville, and a Master of Science from the University of Wisconsin.

4. Katy and I jointly own our home in Madison. We also jointly own two cars, bank accounts, and our dog, Mazey. While the ability to hold property as joint tenants is one of the domestic partnership benefits now available in Wisconsin, Katy and I owned property jointly before domestic partnership registration began.

5. My father, who lived in Ripon, Wisconsin, was ill in 1994. During his illness, Katy and I traveled 70 miles each way, three times a week, to help my parents. During that time, Katy ran my father's business, as he was unable to do so.

6. Katy and I have each prepared Power of Attorney for Health Care documents, and we each appointed the other as our health care decision-maker. We do have wills in which we each identify the other as primary beneficiary.

7. In 2002, while on traveling in New Orleans, Katy had a seizure. I called 911, and was allowed to ride to the hospital in the ambulance with Katy. When I got to the hospital, I told the person at the admission desk that I was Katy's domestic partner with her health care power of attorney. Katy was unconscious when she got to the hospital, but I was told that I could not make medical decisions for her unless I had the health care power of attorney documents with me. We had left the documents in Wisconsin, and could not get them while we were at the hospital. I called Katy's brother and told him that she was in the hospital. I was told that because I did not have the health care power of attorney documents with me, Katy's brother, as her nearest relative, could make her healthcare decisions in the event that Katy was unable to. This concerned me because Katy's brother does not know her wishes in this regard, as I do.

8. After Katy regained consciousness, she had difficulty responding to questions. The health care providers asked Katy questions, and to assist her, I answered them. Despite the fact that I was answering the questions addressed to Katy, at no time was any question directed to me by the health care providers.

9. Because we did not have Katy's signed health care power of attorney documentation with us, Katy and I decided to return to Wisconsin. We were concerned that if Katy had another seizure and was unable to make her own health care decisions, I would not be permitted to make those decisions for her unless I had the proper documents. We would have stayed longer in New Orleans if it were not for Katy's health issue and the fact that we did not have the signed health care power of attorney documentation with us.

10. As a result of our experience with the health care system when Katy had her seizure, I have sent e-mails to friends in same-sex relationships advising them to carry copies of their health care power of attorney documents when they travel, and I now do the same.

11. I recognize that our registration as domestic partners in Wisconsin will not eliminate the need to carry our health care power of attorney documents with us when we travel, as our registration as domestic partners is only effective in Wisconsin.

12. Because we now have domestic partner benefits in Wisconsin, I believe that we will be able to make health care decisions for one another, if needed, even without having documentation with us, so long as we are in Wisconsin. I believe that

having domestic partner benefits makes it more likely that a hospital will respect our ability to make health care decisions for one another. I anticipate that it will not be as easy as it would be if we were married, because domestic partner benefits are new, and may not yet be widely understood in Wisconsin.

13. Because of Katy's seizure, she was unable to drive for six months. I used my vacation time and sick time to take her to doctor's appointments and drive her to and from work. It was my understanding that I had no legal right to take time off of work to care for her.

14. Katy is presently scheduled to have minor surgery in November, 2009. It is my understanding that because Katy and I registered as domestic partners, at the time of her surgery, I will be able to take time off of work under Wisconsin's Family Medical Leave Act to be with her for the surgery, and if necessary, to assist her during recovery.

15. I understand that our registration as domestic partners does not entitle Katy and I to get federal benefits such as social security survivor benefits, as a married couple would. I have contributed to social security during my entire career.

16. I understand that in Wisconsin, Katy and I are not able to marry. As domestic partners, we lack most of the legal rights available to married couples. Additionally, our relationship is only recognized in Wisconsin, although marriage is recognized in every state.

17. I believe that the term "marriage" carries connotations of full commitment and recognition as a family. To me, "domestic partner" sounds more temporary and contingent. By registering as Katy's domestic partner, I fully recognize that our status as domestic partners is distinct, separate and unique from the status of marriage.

18. When Katy and I registered as domestic partners, no one officiated; we merely signed some papers and had them filed with the Register of Deeds a few days later. There was no ceremony, as there would be with a marriage, even a civil marriage. Marriage is different than a domestic partnership, in part, because of the long tradition behind marriage, the universal understanding of what it is, and the general respect that marriage is given. Domestic partnerships in Wisconsin are new, and the implications of the relationship do not yet seem to be well understood.

19. I am a citizen of the State of Wisconsin; I pay taxes as a citizen, and follow the laws. Despite that, as a person in a domestic partnership, I am unable to attain many of the same rights that are available to married couples. Although Katy and I do not qualify for the majority of benefits available to people who are married, and although I believe that our domestic partnership does not get the same respect as a marriage, Katy and I would be harmed if the domestic partnership benefits

are taken away from us. We would lose the official recognition of our relationship, and the few benefits it provides.

Dated September 11, 2009

Judith Trampf

Subscribed and sworn to before me
this 11 day of September, 2009

Notary Public, State of Wisconsin
My commission expires: 02-13-11

JENNIFER BISGROVE
NOTARY
PUBLIC
STATE OF WISCONSIN

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

Case No. 2009AP001860 - OA

vs.

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents.

AFFIDAVIT OF VIRGINIA WOLF IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Virginia Wolf, being first duly sworn on oath, depose and say:

1. I am a 70 year old resident of Eau Claire, Wisconsin, where I live with my life partner, Carol Schumacher.

2. Carol and I have been in an intimate, loving, committed relationship for thirty-four years. On December 21, 1990, we were joined in a Unitarian Universalist marriage ceremony.

3. Carol and I registered as domestic partners at the Eau Claire County Courthouse on August 3, 2009 and our domestic partnership became effective on August 10, 2009. We would instead have entered into a civil marriage if it were legal.

4. Carol and I moved together to Wisconsin in 1977, when I became an English professor at the University of Wisconsin at Stout. We have lived in Eau Claire since then.

5. I retired in early 2001 from my faculty position at the University of Wisconsin - Stout. I was employed as a Unitarian Universalist minister from 1999 until I retired from that position on June 30, 2008.

6. I have two adult children whom Carol and I together raised starting when they were four and eight years old. Carol and I now have two granddaughters.

7. Carol and I own our home together as joint tenants with a right of survivorship. We jointly own two automobiles and have joint checking and savings accounts.

8. Carol and I have taken what steps we can to ensure that our relationship has legal protections. We have each named the other as the primary beneficiary in our wills and as the beneficiary for our retirement benefits and life insurance policies. We have also named each other in financial and health care powers of attorney.

9. Several years ago, Carol was taken to the emergency room and the nurse refused to allow me to be with her, telling me that only family could be with Carol. I insisted that I was her family and eventually the nurse relented. However, I have worried since then that I would be denied access to Carol when she most needs me. For that reason, the new legal protections for domestic partners' right to visit each other in the hospital and in other care facilities are very important to me.

10. Carol is the person who knows me best, including my health history, medical conditions, and views about end-of-life decisions. If for some reason my power of attorney were to be unavailable to Carol or a medical provider were to refuse to follow it, the legal protections to us as domestic partners make me feel safer. For example, I understand that Carol could consent to my admission to a hospice for end-of-life care and could agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Carol would be able to make medical decisions for me during my stay there. Since there is no one in my family better suited to make those decisions, these protections are very important to me.

11. I was diagnosed with bipolar disorder a few years ago and regularly see a psychiatrist for its treatment. Although I hope to never have to be admitted to a mental health treatment facility, I am pleased that Carol as my domestic partner would have access to my treatment records.

12. Under my will, Carol will receive the bulk of my property if I die before her. If my will were to be successfully challenged by someone in my extended family, I take great comfort in knowing that Carol, as my domestic partner, would still receive my assets. Even if my will is not challenged, I understand Carol has additional rights in the probate process, such as her ability to seek temporary support during the estate administration process, because of the fact that we are domestic partners.

13. Carol and I are both old enough to know that there may come a day when we are unable to stay at home and care for ourselves. It comforts us to know that our domestic partner status gives us the right to share a nursing home room if we both need nursing home care and do not have any medical reasons why we cannot be in the same room.

14. It means a great deal to Carol and me that we are registered as domestic partners, because it means to us that the state has recognized the existence of our relationship in a few ways. Knowing that we are in a domestic partnership makes me feel more secure and safe about growing older.

15. However, the meaning and status of our domestic partnership is quite different from marriage. Carol and I will still have to explain to people who do not know us what it means that we are domestic partners. If we were able to marry, this explanation would not be required. Marriage would be helpful to our grandchildren who would no longer have to explain to their friends our relationship. Marriage would provide Carol and me with a great many other legal protections than our domestic partnership. In addition, our marriage would be understood, if not necessarily recognized, when we travel outside of Wisconsin. Our domestic partnership, in contrast, will not be easily understood outside of Wisconsin.

Dated August 27, 2009

Virginia L. Wolf

Virginia Wolf

Subscribed and sworn to before me
this 27 day of August, 2009

Notary Public, State of Wisconsin
My commission expires: 1-23-11

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

Case No. 2009AP001860 - OA

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF MARY WOODRUFF IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

I, Mary Woodruff, being first duly sworn on oath, depose and say:

1. I am 55 years old and I have been a resident of the state of Wisconsin since the start of 2009. I live in Milwaukee, Wisconsin, with my life partner, Wendy Woodruff, with whom I have shared my life for the last ten years. We registered as domestic partners at the Milwaukee County Courthouse on August 3, 2009. Ours was the sixth domestic partnership application completed in Milwaukee County. We then filed our declaration of domestic partnership with the register of deeds on August 10, 2009.

2. I am a retired librarian.

3. In my domestic partnership with Wendy, I lack many of the rights possessed by couples who are married.

4. Wendy and I have prepared Power of Attorney for Health Care documents, and we each appointed the other as our health care decision-maker. We did this because we each know the other's wishes better than anyone else, and each trust the other to make our health care decisions if either of us is incapable of making them for ourselves.

5. If Wendy were unable to produce my power of attorney, or a medical provider were to refuse to follow it, the legal protections for domestic partners make me feel safer. For example, I understand even if without my power of attorney, Wendy can consent to my admission to a hospice for end-of-life care and can agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Wendy would be able to make medical decisions for me during my stay there.

6. Even though Wendy and I have registered as domestic partners, this status does not entitle us to obtain social security death benefits, as married couples are permitted to do. Despite the fact that we both pay into the social security system, neither of us is entitled to death benefits based on the contributions of the other.

7. I understand that our status as domestic partners is only recognized in Wisconsin, whereas marriage (performed under the laws of the state of Wisconsin) is a status that is recognized in all states. If Wendy and I were able to marry in Wisconsin, people would understand what this means when we travel outside of Wisconsin, even if marital rights would not be recognized in most other states. Everyone knows what it means to be married. On the other hand, saying that we are "domestic partners" does not have any readily understood meaning outside of Wisconsin. In my experience, when we travel to Illinois or elsewhere, people have no way of knowing which rights are encompassed within a domestic partnership versus which rights are not. It saddens me deeply that my relationship with Wendy is not afforded the same level of respect as marriage.

8. When I became hospitalized in the past, it was not initially clear whether Wendy was going to be able to make decisions should my condition deteriorate. I told the hospital administration employees that Wendy was "my partner." Because this status is not the same as marriage, Wendy needed to produce a power of attorney for health care to ensure that she could be present for any procedures and that, if I were unable to make decisions, she could make them for me. Without the power of attorney, the hospital would have asked my father to make medical decisons for me, even though he lived in Florida. However, as newly registered domestic partners, our rights to visit each other in the hospital are now protected. The law also makes our medical decision-making rights more secure than in the past.

9. Marital status carries with it a much larger bundle of rights than the "domestic partner" status. By registering as Wendy's domestic partner, I fully recognize that our status as domestic partners is distinct, separate and unique from the status of marriage.

10. I am a citizen of the State of Wisconsin, I pay taxes as a citizen, and follow the laws. Despite that, as a person in a domestic partnership, I am unable to attain many of the same rights that are available to married couples. Although Wendy and I do not qualify for the majority of benefits available to people who are married, and although I believe that our domestic partnership does not get the same respect as a marriage, Wendy and I would be harmed if the domestic

partnership benefits were taken away from us. We would lose the official recognition of our relationship, and the limited benefits it provides.

Mary Woodruff

Mary Woodruff

Subscribed and sworn to before me
this 17TH day of September, 2009.

Janine Kleist Rumage

Notary Public, State of Wisconsin
My commission [is permanent/expires] 6-9-13

NOTARY PUBLIC
JANINE
KLEIST-RUMAGE
STATE OF WISCONSIN

SUPREME COURT OF THE STATE OF WISCONSIN

JULAINE APPLING, JAREN E. HILLER, EDMUND L. WEBSTER,

Petitioners

vs.

Case No. 2009AP001860 - OA

JAMES E. DOYLE, KAREN TIMBERLAKE, JOHN KIESOW,

Respondents

AFFIDAVIT OF WENDY WOODRUFF IN SUPPORT OF BRIEF OF PROPOSED INTERVENING RESPONDENTS IN OPPOSITION TO PETITION TO TAKE JURISDICTION OF ORIGINAL ACTION

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

I, Wendy Woodruff, being first duly sworn on oath, depose and say:

1. I am 57 years old and have been a resident of the State of Wisconsin since 2007. I live in Milwaukee, Wisconsin, with my life partner, Mary Woodruff, with whom I have shared my life for the last ten years. We registered as domestic partners at the Milwaukee County Courthouse on August 3, 2009. Ours was the sixth domestic partnership application completed in Milwaukee County. We then filed our declaration of domestic partnership with the register of deeds on August 10, 2009.

2. I have been a Pastor of the Milwaukee Metropolitan Community Church since January 1, 2007.

3. I was married to a man from 1972 to 1989, and as a married woman, I understood that I was entitled to many benefits that flowed from the status of being married.

4. Mary and I have prepared Power of Attorney for Health Care documents, and we each appointed the other as our health care decision-maker. We did this because we each know the other's wishes better than anyone else, and we trust each other to make our health care decisions if we are incapable of making them for ourselves.

5. If Mary were unable to produce my power of attorney, or a medical provider were to refuse to follow it, the legal protections for domestic partners make me feel safer. For example, I understand even if without my power of attorney, Mary can consent to my admission to a hospice for end-of-life care and can agree to my transfer from a hospital to a nursing home or community-based residential facility. Having consented to my admission to one of these facilities, Mary would be able to make medical decisions for me during my stay there.

6. In my domestic partnership with Mary, I lack many of the rights I formerly had when I was legally married.

7. When I was divorced from my husband, I had the benefit of a court process to protect my right to a fair division of our marital property and to ease the process of resolving any disputes. These benefits and protections do not apply to domestic partners.

8. Even though Mary and I have registered as domestic partners, this status does not entitle us to obtain social security death benefits, as married couples are permitted to do. Despite the fact that we both pay into the social security system, neither of us is entitled to death benefits based on the contributions of the other.

9. I understand that our status as domestic partners is only recognized in Wisconsin, whereas marriage (performed under the laws of the state of Wisconsin) is a status that is recognized in all states. If Mary and I were able to marry in Wisconsin, people would understand what this means when we travel outside of Wisconsin, even if marital rights would not be recognized in most other states. Everyone knows what it means to be married. On the other hand, saying that we are "domestic partners" does not have any readily understood meaning outside of Wisconsin. In my experience, when we travel to Illinois or elsewhere, people have know way of knowing which rights are encompassed within a domestic partnership in Wisconsin versus which rights are not. It saddens me deeply that my relationship with Mary is not afforded the same level of respect as marriage.

10. When I was married, I was able to visit with my husband whenever he was admitted to the hospital, and I was granted this right by virtue of my marital status. I could obtain visitation rights and make medical decisions merely by saying, "I am his wife." However, when Mary became hospitalized, I needed to produce a power of attorney for healthcare to ensure that I could be present for any procedures and that, if she were unable to make decisions, I could make them for her. Without the power of attorney, the hospital would have asked Mary's father to make medical decisions for her, even though he lived in Florida.

11. I am pleased, however, that my domestic partnership with Mary protects our rights to visit each other in the hospital, even though I know that those protections do not extend beyond the Wisconsin borders.

12. Marital status carries with it a much larger bundle of rights than the "domestic partner" status. By registering as Mary's domestic partner, I fully recognize that our status as domestic partners is distinct, separate and unique from the status of marriage.

13. Having been married, I know how much respect is afforded to the institution of marriage. The "domestic partner" status is afforded less respect. In addition to the numerous important differences between the protections available to married couples in comparison to domestic partners, my marriage to my husband was understood and respected by people outside of our group of friends and family much more than a domestic partnership is. Marriage is something that others understand without our having to explain it.

14. I am a citizen of the State of Wisconsin, I pay taxes as a citizen, and follow the laws. Despite that, as a person in a domestic partnership, I am unable to attain many of the same rights that are available to married couples. Although Mary and I do not qualify for the majority of benefits available to people who are married, and although I believe that our domestic partnership does not get the same respect as a marriage, Mary and I would be harmed if the domestic partnership benefits were taken away from us. We would lose the official recognition of our relationship and the limited benefits it provides.

Wendy Woodruff

Subscribed and sworn to before me
this 18TH day of September, 2009.

Janine Kleist Rumage

Notary Public, State of Wisconsin
My commission [is permanent/expires] 6-9-13