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

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

Proposed Intervening Respondents

Case No. 2009AP001860 - OA

NOTICE OF MOTION AND MOTION TO INTERVENE OF PROPOSED INTERVENING RESPONDENTS

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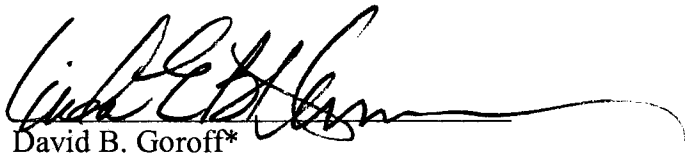
PLEASE TAKE NOTICE that, the Proposed Intervening Respondents, by their attorneys, Foley & Lardner LLP, Laurence J. Dupuis, and John A. Knight hereby move the Court for leave to intervene in this matter pursuant to Wis. Stat. § 803.09(1), or, in the alternative, for permissive intervention pursuant to Wis. Stat. § 803.09(2). A copy of the Response of Proposed Intervening Respondents in Opposition to Petition to Take Jurisdiction of Original Action is attached.

This motion will be heard at a time, date, and place to be set by the Court.

The grounds for this motion are that the Proposed Intervenors claim an interest relating to the transaction that is the subject of the action; without intervention Proposed Intervenors would be unable to protect that interest; and the direct harm to Proposed Intervenors if Petitioners are successful in this case shows that they are not adequately represented by the existing parties who will experience no direct personal injury if they are unsuccessful. In the alternative, the grounds for this motion are that the defenses of the Proposed Intervenors and the main action have common questions of law and fact and the intervention will not unduly delay or prejudice the original parties. The grounds for this motion are more fully detailed in the accompanying brief and supported by the affidavits of the Proposed Intervening Respondents.

[SIGNATURE BLOCK ON NEXT PAGE]

Dated this 22nd day of September, 2009.



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Proposed Intervening Respondents

BRIEF IN SUPPORT OF MOTION TO INTERVENE OF PROPOSED INTERVENING RESPONDENTS

INTRODUCTION

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

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

A party has the right to intervene in an existing action under Wis. Stat. § 803.09(1) if four conditions are met: (i) the motion to intervene is made in a timely fashion; (ii) the movant claims an interest sufficiently related to the

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

subject of the action; (iii) the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and (iv) the movant's interest is not adequately represented by the existing parties. *See* Wis. Stat. § 803.09(1); *Helgeland v. Wis. Municipalities,* 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1; *Armada Broad., Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357, 359-60 (1994); *State ex rel Bilder v. Delavan Twp.*, 112 Wis. 2d 539, 545, 334 N.W.2d 252, 256 (1983). No precise formula exists for determining whether a potential intervenor meets the requirements of § 803.09(1). *Helgeland*, 2008 WI 9, ¶40. Rather, "[t]he analysis is holistic, flexible, and highly fact-specific." *Id.* (footnote omitted).

The Intervenors meet each of these factors and therefore are entitled to intervene as a matter of right. Having availed themselves of the protections afforded to domestic partners under Wisconsin Statute 770, the Intervenors have particularized and direct interests in this action. They have acted quickly to protect their rights, and they may lose their domestic partnerships and related protections if Petitioners prevail in this case. The Intervenors' personal stake in defending the limited protections offered them sets them apart from the Respondents, who will defend the statute itself but do not have the same personal stake in the protections that it provides. Unless they are allowed to intervene, the Intervenors are left to watch while the question of whether they have a right to

visit their domestic partner in the hospital or take family leave to care for her is decided – at a distance and in their absence.

A. The Intervenors' Motion Is Timely

The first prong of the four-part test is the timeliness of the motion filed by the proposed intervening party. This action was filed on July 23, 2009. The Intervenors are filing their motion contemporaneously with the first responsive pleading. The question whether this Court will even accept original jurisdiction over this case has not been decided. In light of these circumstances, the Intervenors have acted promptly in filing the present motion to intervene. *Bilder*, 112 Wis. 2d at 550, 334 N.W.2d at 258 ("The critical factor is whether in view of all of the circumstances the proposed intervenor acted promptly.") Moreover, neither Petitioners nor Respondents have been prejudiced by the timing of this motion to intervene. *Id.* ("A second factor is whether the intervention will prejudice the original parties to the lawsuit."). The present motion for intervention has been timely filed.

B. The Intervenors Have Sufficient Interests In This Action

Intervenors have sufficient interests in the issues being litigated, because they easily satisfy the Court's "broader, pragmatic approach to intervention as of right," in which the interest test serves "primarily [as] a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *Helgeland*,

2008 WI 9, ¶¶43-44 (quoting *Bilder*, 112 Wis. 2d at 548-49, 334 N.W.2d at 252). When considering whether an intervening party has stated a sufficient interest in the underlying matter, the court should focus on "the facts and circumstances of the particular case before it as well as the stated interest in intervention and analyze[] these factors against the policies underlying the intervention statute." *Bilder*, 112 Wis. 2d at 548, 334 N.W.2d at 257. The overriding policy behind intervention is to strike a balance between allowing the original parties to conduct and conclude their own lawsuit and allowing persons to join a lawsuit in the interest of the speedy and economical resolution of controversies without rendering the lawsuit fruitlessly complex or unending. *Id.* Because Intervenors will be directly and personally injured if they lose domestic partner protections – a harm that no party currently before the Court will experience – the balance weighs strongly in favor of allowing them to intervene.

This Court has come to similar conclusions with respect to intervenors who, like the current Intervenors, have direct interests that are distinct from those of the existing parties.

For example, in *Bilder*, newspapers were allowed to intervene in an employment dispute to challenge the stipulation reached by the police chief and town board to seal the court record, since "newspapers have a protectable legal interest in opening the [court] documents to public examination." *Id.* at 549, 334 N.W.2d at 258. Even though the newspapers could have filed a separate

mandamus action to open the file, intervention was granted to "allow[] a final decision on a key issue to be reached in a single lawsuit rather than having multiple lawsuits and multiple judicial decisions on the same subject." *Id.* at 550, 334 N.W.2d at 258.

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

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

Like the intervenors in *Bilder, Armada*, and *Wolff*, the Intervenors in the current action have direct interests that contrast with the interests of the existing parties. Their position is closely analogous to the intervenor in *Armada*, because this action places them at risk of personal harm in the form of lost legal protections as compared to the government's official responsibility to defend the domestic partner law. Just as the school district in *Armada* would not personally suffer the loss of privacy or damage to reputation as the school teacher, none of the Respondents in this case will be personally injured if the domestic partnership protections are stricken out of Wisconsin law. They have a public role to defend Chapter 770. The private injury that will befall Intervenors if Chapter 770 is declared unconstitutional inspires Intervenors to defend their domestic partnerships and resulting protections with a vigor that sets them apart from the government. In addition, Chapter 770 itself evidences the legislature's recognition of lesbian and gay male citizens' interests in protecting their relationships with their domestic partners by granting them certain limited rights,

such as the right to hospital visitation. That interest is different from the government's more general interest in defending the constitutionality of its laws.

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

Unlike the municipalities in *Helgeland*, the Intervenors' interests in the present action are "direct and immediate," *see id.* ¶71, and Intervenors possess the "special, personal, or unique interest" found lacking in *Helgeland.* The Intervenors are same-sex couples who registered as domestic partners under Chapter 770 of the Wisconsin statutes in order to take advantage of the legal protections afforded to domestic partners, such as family medical leave, limited

medical decision-making authority, hospital visitation, and inheritance and survivor protections. In short, the Intervenors are the intended beneficiaries of the legislation currently at issue and thus have a personal interest in the outcome. *See id.* ¶116; *see also Armada Broad.*, 183 Wis. 2d at 474, 516 N.W.2d at 361.

The Intervenors stand to lose the rights afforded to domestic partners as a result of this action. For example, the Intervenors would lose the ability to take family medical leave to care for their domestic partners or the parent of their domestic partner. (*See* I. App. 24 ¶ 14; I. App. 8 ¶ 13; I. App. 1 ¶ 10; I. App. 5 ¶ 6; I. App. 19 ¶ 6; I. App. 12 ¶ 9.)[2] They would also lose the intestacy protections currently provided to domestic partners. (*See* I. App. 12 ¶ 10; I. App. 1 ¶ 9; I. App. 5¶ 7; I. App. 19 ¶ 7; I. App. 16 ¶ 11; I. App. 26 ¶ 12.) They would lose the right to visit each other in the hospital or other medical care settings. (*See* I. App. 16 ¶ 9; I. App. 26 ¶ 9; I. App. 29 ¶ 8; I. App. 32 ¶ 11.) Finally, the extra security they receive as domestic partners that they will be able to make important health care decisions for one another would also be stripped from them. (*See* I. App. 16 ¶ 10; I. App. 26 ¶ 10; I. App. 12 ¶ 11; I. App. 1 ¶ 11; I. App. 5 ¶ 9; I. App. 19 ¶ 9; I. App. 29 ¶ 5; I. App. 32 ¶ 5.) The affidavits of the

[2] The affidavits cited herein refer to the Appendix to the Response of Proposed Intervening Respondents in Opposition to Petition to Take Jurisdiction of Original Jurisdiction, filed contemporaneously with the Court.

Intervenors offer but a glimpse into the personal rights that could be lost as a result of this action.

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

C. The Intervenors Would Be Unable To Protect Their Interests

The third prong of the test is that the disposition of the action may impair or impede the interests of the intervening party. Unless they are permitted to intervene, the Intervenors would not be able to protect their interests using the tools available to parties, such as discovery and trial. For example, they would not be in a position to present evidence on the numerous factual issues that must be resolved before reaching a conclusion on the constitutionality of the domestic partner provisions, by challenging the evidentiary support for Petitioners' assertions about what voters were told about the amendment and what they understood the amendment to mean, offering additional evidence Petitioners have omitted from the complex record of the campaign for the marriage amendment,

and participating in the trial process through which the disputes over what voters understood and intended are resolved.

The Intervenors can offer evidence from a personal perspective about the vast differences between the legal protections and social status afforded domestic partners as compared to married couples. Two Intervenors were married to different-sex spouses in the past and have registered as domestic partners recently and therefore can testify first-hand to the differences between the two statuses. (*See* I. App. 12 ¶ 4; I. App. 32 ¶ 6.)

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

Finally, in contrast to Petitioners' position that this Court should accept direct jurisdiction over this action, because "[d]omestic partners ... would benefit from a prompt determination of whether the legal arrangements are valid which they may pursue in reliance upon Chapter 770," the Intervenors ask this Court to refuse direct jurisdiction over this case so that a trial court can oversee

the development of the complex and disputed factual record that will determine the merits of Petitioners' allegations and the constitutionality of Chapter 770. That other parties to the litigation purport to speak for Wisconsinites in domestic partnerships, and misrepresent the interests of domestic partners in the process, highlights the need for Intervenors to participate as parties to protect those interests.

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

Finally, the Intervenors' interests are not adequately represented by the existing parties, because the Intervenors' interests in upholding the domestic partner law are personal, in contrast to the official duty of the government to defend it and because of the serious harm to Intervenors' interests caused by the Attorney General's refusal to defend the law.

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

Wisconsin Civil Procedure Before Trial § 4.61, at 41 (2d ed. 2002) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989)).

Even though Intervenors need only make a "minimal showing" of the inadequacy of representation, there is a presumption that the representation will be adequate when the government is arguing for the result being sought by the putative intervenors. However, that presumption does not apply here. *See Helgeland*, 2008 WI 9, ¶91.

First, the distinct personal interests of the Intervenors as beneficiaries of the domestic partnership law shows that Defendants' representation is inadequate. The state should not be presumed to simultaneously and adequately represent both the public interest as well as the private interests of the Intervenors. Intervenors have "special, personal [and] unique interest[s]," *id.* ¶116, as compared to the government Respondents, and their personal interests are likewise "more powerful than" the government Respondents. *Id.* ¶117. *See also id.* ¶204 ("Diversity of interest can be the conclusive factor when evaluating the adequacy of representation.") (Prosser, J., dissenting);[3] *Armada Broad.*, 183 Wis. 2d at 476, 516 N.W.2d at 362 (a governmental entity cannot be expected to

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

defend an action with the same vehemence of the individual person whose personal interests are at stake); *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1255 (10th Cir. 2001) (quoting *Nat'l Farm Lines v. Interstate Commerce Comm'n*, 564 F.2d 381, 384 (10th Cir. 1977)) (applying Federal Rule of Civil Procedure 24(a)) ("We have here . . . the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible. The cases correctly hold that this kind of a conflict satisfies the minimal burden of showing inadequacy of representation.").[4]

Where, as here, the interests of Intervenors may be seen as particular to a subset of the general population, the presumption that government representation is adequate is overcome. *Mille Lacs Band of Chippewa Indians v. State of Minnesota,* 989 F.2d 994, 1000-01 (8th Cir. 1993) ("Because the counties and the landowners seek to protect local and individual interests not shared by the general citizenry of Minnesota, no presumption of adequate representation arises."); *Clark v. Putnam County*, 168 F.3d 458, 461-62(11th Cir. 1999) (black voters allowed to intervene in challenge to court-ordered voting plan defended by

[4] "Wisconsin Stat. § 803.09(1) is based on Rule 24(a)(2) of the Federal Rules of Civil Procedure, and interpretation and application of the federal rule provide guidance in interpreting and applying § 803.09(1)." *Helgeland*, 2008 WI 9, ¶37.

county commissioners, since commissioners represented all county citizens, including persons whose interests were adverse to proposed intervenors). The Intervenors have unique and personal interests in this case, distinct from those of the state and from the general population. The protections they may lose will affect and potentially harm some of the most valuable interests in their lives. The presumption of adequate representation by the state, therefore, is inappropriate and inapplicable in this action.

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

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

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

While the state will defend with other distinguished counsel, such outside representation is necessarily compromised. The Attorney General's office has more experience than any other firm in the country when it comes to representing the State of Wisconsin in an original jurisdiction matter before the Supreme Court. Based on this consideration alone, the appointed representation by the state is not adequate.

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

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

The Intervenors meet the four criteria necessary to claim a right of intervention. *See* Wis. Stat. § 803.09(1); *Helgeland*, 2008 WI 9. The Intervenors' showing is particularly strong given the fact that "the criteria need not be analyzed in isolation from one another, and a movant's strong showing with respect to one requirement may contribute to the movant's ability to meet other requirements as well." *Id.* ¶39 (footnote omitted). That is, "there is interplay between the requirements; the requirements must be blended and balanced . . . ." *Id.* In the current situation, the interplay abounds. For example, the difference between Intervenors' personal interests as compared to the government's official role to defend the statute demonstrates not only that Intervenors meet the interest requirement, but also goes to the adequacy of representation prong. Also, because Intervenors' interests are directly at issue in this case, they are able to meet the interest and impairment prongs of the intervention test. When considering such interplay, the showing of the Intervenors is even stronger.

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

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

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

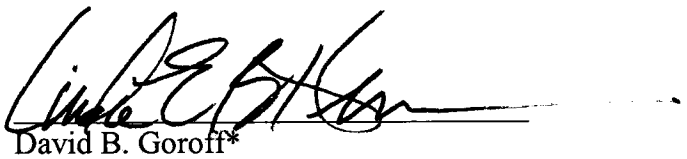
The primary claim in this lawsuit is that the domestic partnership statute creates a legal status substantially similar to marriage, violating Art. XIII, sec. 13 of the Wisconsin Constitution. Here, applicants seek to intervene in order to respond to Plaintiffs' legal and factual allegations. Common questions of law and fact at issue in the main action that will be addressed by the Intervenors include whether the domestic partnership statute and/or the rights afforded to the Intervenors are substantially similar to marriage. If allowed to intervene, the Intervenors will "significantly contribute to [the] full development of the

underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Spangler v. Pasadena Bd. of Educ.*, 552 F. 2d 1326, 1329 (9th Cir. 1977); *see also Daggett v. Comm'n on Gov't Ethics & Election Practices*, 172 F. 3d 104, 113 (1st Cir. 1999) (In exercising its discretion, a court may consider a variety of factors, including whether the intervenor's participation would "be helpful in fully developing the case"). Much of this critical information cannot be provided by the current parties. Simply put, it is in the interest of justice to allow the Intervenors to intervene.

CONCLUSION

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

Dated this 22nd day of September, 2009.



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