

STATE OF WISCONSIN

DANE COUNTY
BRANCH_____

CIRCUIT COURT

JODY HELGELAND
JESSIE TANNER
[address redacted]
Madison, WI 53704,

Case No. _____

VIRGINIA WOLF
CAROL SCHUMACHER
[address redacted]
Eau Claire, WI 54703,

Declaratory Judgment: 30701
Other Injunction: 30704

DIANE SCHERMANN
MICHELLE COLLINS
[address redacted]
Eau Claire, WI 54703,

MEGAN SAPNAR
INGRID ANKERSON
[address redacted]
Madison, WI 53703,

ELOISE McPIKE
JANICE BARNETT
[address redacted]
Milwaukee, WI 53216, and

JAYNE DUNNUM
ROBIN TIMM
[address redacted]
Platteville, WI 53818,

Plaintiffs,

v.

DEPARTMENT OF EMPLOYEE TRUST FUNDS,
DEPARTMENT OF EMPLOYEE TRUST FUNDS BOARD,
WISCONSIN GROUP INSURANCE BOARD,
801 W Badger Road,
Madison, WI 53702,

BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN,

1860 Van Hise Hall,
Madison, WI 53706,

FRANK BUSALACCHI, Secretary of the
Department of Transportation,
DEPARTMENT OF TRANSPORTATION,
4802 Sheboygan Avenue,
Madison, WI 53707,

MATTHEW J. FRANK, Secretary of the
Department of Corrections,
DEPARTMENT OF CORRECTIONS
3099 E Washington Avenue,
Madison, WI 53707, and

Defendants.

COMPLAINT

Plaintiffs, by their attorneys, Linda Roberson, Balisle & Roberson, S.C. and Laurence Dupuis of the American Civil Liberties Union of Wisconsin Foundation, Inc., for their Complaint against defendants, the Department of Employee Trust Funds Board, the Department of Employee Trust Funds, the Wisconsin Group Insurance Board, the Board of Regents of the University of Wisconsin, Frank Busalacchi, the Department of Transportation, Matthew J. Frank, and the Department of Corrections, allege as follows:

INTRODUCTION

1. This is an action for declaratory and injunctive relief challenging the constitutionality of sec. 40.02(20), Stats. and sec. ETF 10.01, Wis. Admin. Code, which define dependant for purposes of state employee health insurance eligibility, and sec. 103.10(3), Stats., which defines those family members with a serious health condition for whom a state employee may take family leave to provide care. The plaintiffs allege that

these definitions violate Article I, section 1 of the Wisconsin Constitution, because they exclude lesbian and gay male employees and their families from the opportunity to enjoy essential employment benefits.

2. The plaintiffs are lesbian couples in committed, intimate relationships. Plaintiffs Jody Helgeland, Virginia Wolf, Diane Schermann, Megan Sapnar, Eloise McPike and Jayne Dunnum all are or were state employees who share their lives, homes and financial obligations with their respective same-sex domestic partners, plaintiffs Jessie Tanner, Carol Schumacher, Michelle Collins, Ingrid Ankerson, Janice Barnett and Robin Timm. Plaintiffs seek equal access to health insurance and to family leave that defendants offer to employees with opposite-sex spouses but deny to plaintiffs.

3. Because the State of Wisconsin provides critical employment benefits to state employees and their spouses but refuses them to similarly situated state employees and their committed same-sex life partners, defendants deprive plaintiffs of their right to equal protection under the Wisconsin Constitution.

4. The benefits at issue in this lawsuit include access to health care for an employee's domestic partner; access to family leave so that an employee can care for a seriously ill domestic partner; and an employee's ability when she leaves state employment, such as at retirement or death, to convert sick leave credits to pay for health insurance for his or her insured partner.

JURISDICTION AND VENUE

5. The plaintiffs bring this action under secs. 801.01, 806.04 and 813, Stats. Venue in this action is proper in Dane County pursuant to sec. 801.50(3), Stats.

THE PARTIES

Jody Helgeland and Jessie Tanner

6. Jody Helgeland and Jessie Tanner have been in an intimate, loving, committed relationship for over ten years. They reside together in Madison, Wisconsin.

7. Jessie moved to Wisconsin when she was three years old, and Jody is a lifelong Wisconsin resident.

8. Jody and Jessie are both twenty-nine years old.

9. Jody and Jessie hold themselves out to their families and their community as a couple in a committed, marital relationship. They would enter into a civil marriage if it were legal.

10. Jody and Jessie celebrated a commitment ceremony in March 1999.

11. Jody and Jessie own their home jointly, and have joint checking and savings accounts.

12. Jody has been employed by the University of Wisconsin at Madison as a research specialist since 1998. Jody is also a full time graduate student. As a university employee, Jody is eligible for health insurance through the Wisconsin state insurance system.

13. Jessie is excluded from Jody's employee health insurance, and Jody and Jessie are unable to afford individual health insurance for Jessie. Jessie has no health insurance at this time.

14. Although the University of Wisconsin does offer limited health insurance benefits to domestic partners of students, Jody and Jessie have not enrolled in the

university health services plan because it would be expensive, and would not provide benefits that Jessie needs.

15. It would cost Jody and Jessie almost \$5,000 a year to purchase health insurance with domestic partnership benefits through the University of Wisconsin student health insurance plan (SHIP) for less coverage than Jody has under her present plan. In contrast, Jody's insurance as an employee costs her approximately \$25 per month, whereas a family plan would cost \$55 per month.

16. Jody and Jessie have not enrolled in the basic services offered by the University of Wisconsin student health services because those basic services are limited, and exclude services such as emergency room care, ambulance services, hospitalization, any health issues requiring a specialist, complex or non-routine diagnostic tests, physical therapy, allergy testing, pregnancy-related care, prescription coverage, or mammograms.

17. Jessie suffers from very severe asthma, allergies and acid reflux disease.

18. Jessie is now unemployed, and she is looking for a new job. However, without medical treatment, her condition restricts her breathing capacity, and limits her abilities.

19. When Jessie last had health insurance, her doctors prescribed Singulair, Pulmicort, Albuterol, Allegra and Rhinocort for her allergies and asthma, and Prilosec and Ranitidine for her acid reflux.

20. Jessie and Jody cannot afford the medications that would improve Jessie's asthma, allergies and acid reflux because they cost over \$500 per month. If Jessie were covered on Jody's health insurance, the co-pay would be approximately \$75 per month.

21. Because Jessie cannot afford necessary medication, she has to limit her physical activity to prevent triggering an asthma attack. In the past, when Jessie has had severe asthma attacks, Jody has had to take her to the urgent care clinic, and they had to pay out of pocket for treatment.

22. If the University of Wisconsin allowed Jody to obtain for Jessie the employment-related benefits that are available to spouses of similarly situated employees, Jody and Jessie would enroll to receive those benefits.

23. On April 4, 2005, Jody asked Stacey Hughes, Payroll and Benefit Specialist for the department of the University of Wisconsin where Jody works, whether she could add Jessie to her health care plan as a domestic partner.

24. Ms. Hughes told Jody that she could not provide coverage to Jessie.

25. Jody and Jessie have made binding promises and commitments of mutual support to one another. Jody and Jessie accept the emotional and financial responsibilities of taking care of one another, and have taken steps to ensure that their relationship has legal protections. Jody has designated Jessie as the beneficiary on her retirement savings account. Jody and Jessie also have named one another as the responsible party on health care powers of attorney.

26. The responsibility that Jody and Jessie have promised to each other includes the obligation to provide for one another if either becomes seriously ill. If serious illness struck them, they are committed to provide nurture, emotional and moral support, and, if necessary, to pay the financial costs of health care for one another.

Virginia Wolf and Carol Schumacher

27. Virginia Wolf and Carol Schumacher have been in an intimate, loving, committed relationship for twenty-nine years. They reside together in Eau Claire, Wisconsin.

28. Virginia is sixty-six years old, and Carol is fifty-one.

29. Virginia and Carol consider themselves married, and hold themselves out to their families and their community as a couple in a committed, marital relationship. They would enter into a civil marriage if it were legal.

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

31. Virginia is a retired English professor at the University of Wisconsin - Stout. Virginia is now a Unitarian Universalist minister.

32. Carol is an elections specialist and works part-time for the City of Eau Claire.

33. Virginia and Carol were joined in a Unitarian Universalist marriage ceremony on December 21, 1990.

34. Virginia has two adult children. Virginia and Carol raised the children together since the children were four and eight years old. Virginia and Carol now have two granddaughters.

35. Virginia and Carol own their home together as joint tenants with a right of survivorship. They also have joint checking and savings accounts, as well as certificates of deposit.

36. As a retired employee of the University of Wisconsin, Virginia is eligible for continued health insurance from the University at a reduced cost. She is able to use her unused sick leave that she accumulated while she was working to “pay” for her health insurance.

37. However, because Virginia is unable to include Carol on her University health insurance as her domestic partner, Virginia and Carol are forced to pay more to obtain inferior insurance coverage for Carol.

38. In addition, Virginia and Carol are precluded from using the value of Virginia’s unused sick leave to purchase health insurance for Carol now, and in the event that Virginia were to pass away before Carol, to pay for Carol’s health insurance until the value of the accrued sick leave was used up. In contrast, spouses of similarly-situated employees are able to use unused sick leave to purchase health insurance at retirement and after the state employee pre-deceases the spouse.

39. If Virginia were to pass away before Carol and before she had used up her sick leave, the value of that leave would be lost.

40. Because Virginia and Carol were unable to provide health insurance for Carol through Virginia’s employment at the University of Wisconsin, Carol was unable to stay home with their children when the children were young, because she needed to work to ensure that she had health insurance.

41. Although Carol now has health insurance through the City of Eau Claire, she has to pay thirty percent of the premiums herself because she works part time. Carol and Virginia pay approximately \$130 per month for Carol’s health insurance.

42. Carol's insurance also has higher co-payments required for prescription drugs, and Carol and Virginia pay out of pocket for medication to treat Carol's thyroid condition, which is not covered by Carol's insurance. For example, last year Carol and Virginia spent approximately \$550 for Carol's medication and co-payments.

43. In addition, Carol plans to retire in 2008. If Carol cannot be covered on Virginia's insurance after she retires, Carol and Virginia will have to pay for a supplemental policy for Carol before Carol is eligible for Medicare. Carol and Virginia have inquired about the cost of that policy, which will be approximately \$100 per month.

44. If the University of Wisconsin allowed Virginia to obtain for Carol the employment-related benefits that are available to spouses of similarly situated retired employees, Virginia and Carol would enroll to receive those benefits.

45. On March 22, 2005, Virginia told Wayne Argo, the Director of Human Resources at University of Wisconsin – Stout, that she was interested in providing domestic partnership insurance for Carol.

46. Mr. Argo told Virginia that she could not do so because the University did not offer domestic partnership insurance.

47. Virginia and Carol have made binding promises and commitments of mutual support to one another. Virginia and Carol accept the emotional and financial responsibilities of taking care of one another, and have taken steps to ensure that their relationship has legal protections. Virginia and Carol have named one another in their wills and in financial and health care powers of attorney. Virginia and Carol also have named one another as the beneficiary for pension benefits and on life insurance policies.

48. The responsibility that Virginia and Carol have promised to each other includes the obligation to provide for one another if either becomes seriously ill. If serious illness struck them, they are committed to provide nurture, emotional and moral support, and, if necessary, to pay the financial costs of health care for one another.

Diane Schermann and Michelle Collins

49. Diane Schermann and Michelle Collins have been in an intimate, loving, committed relationship for almost a year. They reside together in Eau Claire, Wisconsin.

50. Diane is 43 years old, and Michelle is 34 years old.

51. Diane and Michelle have been close friends for over five years, and became romantically involved approximately a year ago. On September 25, 2004, Diane and Michelle celebrated a commitment ceremony.

52. Diane and Michelle consider themselves married, and hold themselves out to their families and their community as a couple in a committed, marital relationship. They would enter into a civil marriage if it were legal.

53. Diane moved to Wisconsin eleven years ago. Michelle is originally from Wisconsin, and moved back to Wisconsin from California seven years ago to be closer to her family.

54. Diane has two children from a previous marriage. Diane and Michelle consider Michelle to be a parent to their children. Diane has signed a medical release authorizing Michelle to make medical decisions for the children.

55. Diane and Michelle are both very involved with their children and in their community. Michelle coaches sports, and Diane has received awards for her community service.

56. Diane and Michelle share household expenses and have shared bank accounts.

57. Diane has worked for the Wisconsin Department Transportation for eleven years. She is currently a Transportation Engineering Specialist, and has over twenty-three years of experience with civil engineering.

58. As a state employee, Diane has family health insurance coverage through the Wisconsin state insurance system.

59. Michelle is excluded from all Wisconsin state insurance contracts and plans, and Diane and Michelle are unable to afford health insurance for Michelle.

60. Michelle injured her back while working approximately four years ago. She was sent back to work with a 7 % permanent disability and re-injured her back in October 2004. As a result of her back injury, she is restricted in her ability to sit or stand for prolonged periods of time.

61. Until she recently re-injured her back, Michelle had been working part time since her injury in order to maintain minimal worker's compensation insurance coverage for the medical problems resulting from her back injury. She is now unable to work.

62. Michelle also suffers from leg and foot pain. Because Michelle does not have comprehensive health insurance, she and Diane recently had to pay \$1,900 out of pocket for an MRI and EKG. In addition, Michelle suffers from severe psoriasis.

63. Michelle has been informed by doctors that she needs surgery to treat her back injury. However, she and Diane are unable to afford the surgery.

64. Michelle's worker's compensation insurance coverage is not comprehensive, and Michelle has been refused treatment for her back injury because she cannot establish that any treatment or surgery would be covered by insurance.

65. Because Diane cannot cover Michelle on her health insurance, and they cannot afford to purchase an individual health insurance policy for Michelle, Michelle seeks treatment from the Chippewa Valley Free Clinic in Eau Claire. The clinic is open one evening a week, and only sees a limited number of patients. Thus, approximately once a month, Michelle is forced to stand in line outside for several hours waiting for the clinic to open.

66. Michelle requires medication that costs approximately \$200 a month. Although she can sometimes obtain the medications she needs from the free clinic, they are not always available. Michelle goes without necessary medication at times because of the cost of the medication.

67. If she is not able to get the medicine for her psoriasis, it becomes inflamed. The patches, which cover various parts of her body from head to toe, swell, begin to flake, sometimes bleed, and become extremely sensitive, so that her clothes and even the bed sheets cause her pain when they touch her skin.

68. Because Michelle does not have comprehensive health care, she is unable to see a regular physician if she gets sick. If the free clinic is not open, Michelle often goes without medical care when she is ill because private urgent care is so expensive.

69. Michelle has also recently found a lump on her breast, and she may need to see a specialist. Diane and Michelle will have to pay for the costs of a specialist visit and a biopsy, which will cost \$1,000 or more. The procedure to remove the lump will

cost from \$4,000 to \$5,000 dollars. Because Michelle and Diane are very concerned about the potential expense, and Michelle has found lumps before that did not turn out to be cancerous, Michelle has not yet sought treatment for the lump.

70. Michelle's medical problems are exacerbated by the lack of a single treating physician who could oversee her care. Instead, because she and Diane are unable to afford an individual health insurance policy, Michelle relies on a patchwork of free clinic visits, worker's compensation coverage, and emergency urgent care visits when absolutely necessary. If Diane could include Michelle on her family health insurance plan, Michelle would have far better medical treatment.

71. If the State of Wisconsin allowed Diane to obtain for Michelle the employment-related benefits that are available to spouses of similarly situated employees, Diane and Michelle would enroll to receive those benefits.

72. On March 29, 2005, Diane asked Denise Foster, Human Resource Specialist at the Department of Transportation, whether she could include Michelle on her family health insurance plan as her life partner.

73. Ms. Foster informed Diane that this was not permitted under Wisconsin law.

74. Diane and Michelle have made binding promises and commitment of mutual support to one another. Diane and Michelle accept the emotional and financial responsibilities of taking care of one another, and have taken steps to ensure that their relationship has legal protections. Diane has named Michelle as her beneficiary for her state of Wisconsin pension benefits and on her life insurance policy. Diane and Michelle have also named each other as the responsible party on health care powers of attorney.

75. The responsibility that Diane and Michelle have promised to each other includes the obligation to provide for one another if either becomes seriously ill. If serious illness struck them, they are committed to provide nurture, emotional and moral support, and, if necessary, to pay the financial costs of health care for one another.

Megan Sapnar and Ingrid Ankerson

76. Megan Sapnar and Ingrid Ankerson have been in an intimate, loving, committed relationship for eight years. They reside together in Madison, Wisconsin.

77. Megan is thirty years old, and Ingrid is thirty-one years old.

78. Megan and Ingrid hold themselves out to their families and their community as a couple in a committed, marital relationship. They would enter into a civil marriage if it were legal.

79. On April 26, 2003, Megan and Ingrid celebrated a commitment ceremony.

80. Megan and Ingrid have also registered as domestic partners with the City of Madison and with the University of Wisconsin.

81. Megan and Ingrid own their home together, share household expenses and have joint bank accounts.

82. Megan is a graduate student in Communication Arts at the University of Wisconsin-Madison studying for her Ph.D. She is also a teaching assistant.

83. Megan and Ingrid chose to move to Madison, Wisconsin from Baltimore, Maryland so that Megan could attend graduate school at the University of Wisconsin.

84. Ingrid works as a graphic designer for a small company that designs educational software, and does not receive health insurance from her employer.

85. As a teaching assistant who is employed on at least a one-third full time basis by the state, Megan is eligible for health insurance from the University of Wisconsin.

86. Ingrid is excluded from Megan's state insurance plan, and Megan and Ingrid are unable to afford full health insurance coverage for Ingrid.

87. Although the University of Wisconsin does offer domestic partnership benefits to students, the benefits available for students are inferior to those available to Megan as an employee, and are far more expensive.

88. It would cost Megan and Ingrid almost \$5,000 a year to purchase health insurance with domestic partnership benefits through the University of Wisconsin student health insurance plan (SHIP).

89. Because Megan and Ingrid cannot afford the cost of that coverage, they have purchased catastrophic coverage for Ingrid that will provide limited coverage in the case of an emergency. Ingrid's health insurance policy has a \$5,000 deductible, and costs almost \$720 a year.

90. In addition, Megan and Ingrid have paid approximately \$315 this year to allow Ingrid to receive basic services from the University of Wisconsin student health services.

91. Those basic services are limited, and exclude many services such as emergency room care, ambulance services, hospitalization, any health issues requiring a specialist, complex or non-routine diagnostic tests, physical therapy, allergy testing, pregnancy-related care, or mammograms. Prescriptions are also not covered, although they can be purchased at a discount.

92. Because Ingrid does not have comprehensive health insurance, and because of the high cost of medical visits, she has been unable to visit the doctor when she becomes sick. For example, when Ingrid has had the flu in the past, she has not received any medical treatment. Similarly, she has not been able to afford treatment for a painful foot condition requiring the care of a specialist.

93. Megan and Ingrid are also concerned that they would have to pay expensive medical bills if Ingrid were to become seriously ill.

94. If the University of Wisconsin allowed Megan to obtain for Ingrid the employment-related benefits that are available to spouses of similarly situated employees, Megan and Ingrid would enroll to receive those benefits.

95. On April 15, 2005 Megan spoke with Barbara Roberts, University Benefits Specialist at the University of Wisconsin and asked whether she could provide coverage for Ingrid on her state employee health insurance plan as a domestic partner.

96. Ms. Roberts said that domestic partners are excluded from health insurance by state law.

97. Megan and Ingrid have made binding promises and commitments of mutual support to one another. Megan and Ingrid accept the emotional and financial responsibilities of taking care of one another, and have taken steps to ensure that their relationship has legal protections. Megan and Ingrid have named each other in health care powers of attorney. In addition, Megan has named Ingrid as the beneficiary on benefits Megan receives through her father's pension plan.

98. The responsibility that Megan and Ingrid have promised to each other includes the obligation to provide for one another if either becomes seriously ill. If

serious illness struck them, they are committed to provide nurture, emotional and moral support, and, if necessary, to pay the financial costs of health care for one another.

Eloise McPike and Janice Barnett

99. Eloise McPike and Janice Barnett have been in an intimate, loving, committed relationship for twenty years. They have lived together in Milwaukee, Wisconsin for the past 20 years.

100. Eloise and Janice consider themselves life-long partners, and hold themselves out to their friends and community as a couple in a committed, marital relationship. They also hold themselves out as a couple to Eloise's family. Eloise and Janice would enter into a civil marriage if it were legal in Wisconsin. Eloise and Janice celebrated a commitment ceremony in 1987.

101. Eloise and Janice, both of whom are African-American women, were born in Missouri, but moved to Milwaukee with their families during their childhoods. Eloise was born in 1953 and Janice in 1959.

102. Eloise and Janice met in Milwaukee. Together, they raised Eloise's daughter, Tracy, from the time Tracy was 10 years old. They now enjoy visits from their grandchildren, who spend a great deal of time with Eloise and Janice.

103. Eloise and Janice share joint finances and purchased their home with shared resources. They have a joint savings account and share all expenses. Eloise has named Janice as the beneficiary of her pension plan, her self-funded retirement plan, and her life insurance policy, and Janice has named Eloise as the beneficiary of her life insurance policy.

104. Eloise has worked for the Wisconsin Department of Corrections for twenty years. She is presently a Captain and Assistant Supervisor at Felmers O. Chaney Correctional Facility in Milwaukee.

105. Janice was seriously injured in an automobile accident in Tennessee in 1996. Prior to the accident, Janice worked full-time as a certified nursing assistant.

106. The injuries to Janice's right leg and shoulder from the accident required several surgeries and have left her with permanent physical limitations, including a fused ankle that she cannot bend, pain and swelling when she stands for more than one-half hour, and spasms in her arm. Janice also suffers from high blood pressure and continues to have emotional symptoms caused by the accident.

107. Until 2003, Janice received disability benefits from the Social Security Administration. She is now working part-time as a home-health nursing assistant through New Health Services, but is limited to light duty and cannot work full-time. She cannot obtain health insurance benefits from her current employment.

108. After the car accident in 1996, Eloise was unable to immediately join Janice in the hospital in Tennessee, because she was unable to use family medical leave. Instead, she had to request vacation time and wait five days for the request to be approved before she could go to Tennessee to care for Janice.

109. Eloise was eligible for family medical leave, but for the fact that Janice, her life partner, is not one of the family members for whom Eloise could seek family leave to provide care.

110. Eloise has also been unable to use family medical leave to be with Janice after her surgeries, but has instead used vacation time.

111. When Janice lost Social Security benefits in 2003, she also lost eligibility for government-funded health insurance coverage. She could not be put on Eloise's insurance, and initially Eloise and Janice were unable to pay for private insurance for Janice. For two years, she was without insurance and could not afford the medications she needed for her pain, depression and other physical and emotional symptoms. In January 2005, Eloise and Janice were able to purchase private health insurance for Janice.

112. Because Eloise is unable to include Janice on her health insurance as her domestic partner, Eloise and Janice are forced to pay more to obtain inferior insurance coverage for Janice. As a result, Janice is forced to depend upon the inferior health-care services that are covered by that policy.

113. The health insurance premium for Janice's coverage is significantly more expensive than Janice's coverage would be if the State of Wisconsin permitted them to obtain insurance coverage for Janice as Eloise's domestic partner. Janice and Eloise now pay about \$100 per month for coverage.

114. In addition, the benefits from Janice's current insurance coverage are not as good as the benefits available under the plans the State of Wisconsin offers to employees and their spouses. For example, Janice must pay about \$100 per month for prescription drugs and another \$60 for medical service co-payments.

115. If the Department of Corrections allowed Eloise to obtain for Janice the employment-related benefits that are available to spouses of similarly situated employees, Eloise and Janice would enroll to receive those benefits.

116. On April 11, 2005, Eloise asked Bonnie K. Parenteau, a benefits administrator for the Department of Corrections, if domestic partner health insurance was available.

117. Ms. Parenteau told Eloise that domestic partner insurance is not available.

118. Eloise and Janice have made binding promises and commitments of mutual support to one another. Eloise and Janice accept the emotional and financial responsibilities of taking care of one another, and have taken steps to ensure that their relationship has legal protections. They each have financial powers of attorney in which they have named each other as the responsible party. Each has named the other as the beneficiary in her will. Janice has named Eloise in her health care power of attorney.

119. The responsibility that Eloise and Janice have promised to each other includes the obligation to provide for one another if either becomes seriously ill. If serious illness struck them, they are committed to provide nurture, emotional and moral support, and, if necessary, to pay the financial costs of health care for one another.

Jayne Dunnun and Robin Timm

120. Jayne Dunnun and Robin Timm have been in an intimate, loving, committed relationship for thirteen years. They reside together in Platteville, Wisconsin.

121. Jayne and Robin consider themselves life partners, and hold themselves out to their families and their community as a couple in a committed, marital relationship. They would enter into a civil marriage if it were legal.

122. Jayne and Robin were both born in Wisconsin.

123. Jayne and Robin met when they lived in Milwaukee. They moved to Platteville ten years ago for Robin's work.

124. Jayne and Robin celebrated a commitment ceremony in 1992.

125. Jayne and Robin share joint finances and own their home and a working farm together. They have a joint checking account and joint savings accounts. Jayne has named Robin as the beneficiary of her pension plan and her life insurance policy, and Robin has named Jayne as the beneficiary on her deferred compensation plan and on her retirement savings account.

126. Jayne has worked for the Wisconsin Department of Corrections for fifteen years. She is presently the Director of Training and Staff Development.

127. Robin is a full-time farmer on a Community-Supported Agriculture farm that provides produce to subscribing families. The farm is jointly owned by Jayne and Robin.

128. Robin was previously a public health inspector, and she has a nursing degree. Jayne supported herself and Robin while Robin was in nursing school. Although Robin has worked as a farmer full-time for the past four years, she has maintained her nursing license to ensure that she would be able to support herself and Jayne if Jayne became unable to work due to illness or any other reason.

129. Because Jayne is unable to include Robin on her health insurance as her domestic partner, Jayne and Robin are forced to pay more to obtain inferior insurance coverage for Robin, and Robin is forced to depend upon inferior health-care services.

130. The health insurance premium for Robin's coverage is significantly more expensive than Robin's coverage would be if the State of Wisconsin permitted them to obtain insurance coverage for Robin as Jayne's domestic partner. Robin now pays \$270 per month for coverage with a \$500 deductible.

131. In addition, the benefits from Robin's current insurance coverage are not as good as the benefits available under the plans the State of Wisconsin offers to employees and their spouses.

132. For example, Robin's insurance does not offer prescription drug coverage, while Jayne's does with a low co-payment requirement. Robin has a thyroid condition and regularly has to take prescription medication. Were Robin covered on Jayne's health insurance, her medication would be available at a reduced cost.

133. Robin's insurance also has higher co-pays for a variety of services including emergency room treatment and the purchase of medical supplies.

134. Robin's insurance also provides no coverage for regular dental care, while she would be able to receive treatment at a reduced cost if she were covered on Jayne's health insurance.

135. If the Department of Corrections allowed Jayne to obtain for Robin the employment-related benefits that are available to spouses of similarly situated employees, Jayne and Robin would enroll to receive those benefits.

136. On April 1, 2005, Jayne asked Christine Lindeman, Director of Payroll and Benefits for the Department of Corrections, if she could cover Robin on her health insurance as her domestic partner.

137. Ms. Lindeman told Jayne that domestic partnership health insurance benefits were not available under Wisconsin law.

138. Jayne and Robin have made binding promises and commitments of mutual support to one another. Jayne and Robin accept the emotional and financial responsibilities of taking care of one another, and have taken steps to ensure that their

relationship has legal protections. They have signed a domestic partnership agreement that sets out their agreement to “be jointly responsible for all joint debts and expenses,” including “health care for each other.” In addition, they each have health care and financial powers of attorney in which they have named each other as the responsible party, they have named each other as the beneficiary in their wills, and they have named each other as responsible for burial decision-making.

139. The responsibility that Jayne and Robin have promised to each other includes the obligation to provide for one another if either becomes seriously ill. If serious illness struck them, they are committed to provide nurture, emotional and moral support, and, if necessary, to pay the financial costs of health care for one another.

Defendants

140. Defendant Department of Employee Trust Funds Board (“DETFB”) is made up of persons appointed or elected pursuant to sec. 15.16, Stats., whose powers and duties are set out at sec. 40.03, Stats. The Board is sued in its official capacity.

141. Defendant Department of Employee Trust Funds (“DETF”) is an administrative agency of the State of Wisconsin created by sec. 15.16, Stats. DETF is under the direction and supervision of the DETFB.

142. Defendant Group Insurance Board (“GIB”) is made up of persons appointed or elected pursuant to sec. 15.165(2), Stats., whose powers and duties are set out at sec. 40.93(6), Stats. The Board is sued in its official capacity.

143. Defendant, the Board of Regents of the University of Wisconsin System (the “Board of Regents”), is made up of persons appointed or elected pursuant to sec.

15.91, Stats., whose powers and duties are set out at sec. 36.09(1), Stats. The Board is sued in its official capacity.

144. Defendant Matthew J. Frank is the Secretary of the Department of Corrections, who was appointed pursuant to sec. 15.05, Stats. and whose powers and duties are set out at sec. 15.05, Stats. He is sued in his official capacity.

145. Defendant, the Department of Corrections (“DOC”), is an administrative agency of the State of Wisconsin created by sec. 15.14, Stats. DOC is under the direction and supervision of the Secretary of the Department of Corrections.

146. Defendant Frank Busalacchi is the Secretary of the Department of Transportation, who was appointed pursuant to sec. 15.05, Stats. and whose powers and duties are set out at sec. 15.05, Stats. He is sued in his official capacity.

147. Defendant, the Department of Transportation (“DOT”), is an administrative agency of the State of Wisconsin created by sec. 15.46, Stats. DOC is under the direction and supervision of the Secretary of the Department of Transportation.

GENERAL ALLEGATIONS

Health insurance

148. Defendant DETFB controls defendant DETF, sec. 40.01, Stats., and promulgates, with the approval of Defendant GIB, “all rules required for the administration of the group health” plans for state employees. Sec. 40.03(2)(ig).

149. Section 40.52(1), Stats., states that “[t]he group insurance board shall establish by contract a standard health insurance plan in which all insured employees shall participate except as otherwise provided in this chapter. The standard plan shall

provide: (a) A family coverage option for persons desiring to provide for coverage of all eligible dependents”

150. Section 40.52(3), Stats., provides: “The group insurance board, after consulting with the board of regents of the university of Wisconsin system, shall establish the terms of a health insurance plan for graduate assistants, . . . who are employed on at least a one-third full-time basis” Pursuant to this authority, the GIB has established a family coverage option for graduate assistants to provide coverage for them and their eligible dependents.

151. Section 40.02(20), Stats., defines “dependent” as “the spouse, minor child, including stepchildren of the current marriage dependent on the employee for support and maintenance, or child of any age, including stepchildren of the current marriage, if handicapped to an extent requiring continued dependence. For group insurance purposes only, the department may promulgate rules with a different definition of “dependent” than the one otherwise provided in this subsection for each group insurance plan.”

152. DETFB promulgated Sec. ETF 10.01(2), Wis. Admin. Code, which defines “dependent” as “an employee’s spouse” The definition of dependant does not include an employee’s domestic partner.

153. Under these statutes and regulations, or, in the alternative under defendants’ interpretation and administration of applicable state statutes and regulations, Wisconsin state employees in opposite-sex relationships may elect to pay additional insurance premiums to extend the coverage of such benefit contracts or plans to their dependents, including their spouse, but Wisconsin state employees in committed same-

sex relationships may not elect to pay additional insurance premiums to extend such coverage to their domestic partner.

Sick leave carryover

154. Section 40.05, Stats., provides that accumulated unused sick leave of an eligible employee shall, at the time of death, upon termination of service, at retirement, or upon layoff, be converted to credits for payment of health insurance premiums on behalf of the employee or the employee's surviving insured dependents.

155. The definition of "dependent" from sec. 40.02(20), applies to determine which dependents may be covered under a family health insurance plan of the employee who has retired or otherwise left state employment and to determine which dependents may receive the sick leave credits pursuant to sec. 40.05, Stats..

156. Under these statutes and regulations, or, in the alternative under defendants' interpretation and administration of applicable state statutes and regulations, the accumulated unused sick leave of Wisconsin state employees in opposite-sex relationships may be used by the employees and their dependents, including their spouses, to purchase health insurance. In contrast, Wisconsin state employees in committed same-sex relationships may not share their accumulated unused sick leave with their partners.

Family leave

157. Section 103.10(3), Stats., provides that, "(b) An employee may take family leave for any of the following reasons: . . . 3. To care for the employee's child, spouse or parent, if the child, spouse or parent has a serious health condition." Although the statute requires that the employee give reasonable notice to the employer for the birth

or adoption of a child or for planned medical treatment, it does not require advance notice of the employee's need for leave to care for a family member who has an unplanned serious health condition.

158. Under this statute, Wisconsin state employees in opposite-sex relationships may obtain family leave to care for their spouse who has an unplanned serious health condition without giving advance notice. This statute does not prohibit state employers from providing their employees with rights to family leave that are more generous than the statute requires. Section 130.10(2)(a), Stats.

159. Defendant, the Board of Regents, has allowed some University of Wisconsin employees in committed same-sex relationships to use sick leave or vacation time to care for their domestic partners whose condition requires their direct care. Other state employers, such as the Department of Corrections, do not allow even the minimum family leave required under Section 130.10(3), Stats., to state employees to care for their domestic partners.

160. The opportunity to participate in or receive the benefits of family health insurance, sick leave carryover and family leave are privileges of employment.

161. Under these statutes and regulations, or, in the alternative under defendants' interpretation and administration of applicable state statutes and regulations, Wisconsin state employees in same-sex relationships are denied privileges of employment because they are not permitted to pay additional insurance premiums to extend the coverage of such benefit contracts or plans to their dependents, including same-sex domestic partners, because their same-sex domestic partners cannot benefit

from their sick leave carryover and because they cannot take family leave to care for their same-sex domestic partners who have a serious health condition.

Limited domestic partner benefits now available for certain state employees.

162. Defendant, the Board of Regents, makes available certain domestic partner benefits to their employees, including life insurance and accidental death and dismemberment insurance. (See <http://www.bussvc.wisc.edu/ecbs/bng-domestic-partner-benefits-uw1107.html>). To qualify for those benefits, an employee and his or her partner sign a declaration that provides:

We, the undersigned _____ and _____ declare that on _____ we agreed to live as domestic partners in a committed relationship of mutual support and caring as defined in this document, and that we have so lived since that time. We further state that since that time we have held ourselves out publicly to be each other's sole domestic partner and intend to remain in such a committed relationship for the foreseeable future.

163. In addition, the members of the same-sex couple state in the declaration that they are willing and able to show written proof of their status as domestic partners and affirm that they meet the definition of domestic partner. Domestic partners are defined as two individuals who:

1. Are 18 years of age or older.
2. Are competent to enter into a contract.
3. Are not legally married to, nor the domestic partner of, any other person.
4. Are not related by marriage.
5. Are not related by blood closer than permitted under marriage laws of the State of Wisconsin.
6. Have entered into the domestic partner relationship voluntarily, willingly and without reservation.
7. Have entered into a relationship which is the functional equivalent of a marriage, and which includes all of the following:
 - a. living together as a couple;
 - b. mutual support of each other;
 - c. mutual caring and commitment to each other;
 - d. mutual fidelity;

- e. mutual responsibility for each other's welfare; and
 - f. joint responsibility for the necessities of life.
8. Have been living together as a couple for at least six (6) months prior to registration with the Subscriber's employer.
 9. Intend to continue the domestic partner relationship indefinitely, with the understanding that the relationship is terminable at the will of either partner.

(The affidavit form is found at: <http://www.uwsa.edu/hr/benefits/ins/uws50.pdf>). The

Board of Regents requires domestic partners to file a Statement of Termination if there is any change in their status as domestic partners.

164. If permitted to do so, the plaintiff employees would sign an affidavit of domestic partnership, such as the one established by the Board of Regents, and would pay the additional insurance premiums required for the family coverage available to married employees to obtain health insurance coverage for their domestic partners.

165. Defendants intentionally deny plaintiffs and other lesbian and gay male employees and their families equal access to the privileges of employment: health insurance, sick leave carryover and family leave.

Conditioning Benefits on Marriage

166. For an employee's domestic partner to qualify as a "dependent" under these statutes and regulations, or, in the alternative under defendants' interpretation and administration of applicable state statutes and regulations, the employee and his or her partner must marry.

167. Gay and lesbian employees are not permitted to obtain benefits for their same-sex domestic partners because defendants intentionally condition the receipt of such benefits on marriage while denying lesbians and gay men the right to marry. *See* Sec. 765.02, Stats. (defining marriage as "a legal relationship between 2 equal persons, a husband and a wife . . .").

168. Defendants' only motives for denying equal employment benefits to lesbian and gay male employees and their families are to express disapproval of and to disadvantage lesbians and gay men.

Plaintiffs are similarly situated to married state employees and their spouses.

169. Plaintiff couples would marry if they could do so. Plaintiff couples view themselves and hold themselves out to their families and communities as committed, loving intimate couples, who are as committed to one another as spouses in a marital relationship.

170. As a part of their commitment, plaintiffs have made binding promises and commitments of mutual support to one another. They have undertaken financial obligations to care for one another, have intertwined their finances, and have signed documents to protect one another and their finances in the event of a health crisis or death. Although these protections fall short of those automatically provided by marriage, plaintiffs have tried to protect their relationships through the means available to them.

171. Each plaintiff's financial commitment to her partner includes promising to provide for one another if either becomes seriously ill. That obligation of care includes not only the commitment to provide nurture, emotional and moral support, but also, if necessary, to pay the financial costs of health care. Each plaintiff has taken on those obligations for her partner.

**CLAIM FOR RELIEF: VIOLATION OF ARTICLE I, SEC. 1
OF THE WISCONSIN CONSTITUTION -- EQUAL PROTECTION**

172. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 171.

173. Article I, Sec. 1 of the Wisconsin Constitution provides:

Equality; inherent rights. Section 1. All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

174. Under the statutes and regulations governing employee benefits set forth above, or, in the alternative under defendants' interpretation and administration of applicable state statutes and regulations, defendants provide health insurance, sick leave carryover benefits, and family leave benefits to married employees to provide for their spouses, but deny those benefits to similarly-situated state employees in committed intimate same-sex relationships to provide to, or use to care for, their life partners.

175. A lesbian or gay male employee is, therefore, treated less favorably than is a heterosexual employee.

176. A female employee with a female partner is treated less favorably than is a male employee with a female partner with the respect to health insurance, sick leave carryover benefits, and family leave. Similarly, a male employee with a male partner is treated less favorably than a female employee with a male partner with respect to the receipt of those same benefits.

177. The governing Wisconsin statutes and regulations, or, in the alternative, defendants, through their interpretation and administration of those statutes and regulations, deprive plaintiffs of the right to equal protection under Article I, sec. 1 of the Wisconsin Constitution by denying these employment benefits to lesbian and gay male employees with same-sex domestic partners, because of their sexual orientation, sex and marital status.

RELIEF SOUGHT

WHEREFORE, the plaintiffs request that the Court:

A. Enter a declaratory judgment that these statutes and regulations, or, in the alternative, defendants' interpretation and administration of them, violate plaintiffs' right to equal protection under Article I, Section 1 of the Wisconsin Constitution by denying gay male and lesbian employees and their same-sex domestic partners the employment benefits of health insurance, sick leave carryover and family leave that are available to similarly-situated heterosexual employees and their spouses because of sexual orientation, sex and marital status;

B. Enter a declaratory judgment that the Wisconsin Constitution requires that defendants provide lesbian and gay male employees and their same-sex domestic partners the same employment benefits of health insurance, sick leave carryover and family leave provided to similarly-situated employees and their spouses, including by classifying same-sex domestic partners of state employees as dependents for purposes of participation in these employment benefits;

C. Enter an order enjoining the defendants from excluding lesbian and gay male employees and their same-sex domestic partners from the same employment benefits provided to similarly-situated employees and their spouses, including by classifying same-sex domestic partners of state employees as dependents for purposes of participation in all employee benefit contracts and plans;

D. Award the plaintiffs their reasonable costs and attorneys' fees;

E. Award the plaintiffs any other relief as is appropriate under the

circumstances.

Dated: April 20, 2005.

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