

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

VIRGINIA WOLF and CAROL  
SCHUMACHER, KAMI YOUNG and  
KARINA WILLES, ROY BADGER and  
GARTH WANGEMANN, CHARVONNE  
KEMP and MARIE CARLSON, JUDITH  
TRAMPF and KATHARINA HEYNING,  
SALUD GARCIA and PAM KLEISS,  
WILLIAM HURTUBISE and LESLIE  
PALMER, and JOHANNES WALLMANN  
and KEITH BORDEN,

**Plaintiffs,**

**vs.**

**Case No. 14-cv-64**

SCOTT WALKER, in his official capacity as  
Governor of Wisconsin, J.B. VAN HOLLEN,  
in his official capacity as Attorney General of  
Wisconsin, RICHARD G. CHANDLER, in his  
official capacity as Secretary of Revenue of  
Wisconsin, OSKAR ANDERSON, in his  
official capacity as State Registrar of  
Wisconsin, GARY KING, in his official  
capacity as Eau Claire County District  
Attorney, JOHN CHISHOLM, in his official  
capacity as Milwaukee County District  
Attorney, JOSEPH CZARNEZKI, in his  
official capacity as Milwaukee County Clerk,  
WENDY CHRISTENSEN in her official  
capacity as Racine County Clerk, and SCOTT  
MCDONELL, in his official capacity as Dane  
County Clerk,

**Defendants.**

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**Preliminary Statement**

1. Plaintiffs Virginia Wolf and Carol Schumacher, Kami Young and Karina Willes, Roy Badger and Garth Wangemann, Charvonne Kemp and Marie Carlson, Judith Trampf and

Katharina Heyning, Salud Garcia and Pam Kleiss, William Hurtubise and Leslie Palmer, and Johannes Wallmann and Keith Borden (collectively, “Plaintiffs”) are all loving, committed, same-sex couples. They bring this action pursuant to 42 U.S.C. § 1983 to challenge the validity under the United States Constitution of Article XIII, § 13 of the Constitution of Wisconsin. That provision bars marriage between two people of the same sex and further bars the recognition of any legal status substantially similar to marriage for same-sex couples. Plaintiffs further challenge, on the same basis, any and all provisions of Wisconsin’s marriage statutes (Wis. Stat. ch. 765) that refer to marriage as a relationship between a “husband and wife,” if and to the extent that such provisions constitute a statutory ban on marriage for same-sex couples (collectively with Article XIII, § 13, the “marriage ban”). Plaintiffs seek declaratory and injunctive relief for violations of the Equal Protection and Due Process Clauses of the U.S. Constitution (U.S. Const. amend. xiv, § 1).

2. Marriage is universally recognized and celebrated as the hallmark of a couple’s love for and commitment to each other. When two people marry, they commit personally and publicly to build a life together, and they ask their families, friends, communities, and government to respect, honor, and support that commitment. Marriage has long been recognized and valued for its beneficial contribution to the welfare of society and to individual happiness. Lesbians and gay men in Wisconsin are denied the freedom afforded to different-sex couples in this State to have their loving, committed relationships recognized through marriage.

3. Historically, marriage in the United States has been a much more restrictive institution than it is today. Through various mechanisms, states have at times prohibited marriage among slaves, interracial marriage, and even marriage between two people of different faiths. State laws also made a woman the subordinate partner in a marriage, legally barred from

controlling her own finances and property. Wisconsin, however, once had a laudable history of supporting the freedom to marry on equal terms. For example, Wisconsin never banned marriage between people of different races. In 1850, Wisconsin became one of the first states to enact legislation protecting the property rights of married women, and by the turn of the twentieth century, Wisconsin had lifted many other legal restrictions on a married woman's ability to exercise financial independence from her husband.

4. Now, through the actions of legislatures and courts across the country, 17 states and the District of Columbia have extended the freedom to marry to same-sex couples. Yet Wisconsin, a historic leader in marriage equality, maintains one of the most restrictive bans on marriage for same-sex couples in the nation. Wisconsin's constitutional amendment barring same-sex couples from marrying not only denies loving, committed, same-sex couples the dignity and status that only marriage can confer on their relationships and their families, it also prohibits the extension to same-sex couples of the same legal protections, duties, and benefits that married couples are allowed by law. The State deprives same-sex couples of these rights and freedoms for no other reason than their sexual orientation and their sex.

5. The Plaintiffs in this action are five same-sex couples who seek the freedom to marry in Wisconsin to establish and affirm publicly the love they feel for each other and the mutual commitment they have made, two same-sex couples who ask the State of Wisconsin to recognize the marriages that they have legally contracted under the laws of another jurisdiction, and one same-sex couple who seeks freedom from the State's nullification of their existing marriage. Wisconsin's denial of the freedom to marry has harmed these couples and their families in numerous ways. Carol Schumacher was unable to seek family and medical leave to care for Virginia Wolf when she was ill because they were not married. Roy Badger and Garth

Wangemann struggle financially to pay for health insurance that would be more affordable if they were married. Judith Trampf was denied the right to make health care decisions for her unconscious partner because she could not prove her entitlement to do so. Kami Young and Karina Willes, along with Bill Hurtubise and Dean Palmer, cannot access the same opportunities to secure for their children the protections of dual parenthood that are available to different-sex married couples. And every one of these couples suffers the stigma that comes from the State's denigration of their relationships as unworthy of recognition.

6. Wisconsin's marriage ban inflicts two additional harms on Plaintiffs. First, the Supreme Court's ruling in *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013), which prohibits the federal government from treating state-sanctioned marriages of same-sex couples differently from marriages between a man and a woman, means that all federal spousal protections and obligations now flow to married same-sex couples living in states that recognize their marriages. Some of those protections are also extended, as a result of *Windsor*, to married same-sex couples living in states where their marriages are not recognized. But Wisconsin's marriage ban deprives the unmarried Plaintiff couples any access to these federal spousal benefits—benefits they could receive if they lived across the state line in Iowa or Minnesota where they could marry, and benefits they could partially access if they simply left the State to marry.

7. But leaving the State to marry puts Plaintiffs in the way of the second harm. Wisconsin's marriage ban discourages these unmarried Plaintiffs from marrying elsewhere and puts the married Plaintiffs at imminent risk of prosecution under Wis. Stat. § 765.30(1) (the "marriage evasion statute" or "marriage evasion law"), which makes it a criminal offense for a Wisconsin resident to leave the State to contract a marriage that is prohibited or void here. By

solemnizing their love and commitment in a state that acknowledges the dignity of their relationship, Carol Schumacher and Virginia Wolf, along with Kami Young and Karina Willes, risk criminal prosecution in their home state. The unmarried Plaintiffs are forced to choose between the risk of prosecution and foregoing access to any federal spousal protections. Once again, Wisconsin has no justification for this treatment other than Plaintiffs' sexual orientation and sex.

8. The marriage ban also inflicts a third, distinctive harm on Plaintiffs Johannes Wallmann and Keith Borden. For more than four years, Wallmann and Borden lived in California as a married couple under the laws of that State. When they moved to Wisconsin, Article XIII, § 13 of the Constitution of Wisconsin operated to nullify their existing marriage for state law purposes, and to revoke the legal protections and obligations their marriage would otherwise have afforded them. The State of Wisconsin voided their existing state law rights and responsibilities as a married couple against their will merely because they moved from one state to another.

9. Wisconsin's refusal to recognize these Plaintiffs' committed relationships, its elimination of even the possibility of seeking redress through the state legislature, and the possibility of criminal prosecution for doing nothing more than marrying the person they love has led these Plaintiffs to seek relief from this Court. Plaintiffs ask that the Court fulfill its solemn duty of ensuring to all Americans the fundamental freedoms that the Constitution of the United States guarantees. Wisconsin's marriage ban denies those freedoms. Plaintiffs therefore ask this Court to declare unconstitutional and enjoin enforcement of Article XIII, § 13 of the Wisconsin Constitution and any provisions of Wisconsin's marriage law that could be construed as limiting marriage to different-sex couples, on the grounds that they violate the Equal

Protection and Due Process Clauses of the United States Constitution (U.S. Const. amend. xiv, § 1). Plaintiffs also ask this court to enjoin enforcement of the marriage evasion statute against these Plaintiffs on the same grounds.

### **Jurisdictional Statement**

10. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress deprivations of rights, privileges, and immunities secured by the Constitution of the United States under color of State law. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

### **Venue**

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants Walker, Van Hollen, Chandler, Anderson, McDonell, and King reside and have offices within the district and all Defendants reside in the State of Wisconsin, and because the events giving rise to Plaintiffs Wolf, Schumacher, Trampf, Heyning, Garcia, Kleiss, Wallmann and Borden's claims occurred, and will occur, in this district.

### **The Plaintiffs**

12. Plaintiffs Virginia Wolf and Carol Schumacher reside in Eau Claire, Wisconsin. They are a loving, committed, same-sex couple legally married under the laws of Minnesota. They wish to have their Minnesota marriage recognized here.

13. Plaintiffs Kami Young and Karina Willes reside in West Milwaukee, Wisconsin. They are a loving, committed, same-sex couple legally married under the laws of Minnesota. They wish to have their Minnesota marriage recognized here.

14. Plaintiffs Roy Badger and Garth Wangemann reside in Milwaukee, Wisconsin. They are a loving, committed, same-sex couple, and they wish to marry in Wisconsin. They would marry in Wisconsin but for the marriage ban.

15. Plaintiffs Charvonne Kemp and Marie Carlson reside in Milwaukee, Wisconsin. They are a loving, committed, same-sex couple, and they wish to marry in Wisconsin. They would marry in Wisconsin but for the marriage ban.

16. Plaintiffs Judith “Judi” Trampf and Katharina “Katy” Heyning reside in Madison, Wisconsin. They are a loving, committed, same-sex couple, and they wish to marry in Wisconsin. They would marry in Wisconsin but for the marriage ban.

17. Plaintiffs Salud Garcia and Pam Kleiss reside in Madison, Wisconsin. They are a loving, committed, same-sex couple, and they wish to marry in Wisconsin. They would marry in Wisconsin but for the marriage ban.

18. Plaintiffs William Hurtubise and Leslie “Dean” Palmer reside in Racine, Wisconsin. They are a loving, committed, same-sex couple, and they wish to marry in Wisconsin. They would marry in Wisconsin but for the marriage ban.

19. Plaintiffs Johannes Wallmann and Keith Borden reside in Madison, Dane County, Wisconsin. They are a loving, committed couple legally married under the laws of Canada and California, and they wish to have their Canadian marriage recognized here.

### **The Defendants**

20. Defendant Scott Walker is sued in his official capacity as the Governor of the State of Wisconsin. Walker is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as governor, Walker has a duty under the Wisconsin Constitution to ensure that the laws of the State of Wisconsin, including the marriage ban and the marriage evasion statute, are faithfully executed.

21. Defendant J.B. Van Hollen is sued in his official capacity as Attorney General of Wisconsin. Van Hollen is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and

will be acting under color of state law at all times relevant to this Complaint. In his capacity as Attorney General, Van Hollen has authority to initiate a prosecution under Wisconsin's marriage evasion statute.

22. Defendant Richard G. Chandler is sued in his official capacity as Secretary of Revenue of the State of Wisconsin. Chandler is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as Secretary of Revenue, Chandler has authority to enforce the revenue code of Wisconsin, including its provisions related to the treatment for revenue purposes of marriages contracted in Wisconsin and in other jurisdictions.

23. Defendant Oskar Anderson is sued in his official capacity as State Registrar. Anderson is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as State Registrar, Anderson has the authority to establish the form of a marriage license in Wisconsin and to accept for registration and assign a date of registration to marriage documents.

24. Defendant Gary King is sued in his official capacity as Eau Claire County District Attorney. King is a person within the meaning of 42 U.S.C. § 1983, and he was, is, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as District Attorney, King has the authority to initiate a prosecution under the marriage evasion statute.

25. Defendant John Chisholm is being sued in his official capacity as Milwaukee County District Attorney. Chisholm is a person within the meaning of 42 U.S.C. § 1983, and he was, is, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as District Attorney, Chisholm has the authority to initiate a prosecution under the marriage evasion statute.

26. Defendant Joseph J. Czarnezki is being sued in his official capacity as Milwaukee County Clerk. Czarnezki is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as Milwaukee County Clerk, Czarnezki has the authority to issue or withhold a marriage license and to ensure compliance with laws that prohibit the issuance of a marriage license to a same-sex couple.

27. Defendant Wendy Christensen is being sued in her official capacity as Racine County Clerk. Christensen is a person within the meaning of 42 U.S.C. § 1983, and she is, was, and will be acting under color of state law at all times relevant to this Complaint. In her capacity as Racine County Clerk, Christensen has the authority to issue or withhold a marriage license and to ensure compliance with laws that prohibit the issuance of a marriage license to a same-sex couple.

28. Defendant Scott McDonell (collectively with Walker, Van Hollen, Chandler, Anderson, King, Chisholm, Czarnezki, and Christensen, “Defendants”) is being sued in his official capacity as Dane County Clerk. McDonell is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as Dane County Clerk, McDonell has the authority to issue or withhold a marriage license and to ensure compliance with laws that prohibit the issuance of a marriage license to a same-sex couple.

### **General Allegations**

29. Wisconsin law would allow Virginia and Carol, Kami and Karina, Roy and Garth, Charvonne and Marie, Judi and Katy, Salud and Pam, Bill and Dean, and Johannes and Keith to marry or have their marriages recognized here but for the fact that they are same-sex couples. They are not related to one another by blood or marriage. None is married to anyone else, and

all are over the age of 18. All of them have the capacity to consent to marry, and each couple consents or has consented to marry each other.

***Virginia Wolf and Carol Schumacher***

30. Virginia Wolf and Carol Schumacher have been in a loving, committed relationship for more than 38 years. Together they raised two children, a daughter and a son, and they now have four grandchildren, two girls and two boys. They live in Eau Claire with their dog “Zee,” a border collie/Australian shepherd mix. When domestic partnerships became available in Wisconsin in 2009, Carol and Virginia were the first couple in Eau Claire to sign up.

31. Virginia, 75, is a professor emeritus of English at the University of Wisconsin-Stout, where she worked and taught for 24 years. Virginia retired from the university on January 1, 2001. She is also a former minister in the Unitarian Universalist Church, and remains an active church member. Virginia was born and raised in Kansas, where she met Carol. They moved to Wisconsin in 1977 when Virginia took the university job.

32. Carol, age 60, retired five years ago, after a 29-year career that included working as an elections administrator for the City of Eau Claire, and also as the city clerk there. Carol also has a Master of Arts in marriage and family therapy, and worked as a therapist for a few years at the University of Wisconsin-Eau Claire. So while she has counseled other people on issues in their marriages, she is not able to get the State of Wisconsin to recognize her own. Like Virginia, she was born and raised in Kansas. Carol, too, is active in their church.

33. Virginia and Carol met through mutual friends in Lawrence, Kansas, when Virginia was looking for someone to help with housekeeping and child care in exchange for room and board. At the time, Virginia had two young children from a previous relationship. Virginia and Carol ended up raising the children together. Their daughter, Laura, known as

Niña, now 47, lives near Oshkosh with her husband and two daughters, ages 17 and 13. David, their son, is 42 and lives in Cottage Grove with his two sons, ages 4 and 2.

34. Carol's extended family has always been supportive of Carol, Virginia, and their family. Virginia's family is religiously conservative, and were not completely approving of her and Carol. Still, they were never unkind and have always included Virginia and Carol in the family.

35. In the 1980's Carol and Virginia tried several times to sign up for a family membership at the YMCA in Eau Claire. The YMCA denied their applications because its policy was to refuse to recognize a same-sex couple as a family.

36. Carol and Virginia face other obstacles in taking care of each other that they would not face if they could marry. Over the years, Virginia has had a few surgeries and other illnesses. On those occasions, Carol, who worked for the City of Eau Claire, was not permitted to take family leave to care for Virginia. And until 2009, when Virginia and Carol became domestic partners, they could not be covered under each other's health insurance. If Carol had been recognized as Virginia's spouse, she could have been covered immediately.

37. On another occasion, Virginia was in the emergency room for chest pains, and an emergency room nurse refused to let Carol into the treatment area to comfort Virginia, ostensibly because Carol was not legally Virginia's family.

38. Carol and Virginia married in the Unitarian Universalist Church in Eau Claire on December 21, 1990, the 15th anniversary of their first date in 1975. A Unitarian minister officiated at the ceremony, where Carol and Virginia wore silk suits and carried flowers, and their children gave them away. Despite below-freezing Wisconsin weather, the church was

packed, and so was the party at Carol and Virginia's home afterward. However, the State of Wisconsin did not recognize this marriage.

39. Carol and Virginia were married legally in Minnesota on December 21, 2013, their 38th anniversary. As Virginia put it, "We've been inching towards matrimony for 38 years!" But being married under the laws of Minnesota is not enough. For one thing, their marriage in Minnesota puts Carol and Virginia at risk of prosecution under Wisconsin's marriage evasion statute. More importantly, Carol and Virginia want to have their marriage recognized under the laws of Wisconsin, their home state and the state where they have made their lives and raised their family. For Carol, "the main reason I want my marriage to Virginia to be recognized is that it would be an affirmation of our relationship and our family." Virginia says, "The protections and benefits we're missing out on are also still really important to me." In addition, because of Virginia's age, she is concerned that she might not survive to see her marriage recognized, thus depriving Carol of the legal protections afforded to a different-sex surviving spouse.

40. Their granddaughters would like to see their marriage recognized too. That wish grew even stronger last summer, when Virginia officiated as a Unitarian Universalist Minister at the wedding of a same-sex couple in Minneapolis that the girls attended. Both girls were really moved by the ceremony, and they talked about it a lot afterwards. They would like their grandmothers' love to receive the same acknowledgement and respect in their home state.

41. After 38 years of a committed, loving relationship and family life, the State of Wisconsin still treats Carol and Virginia as legal strangers. Carol and Virginia look forward to the day when Wisconsin recognizes their relationship as deserving of the same legal protections, respect, and dignity that are accorded to marriages between different-sex spouses every day.

***Kami Young and Karina Willes***

42. Plaintiffs Kami Young, 36, and Karina Willes, 44, met a few minutes after midnight on January 1, 2001. They went on their first date ten days later. At the beginning, Karina didn't expect their relationship to last. "We were 30 and 22 when we met, but Kami already owned her own home, had a great job, and was fully supporting herself. In a lot of ways she was more mature when we first met than I was!" But their relationship has lasted—for 13 years. Kami says that Karina "is everything I'm not. She's the talker, I'm not. She's smart in ways that I'm not, I'm smart in ways that she's not. We balance each other out and we always have."

43. Kami and Karina are both animal lovers, and they live in West Milwaukee with their dogs and cat. Kami works as a training specialist at the Medical College of Wisconsin where she's been employed for the last 11 years. Karina is a senior project manager in the technology department at Foley and Lardner LLP, a major law firm with offices throughout the country. She is also working on her PhD in communications, with a focus on LGBT issues in health communication. They registered as domestic partners on August 14, 2009.

44. Kami and Karina have gotten mixed reactions from their families about their relationship. Karina's family is in the Appleton area, where she was born and grew up. She has never explicitly come out to her parents, but Kami has been at her side at family events for 13 years, and Karina's family treat her like part of the family.

45. Kami was born in Indianapolis and moved around the Midwest as a kid. She says that her father, who lives in Indianapolis, has been "great since day one" about her sexual orientation. Her mother, who lives in Tennessee, was slower to come around, but once she realized that Karina was in Kami's life to stay, she tried harder to be accepting. Kami's older brother is not very supportive of her relationship with Karina.

46. Kami and Karina were legally married in Minnesota on December 6, 2013. It was an intimate wedding, with just their closest friends in attendance in a beautiful, historic courtroom in the town of Winona. Karina cried all through the ceremony. “I just never thought this would ever happen in my lifetime. You get so used to being a second-class citizen that when you’re not anymore, it’s overwhelming.”

47. Kami and Karina are starting a family now, with Kami due to deliver their daughter on April 3. Kami has always wanted a child, but Karina only realized in the last few years that having children was really important to her. Despite having two people ready and eager to welcome her, love her, and care for her, when Kami and Karina’s daughter is born only Kami will be recognized as her parent. In fact, as far as the law is concerned, Karina and the baby will be strangers. In contrast, if Kami and Karina’s marriage were recognized, Karina would automatically be recognized as the baby’s parent.

48. And although adoption should be unnecessary if Kami and Karina’s marriage were recognized, Wisconsin law does not allow Karina to secure her parental rights through a step-parent adoption. Nor will Wisconsin allow Karina to take advantage of the second-parent adoption process available in many other states. Kami and Karina will be deprived of access to the same legal protections of their parental relationship with their child that are available to married couples, for no other reason than that they are the same sex.

***Roy Badger and Garth Wangemann***

49. Plaintiffs Roy Badger, 56, and Garth Wangemann, 58, met through mutual friends in 1975, when both were in college at the University of Wisconsin-Milwaukee. They have been a couple for 37 years, since the day in 1976 when each came out to the other. Garth loves Roy for his “gentle and giving” nature. Once, when Roy and Garth were still in college and Garth was

strapped for cash, Roy helped with Garth's dorm bill. Roy says that Garth "has a terrific heart." For example, Garth is a pen pal to several gay inmates, because, in Roy's words, he's "trying to be supportive to people who have been abandoned by everyone."

50. Garth is a lifelong Wisconsinite and grew up in Sheboygan. Roy was born in Illinois, and moved around the Midwest as a young child until his stepfather got a trucking job in Burlington, Wisconsin when Roy was about 12, and the family settled there. Today, the couple lives in Milwaukee with their two dogs, Daisy and Winston.

51. Roy and Garth are members of the United Church of Christ in Milwaukee. On August 16, 2009, Roy and Garth had a private church commitment ceremony with just a handful of friends, their pastor, and the pastor's wife. The memory of the ceremony is bittersweet, says Roy, because "it felt like something we were doing in secret."

52. In 2009, Roy and Garth also registered as domestic partners in order to qualify for the limited protections domestic partnership provides them. However, they know that their domestic partnership provides them with only a few state law protections and none of the federal protections, recognition, and respect reserved to married couples. Moreover, Roy and Garth are hesitant to leave the state to marry, even though they could get access to some federal spousal benefits that way, because they don't want to take the risk of being arrested and prosecuted under Wisconsin's marriage evasion law.

53. For 32 years, Roy has worked at the university where he and Garth met. He is the editor of the campus directory. Garth worked in customer service for a retail costume website, but his job was outsourced in May of 2013 and Garth was laid off. Since then, Garth has been doing some temp work for the company while looking for full-time work.

54. Like many Americans, Roy and Garth have been struggling financially in recent years. They lost their condo to foreclosure four years ago, and both of them had to file for bankruptcy. Worse, after Garth was laid off last year, he paid for health insurance through COBRA for eight months until Roy was able to add Garth to his insurance as a domestic partner. On only Roy's salary, Garth's unemployment, and the income Garth makes from temporary work, the couple has found it increasingly difficult to afford rent, household expenses, and Garth's health insurance. They had to sell many of their belongings on eBay just to meet Garth's COBRA payment.

55. Health care coverage is a major concern for Roy and Garth, but so is their ability to make health and end-of-life decisions for each other, and to have those decisions respected by both doctors and their families. In 2011, Garth was diagnosed with lung cancer. While still in the hospital recovering from successful surgery for the cancer, Garth had a serious medical emergency—one that his doctors still don't fully understand. He coded three times, and his doctors decided to place Garth in a medically-induced coma from which he did not emerge for nearly a month.

56. During this period, the doctors held several meetings with Garth's family to decide how to proceed. Before the surgery—at the suggestion of Garth's surgeon—Garth had signed a power of attorney, giving Roy the authority to make medical decisions for him, authority that any different-sex spouse could count on without question. Even though Roy had the legal authority to make decisions for Garth, Roy included Garth's father in the discussions.

57. Garth's relationship with his father had not been easy. When, at 20, Garth told his family he was gay, his father kicked him out of the house, hurling a piece of furniture at Garth as

he packed up his car to leave. Garth was estranged from his family—allowed home only at Christmas—for nearly two decades until his mother became ill with lung cancer.

58. During Garth’s own health crisis, Roy made it clear that he believed Garth would survive, and he insisted on keeping him on life support during the coma. Garth’s father wanted to take Garth off life support. After he recovered, Garth learned from his sisters that his father had gone so far as to talk with attorneys about trying to override Roy’s power of attorney. Garth later said that he was not upset that his father wanted to take him off life support, but “what hurt the most was that he still didn’t look at Roy as my spouse after all this time.” Garth was so hurt and upset that he no longer speaks to his father.

59. If Roy and Garth had been able to enter into a legal marriage in Wisconsin, Roy’s authority to make end-of-life decisions is unlikely to ever have been questioned.

60. Fortunately, Garth recovered from the coma and he remains cancer-free, but he still has lingering nerve damage and balance problems, and he also suffers from diabetes. Because they are a same-sex couple and their relationship is not recognized by the State, Roy and Garth remain vulnerable. As a state employee, Roy is now able to get Garth coverage through his employer-provided health insurance, but it will still be expensive—more expensive than if Garth were Roy’s spouse—because unlike married couples Roy is likely to be taxed on the value of the insurance. Moreover, Roy and Garth cannot be certain that the State, their families, and health care providers will recognize the decision-making authority that each has given to the other. Different-sex couples, who are legally allowed to marry in this State, do not face these same risks.

*Charvonne Kemp and Marie Carlson*

61. Charvonne Kemp, 43, and Marie Carlson, 48, have been in love and committed exclusively to each other for seven years. They live in Milwaukee, where Charvonne works for UMB Fund Services in Milwaukee as a mutual fund accountant. She handles the cash flows and trade activity, and strikes a price for NASDAQ daily. Marie is a raw materials handler for Wrought Washer. Marie is responsible for allocating, tracking, and moving all of the steel that comes in and out of the company's Milwaukee facility.

62. Charvonne and Marie met in a MySpace group for lesbians over 30. At first the group was a place for members to share dating stories and get advice. Eventually, the group decided that half the members should be mentors to the other half, giving them dating advice and support. Charvonne was assigned to be Marie's mentor, but the two fell for each other and started dating instead.

63. Charvonne moved around when she was growing up, even globe-trotting a bit with her military stepfather. She was living in Los Angeles when she and Marie first started dating. Marie, who had lived in Milwaukee since the third grade, moved out to L.A. to be with Charvonne, but the two didn't stay long. Charvonne had two sons from a prior marriage and a prior relationship, and she and Marie believed that Wisconsin was a better place to raise them than L.A. So the entire family came back to Milwaukee in early 2007.

64. Charvonne and Marie's older son, Alexander, is 21 and serves in the Air Force. He and his wife, Autumn, have two children of their own, a daughter, two, and a son who was born last summer. Their younger son is just 11 so he still lives at home with Marie, Charvonne, and Charvonne's younger brother and sister. Marie and Charvonne were active in the PTA at their son's school. They've both served as PTA officers, and Charvonne twice served on search

committees to select a new school principal. Charvonne is currently on the Governance Council Committee at her son's school. Both sons consider Marie to be their stepmother, even if the State of Wisconsin does not.

65. Charvonne says their relationship works because "Marie and I have similar interests and moral codes but we're independent enough in ourselves that we're okay if I want to go do something or she wants to be alone for a while." Charvonne spends time on her own cooking, sewing, quilting, gardening, and even dancing in a local Turkish dance group.

66. Together, Charvonne, Marie, and their son are enthusiastic members of the Society for Creative Anachronism, and enjoy medieval reenactments with the group. The whole family tries to go to the YMCA together once a week to swim, and they enjoy their son's many school performances—including an opera performed by his class. Last year, Marie coached their son's baseball team.

67. Marie's extended family was not always accepting of Marie and Charvonne and their family. But Marie's mother came to Milwaukee to be with them when they registered as domestic partners, and they expect that both Marie's parents will come to Milwaukee when Marie and Charvonne are allowed to marry. To Marie and Charvonne's surprise and delight, Marie's mother recently updated her Facebook page to tag Charvonne as her daughter-in-law.

68. Charvonne's extended family is close and supportive. Charvonne is African-American, the daughter and granddaughter of civil rights activists. She thinks that her grandmother, an NAACP veteran, laid down the law a long time ago making it clear that, in their family, a same-sex couple was the same as any other.

69. Being excluded from marriage means that Marie and Charvonne face obstacles a different-sex married couple does not. When Charvonne's mother died, Marie had to use

vacation time to go to the funeral—she couldn't take bereavement leave. And without marriage in Wisconsin, if either Marie or Charvonne were seriously ill, the federal Family and Medical Leave Act would not protect them.

70. At bottom, though, Marie and Charvonne want very much to get married for the same reasons most couples do. “I love her and want to spend the rest of my life with her,” says Charvonne of Marie. Marriage is “that final commitment to another person.... I'm old fashioned in that way.” Marie says, “I want to call Charvonne my wife and have people understand what that means. . . . I want to do it the right way and the right way is marriage.” They have thought about going to Illinois or Massachusetts or Canada to get married, especially after the Supreme Court's decision in *Windsor*, but Charvonne says, “I'm not a big fan of breaking the law.” For Marie, if the marriage is not recognized in Wisconsin, “it doesn't mean what it's supposed to mean.” Marie feels strongly that the commitment she has made to Charvonne and their sons, and that they have made to Marie, should be legally recognized. “I want to proudly walk with my family.” According to Charvonne, “Everyone else in our lives accepts us as a couple except the law.”

***Judi Trampf and Katy Heyning***

71. Judith “Judi” Trampf, 53, and Katharina “Katy” Heyning, 51, will celebrate 25 years together this July. They met at Girl Scout Camp in Wyoming in 1982. Later, they were both members of a group of camp alumna from the Midwest who would get together outside of summer camp. They got to really know each other through the group, and discovered a lot of interests in common. After a few years, they fell for each other and started dating.

72. Both Judi and Katy work at the University of Wisconsin-Whitewater. Katy is the Dean of the College of Education and Professional Studies, and Judi is Director of Human

Resources and Diversity. When they aren't working, they garden and host dinner parties for friends at the home they share in Madison, Wisconsin. They also spend their time boating, kayaking, and traveling together—it doesn't matter where—and they are Rally Chairs for their BMW Motorcycle Club. Judi and Katy registered as domestic partners in Madison on August 5, 2009.

73. Katy's family accepts Judi, and Judi's family has long viewed Katy as a family member. When Katy had surgery and her own mother couldn't travel to be with her, Judi's mother stepped in. When Judi's father, who lived in Ripon, Wisconsin, was ill and hospitalized in 1994, Katy ran his business for him, travelling to Ripon with Judi three times a week, 70 miles each way, to help. Even so, after Judi and Katy had been together for 15 years, Judi's family insisted on a wedding so that Judi and Katy's relationship could be celebrated properly. They held a commitment ceremony on June 19, 2004 in James Madison Park in Madison, Wisconsin, followed by a reception for 150 friends, family, and colleagues.

74. Many years ago, Judi and Katy prepared health care powers of attorney for each other, but they know that such paperwork is no substitute for the security that marriage provides. In 2002, while on a trip to New Orleans, Katy had a seizure. In the emergency room, where Katy lay unconscious, Judi explained that she was Katy's partner and designated health care decision-maker. But Judi was told that unless she had the health care power of attorney document in hand, she would not be allowed to make any medical decisions on Katy's behalf. The documents were at home in Wisconsin, so the hospital informed Judi that Katy's brother, as her nearest relative, had the authority to make health care decisions, not Judi. "My brother was not as aware of my wishes as Judi," says Katy.

75. After Katy regained consciousness, she had trouble concentrating and responding to questions. Judi repeatedly answered questions on Katy's behalf, and yet the health care providers continued to direct their questions to Katy, and to ignore Judi.

76. Out of concern that Katy might have another seizure and that Judi would not be permitted to make decisions for her, Judi and Katy ended up cutting their trip short and returning to Wisconsin, even though Katy was feeling better and they would have liked to stay. They now keep scanned copies of their health care powers of attorney accessible by smartphone so they are available wherever they go.

77. Judi and Katy's current domestic partner status would not have solved the problem they encountered in New Orleans. That status is only recognized in Wisconsin, while marriage is understood everywhere and widely respected. And even in Wisconsin, Judi and Katy find that domestic partnership is not well understood, and they have on at least one occasion been asked to prove their partnership status with documentation—a request that married couples almost never encounter. “Legally, we have to take so many more legal and financial steps to protect our relationship than married couples, and we're penalized even when we do,” says Judi. Domestic partnership also does not entitle Judi or Katy to federal protections that are reserved for spouses.

78. After 25 years, Judi and Katy have built a life together. They jointly own a house, two cars, a pontoon boat, and several bank accounts. Judi and Katy wish to marry because, according to Judi, “we want to know that if one of us is ill or dies, we will have the same protections as any other married couple after 25 years of being together.” More than that, though, Katy would like the public recognition that Judi is the love of her life. “We have been in love and faithful to each other for more than 25 years. We have cared for each other in sickness

and in health, and we would like public recognition through marriage of our commitment until death do us part.”

***Salud Garcia and Pam Kleiss***

79. Plaintiffs Salud Garcia, 50, and Pam Kleiss, 49, live in Madison with their 12-year old daughter. They met when they were both working for the American Association of Retired Persons (“AARP”), Pam in Seattle, Washington, and Salud in California. A co-worker of Pam’s, who was also a friend of Salud’s, would forward funny or interesting emails from Salud to Pam. Eventually, Salud met Pam at a meeting in the Seattle regional office of AARP, and Pam said excitedly, “You’re Salud from the emails!” “The moment I met her, I was totally smitten, just whacked out in love,” says Pam. Salud says of Pam, “She’s an astonishingly supportive person. You couldn’t ask for a better sidekick in any adventure.”

80. Later that year, Salud moved to Seattle, and within a few months, she and Pam started seeing each other. They have been together for 18 years. In 2001, they decided to have a child, and Pam gave birth to their daughter in October. Their daughter was born 14 weeks early and weighed just over two pounds. She spent the first months of her life in the Neo-natal ICU. Just after the birth, Pam also experienced complications, and Salud asked for a family I.D. bracelet that would allow her to enter the NICU and care for their child. A nurse told Salud that those bracelets were only for family. Salud felt as though she was being treated like a stranger to her family at their most vulnerable moment. Pam’s brother-in-law later got the nurse to relent and give Salud a bracelet. Salud later adopted their daughter in Washington State where second-parent adoption is available. But in the hospital in the early days of her child’s life, Salud realized that if Pam had died during childbirth, Salud could have lost both her partner *and* her daughter, because the law did not protect her relationships with them.

81. Pam and Salud's daughter is 12 now. Her parents describe her as a "normal tween" with an active social life. She is well-liked by her teachers, and the only thing that gets her in trouble at school is talking too much. She contracted a hospital-acquired infection when she was just two weeks old that resulted in some physical disabilities. Despite this, she is an accomplished athlete who plays basketball, skis, swims, and loves a physical challenge. Salud describes her daughter as a "smart jock." As for the law that keeps her parents from getting married, Pam says their daughter "just doesn't understand why anyone would object to our marriage."

82. Salud's family lives out of state, and she is estranged from them. Pam's parents live in northern Wisconsin. They are loving grandparents to Pam and Salud's daughter, and they have welcomed Salud into their family. Pam's brother, who lives in Madison, and her sister, who lives in Atlanta, are very supportive and have encouraged Salud and Pam to marry.

83. Pam and Salud have lived in Madison since 2002, and they registered as domestic partners with the State of Wisconsin in 2010. Both of them made careers primarily in the not-for-profit sector. Pam works part time as the Executive Director of the Physicians for Social Responsibility Wisconsin ("PSR Wisconsin"). Salud currently works for Alpha Baking Company as merchandiser, but for ten years she worked as a Program Coordinator for the State Bar of Wisconsin. PSR Wisconsin has been supportive of their relationship, covering half of Pam's individual health insurance premiums for the past five years, and paying half of the family health insurance plan for six months after Salud left her job in 2013.

84. When Salud worked for the State Bar and Pam was staying at home taking care of their daughter, Pam became ill. At that time, Pam had a very limited catastrophic health insurance policy that did not pay for regular doctor visits, so she delayed seeking medical care

for her symptoms. Had Salud and Pam been a different-sex married couple, Pam could have been covered under Salud's employer-provided health insurance from the State Bar. Salud asked her employer several times whether they would consider providing health benefits to domestic partners, as they did for different-sex spouses. For nearly ten years, the Bar refused to do so. As a result, Salud and Pam had to shoulder the costs of a separate insurance policy and pay out-of-pocket for Pam to address her health needs.

85. Pam and Salud want to marry so that their relationship and their family will be accorded the same esteem and the same protection that different-sex married couples enjoy. In addition to wanting the public acknowledgment of their commitment that marriage would bring, Pam wants the assurance that the law will always treat her, Salud, and their daughter as the family they are. Pam and Salud could leave the state to marry, and in that way access some of the protections that the federal government provides to same-sex spouses. But if they do, they face the possibility of arrest and prosecution in Wisconsin, and they feel that is much too great a risk for them to take. Only marriage in Wisconsin can give them the full range of protections that married couples enjoy and the peace of mind of knowing that they are free from the risk of criminal proceedings. They are entitled to both.

***Bill Hurtubise and Dean Palmer***

86. Plaintiffs Bill Hurtubise, 40, and Leslie Palmer, who goes by Dean, also 40, live in Racine Wisconsin with their three children, ages 5, 4, and 2. Dean works for Aurora Healthcare as a polysomnography technician—he conducts sleep studies. Bill is a contracts and compliance specialist for Blue Cross/Blue Shield of Illinois in Chicago. He grew up in Racine, and he commutes four hours a day to work in Chicago so that he, Dean, and their children can live in his hometown near family, friends, and their church.

87. Bill and Dean met in an online chat room. “It got to a point at which we were really looking forward to talking with each other the minute we got home from work every day, so we decided to see how a visit would go,” says Bill. Bill went down to St. Louis, where Dean lived, for a visit, and soon they were visiting twice a month. Dean says, “It wasn’t long before the time apart got to be really unbearable, and that was when we knew this was it.” So Dean moved to Racine just a few months after that first visit. Shortly after he got there, Dean took Bill to a lookout tower at Racine Harbor on the shore of Lake Michigan and proposed. At that moment, they decided to commit their lives to one another.

88. Dean and Bill both knew they wanted children. Two of their children have been adopted by Dean through Wisconsin’s foster care system, and Bill is their legal guardian. Both Bill and Dean are legal guardians to their third child, with plans to adopt. When the kids first came to live with Bill and Dean, they were quiet and withdrawn. Their 5-year-old had never been in day care. Their younger daughter didn’t talk at all and would wake up and just sit quietly in her crib, as if she were afraid of letting anyone know she was awake. Now, all three children are talkative and expressive, and they are flourishing. A day care worker told Dean and Bill that their daughters walk around day care arm in arm whispering and giggling, just like any other sisters.

89. The children are the center of Bill and Dean’s lives. They are currently applying to get their son into a magnet school, which they hope all three children will be able to attend. They look forward to getting involved in the PTA when the kids are in school, and Bill even played the Easter Bunny at the kids’ day care center this past spring. They are also looking forward to bringing their children up in their Presbyterian Church; Bill and Dean are active

members, and they plan to be even more active when the children are older. Their church is completely welcoming of Bill and Dean and their family.

90. Bill and Dean's extended families are very supportive. When their older daughter first came to them, Bill worked from home for a few months. His dad and stepmother would take care of her in the morning, and his mother would come take care of her in the afternoon while he worked. When the other two children arrived, day care was the only reasonable solution, but Bill's family is still very involved with the children and they get together regularly. Dean's family is farther away, mainly in Nebraska, but some of them have been up to visit the kids, and Bill and Dean are looking forward to taking the whole family for a visit over Memorial Day.

91. Bill and Dean wish to be married in Wisconsin because they love each other and are committed to each other. They want that commitment recognized on terms of equal respect and dignity with any different-sex marriage. They have considered leaving the state to marry so that they could access some of the spousal and family protections and obligations that the federal government affords to married same-sex couples, but Bill and Dean are unwilling to take the risk of a fine or even a jail sentence for breaking the law in Wisconsin.

92. Bill and Dean also very much want to be married for the stability and protection it will bring to their children. During the course of the foster-to-adopt process, Bill and Dean were repeatedly advised that because they are not married, Wisconsin law would only allow one of them to adopt their children. As a result, only Dean is a legal parent to the two children they have already adopted. Although Bill is a guardian to the children, his legal relationship is not that of a parent, despite being their father. While Bill and Dean intend to adopt their third child, they still face the obstacle of being unmarried.

93. Without marriage, Bill and Dean's legal ties to their three children are less secure. With marriage, their children would benefit from additional legal protections and security, such as a straightforward means for their parents to jointly adopt them. Marriage is also important because of the message it would send to their children. Marriage would demonstrate that they a family like any other, not a second-class arrangement unworthy of the State's respect and protection. "We're like any other normal family in Wisconsin," says Dean. "We pay our taxes, we take our kids to dance class and sports practice, we fall asleep the second the kids go to bed. We shouldn't be treated any differently by the state."

***Johannes Wallmann and Keith Borden***

94. Plaintiffs Johannes Wallmann, 39, and Keith Borden, 40, live in Madison, Wisconsin. Johannes is an Assistant Professor of Music and Director of Jazz Studies at the University of Wisconsin-Madison. He is also a professional jazz pianist, composer, and bandleader. Keith is a classically trained singer and a yoga instructor.

95. Keith and Johannes met in New York City on Halloween in 1998. Johannes was playing in a band for a concert that Keith had produced. Somehow, Johannes got the idea that he was supposed to wear a costume, and he showed up to perform wearing a sailor suit. He was the only person in costume, and Keith says, "He really stuck out!" They began dating a few weeks later and have been together for more than 15 years.

96. "The thing I recognized very early on was the ease with which we connected. There wasn't a lot of uncertainty," says Keith. "It seemed so natural, like this relationship was the puzzle piece we needed to complete this picture of what our lives were going to be." Johannes says that the couple has found "a great mixture of living intertwined lives but giving

each other lots of space and freedom to pursue individual interests as well.” Johannes says that Keith is “incredibly kind. He inspires me to try to be a kinder, better person.”

97. Johannes was born in Germany. He moved to Canada with his mother when he was 12 and became a Canadian citizen. He grew up on Vancouver Island, British Columbia. After going to college in the U.S., he moved to New York, where he met Keith. Keith was born and grew up in Evanston, Illinois. He went to college at DePauw in Indiana and then moved to New York City to study with a voice teacher.

98. Keith and Johannes lived together in New York for a while when they were first a couple, but Johannes only had a temporary visa. Concerned about the stability of their future together, the couple decided to move to Canada, where Johannes is a citizen and where he was able to sponsor Keith for permanent residency. “That was a huge thing, to ask Keith to leave his country so we could be together,” says Johannes. Johannes loved Keith, and Canada allows same-sex couples to marry, so Johannes proposed.

99. The couple thought long and hard about where to hold the ceremony. They considered Toronto, where they intended to move, but eventually decided on Vancouver Island in British Columbia. Johannes had grown up there and had family there. He and Keith had visited Johannes’ parents there many times and considered the island a special place. And it would make a beautiful destination wedding for their friends.

100. In May 2007, Johannes and Keith were in Toronto looking for an apartment with the intention of moving there in June, when Johannes received a call offering him his first tenure track job teaching music at California State University, East Bay. As it happened, the yoga studio where Keith worked in New York was opening a Bay Area facility where Keith could find

a job. They decided that Johannes should accept the position and that they would move to California.

101. Even though their plans to live in Canada had changed, they went ahead with their wedding there, because they had planned so much for it at that point and really wanted to be married. They were married there on August 11, 2007. “When we got married we didn’t think of it as a political or legal act,” says Johannes. “It was just that we thought we’d be living somewhere where it would be recognized, and we loved each other.”

102. Johannes and Keith loved their wedding. Johannes’ grandfather, a retired minister, performed the religious parts of the ceremony, and a Canadian Marriage Commissioner was the officiant for the civil elements. Johannes’ best man was the musician whose band Johannes was playing in the night that he and Keith met, and he and another friend played a version of Kool and the Gang’s “Celebration”—arranged by Johannes—as Keith and Johannes walked up the aisle as a married couple. Johannes’s father, who died a few years later, was able to attend.

103. At first, Johannes and Keith’s marriage was not considered valid in California. But that changed when the California Supreme Court legalized marriage for same-sex couples in May 2008. Then California voters enacted Proposition 8, excluding same-sex couples from marrying in California, creating some uncertainty about whether Johannes and Keith’s out-of-state marriage would continue to be recognized. The California legislature acted, though, and affirmed the validity of out-of-state marriages of same-sex couples in California. As a result, Johannes and Keith’s marriage was legally recognized in California from May 2008 until they left the state more than four years later. And, of course, California’s marriage ban was later overturned entirely, and same-sex couples again enjoy the freedom to marry there.

104. Until they moved to Wisconsin in 2012, Johannes and Keith lived as a married couple under the laws of California. They filed joint state tax returns, Keith was covered as a spouse on Johannes's health insurance, and, had it been necessary, either one of them could have made critical health decisions on the other's behalf. They also bought a car, some furniture, and accumulated other possessions that were all considered marital property in California. They decided to put off making wills, because they knew they could rely on California law to protect the surviving spouse's interest in their property if anything had happened to one of them. But just as importantly, Keith and Johannes could call their relationship a marriage and have everyone understand the seriousness of their love and commitment, as well as the permanence of their relationship. In California, Keith and Johannes' decision to build their lives and their futures together was accorded the dignity and status that it deserved.

105. When they decided to come to Wisconsin in 2012 so that Johannes could take the position at the University of Wisconsin-Madison, Johannes and Keith knew they were moving to a state that would not recognize their marriage. They still see themselves as married. However, the State of Wisconsin treats their relationship as though it ceased to exist for legal purposes, even though they had built a life in reliance on the protections and obligations that marriage provides. Had they been a different-sex couple, Keith and Johannes could have counted on the continuity and stability that state and federal law provides a different-sex married couple when they move from state to state. Instead, Wisconsin's constitutional marriage ban has simply erased Keith and Johannes' commitment to each other as far as the State is concerned and even erased certain federal law protections that are available only to couples whose marriages are legally recognized by the home state. No different-sex couple would ever be subjected to such an indignity.

106. Johannes and Keith have not registered for a domestic partnership in Wisconsin. Johannes and Keith feel that, for them, it would be a step backwards to sign up for a legal status that is so much less than being married when they are already married.

### **The Discriminatory Wisconsin Marriage Ban**

107. The State of Wisconsin establishes laws governing marriage. Wisconsin's marriage ban provides that "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." Wis. Const. Art. XIII, § 13.

108. Wisconsin's marriage ban is one of the most restrictive bans on marriage for same-sex couples in the nation. On its face, it expressly bars both marriage between two people of the same sex and the recognition of *any* legal status substantially similar to marriage. As a result, on its face, Wisconsin's constitutional amendment does not permit Roy and Garth, Charvonne and Marie, Judi and Katy, Salud and Pam, and Bill and Dean to marry and prohibits the recognition of out-of-state marriages of Virginia and Carol, Kami and Karina, and Johannes and Keith.

109. Worse, Wisconsin law makes it a criminal offense to go outside the state to contract a marriage prohibited under the laws of Wisconsin. A violation bears penalties of up to \$10,000 in fines and nine months in prison. Wis. Stat. § 765.30(1)(a).

### **Wisconsin's Domestic Partnership Statute**

110. In 2009, the Wisconsin legislature passed a domestic partnership law, Wis. Stat. ch. 770, which creates the status of domestic partnership that carries with it some, but nowhere near all, of the protections and obligations accorded to married couples. The domestic partnership law did not end the exclusion of same-sex couples from marriage. Indeed, it cannot

do so under the terms of Wisconsin's discriminatory marriage ban, which prohibits granting same-sex couples any status that is substantially similar to marriage.

111. Moreover, even the limited domestic partnership law is currently under challenge in the Wisconsin Supreme Court in *Appling v. Walker*, No. 2011AP1572. A decision in that case is pending.

112. Even if the domestic partnership law were to be upheld, it is not an adequate substitute for marriage. Denying two people in a loving, committed relationship the freedom to marry denies them the opportunity to express and legally embody their commitment in the most serious way that society provides. It refuses them the opportunity to enter into a relationship that is universally respected and recognized as a symbol of their love and commitment. The novel domestic partnership designation withholds from same-sex couples the reverence and recognition associated only with marriage. It offers no more than a mundane entryway to an extremely limited subset of benefits. The essence of marriage is a private and public celebration of love and commitment; domestic partnerships fail to achieve that goal. Marriage is something many people hope for from a young age, an ideal they aspire to; domestic partnership is not.

113. Denying Plaintiffs and other lesbian and gay couples the freedom to marry also would make it impossible for them to receive the protections currently provided only to married couples under federal law. After *Windsor*, the federal Defense of Marriage Act ("DOMA") no longer excludes same-sex couples from access to federal marriage responsibilities and protections. But, even if same-sex couples move to Wisconsin after marrying elsewhere or risk criminal prosecution by leaving the state to marry, Wisconsin same-sex couples are still denied those federal law protections for spouses that require the marriage to be recognized in their state of residence, such as veteran and family medical leave protections.

114. Barring same-sex couples from marriage also disqualifies them from critically important state law protections and responsibilities that different-sex couples rely upon to secure their commitment to each other and to safeguard their families. Even if they obtain a domestic partnership under Wisconsin's domestic partnership law, same-sex couples are still denied numerous protections and obligations, including:

- (a) the presumption of parenthood for a non-birth parent with respect to any child born within the marriage;
- (b) the right to adopt a spouse's child;
- (c) eligibility for stepparent visitation rights for the surviving spouse of a deceased parent of a minor child;
- (d) the "married persons credit" and personal exemptions for state income tax purposes;
- (e) certain tax deductions for medical insurance expenses for a spouse;
- (f) certain tax deductions for long-term care insurance for a spouse;
- (g) eligibility of a surviving spouse of a veteran to be buried with their spouse in a veterans' cemetery;
- (h) entitlement of a surviving spouse to seek damages for loss of society and companionship in case of wrongful death;
- (i) the presumption of confidentiality for communications with health insurers about a spouse's medical condition; and
- (j) protection against discrimination on the basis of marital status in numerous contexts.

115. If the Wisconsin Supreme Court holds that the domestic partnership law violates Wisconsin's constitutional marriage ban, same-sex couples would lose even the limited benefits that the law does provide.

116. Wisconsin and this country have subjected lesbian and gay people to scorn and discrimination for many years, and they have done so because lesbians and gay men form intimate relationships with a person of the same sex. Although Wisconsin and this country have taken some steps to reduce discrimination against lesbians and gays, Wisconsin's ban on marriage for same-sex couples is a striking and continuing vestige of the long history of discrimination toward lesbians and gay men. The marriage ban and the marriage evasion statute, together with the new, separate, inferior, and poorly understood status of domestic partnership instead of marriage, send a powerful message to same-sex couples, their families, and the public that lesbians and gay men are not good enough for marriage and their relationships are undeserving of the respect and dignity associated with marriage alone.

117. The substantive and dignitary inequities imposed on committed same-sex couples include particular harms to same-sex couples' children, who are equally deserving of the stability, permanence, and legitimacy that are enjoyed by children of different-sex couples who marry. Civil marriage affords official sanctuary to the family unit, offering parents and children critical means to secure legal parent-child bonds and a familiar, public way of demonstrating those bonds to third parties. By denying same-sex couples marriage, Wisconsin reinforces the view held by some that the family bonds that unite same-sex parents and their children are less consequential, enduring, and meaningful than those of different-sex parents and their children. Same-sex couples and their children accordingly must live with the vulnerability and stress inflicted by a lack of access to the same mechanisms for securing their legal relationships and the

ever-present possibility that others may question their familial relationship—in social, legal, educational, and medical settings and in moments of crisis—in a way that different-sex spouses can avoid by simple reference to being married.

118. Children from a young age understand that marriage signifies an enduring family unit and likewise understand that Wisconsin has deemed a class of families as less worthy than other families, undeserving of marriage, and not entitled to the same societal recognition and support as other families. Wisconsin has no interest adequate to justify marking the children of same-sex couples, including the children of Plaintiffs, with a badge of inferiority that will invite disrespect in school, on the playground, and in every other sphere of their lives.

119. Because Wisconsin denies lesbian and gay couples the esteem and understanding associated with marriage and stigmatizes them by relegating them to a separate and unequal legal status, two of the Plaintiff couples left the State to marry, subjecting themselves to an ongoing risk of criminal prosecution. All Plaintiff couples have been injured by Wisconsin's refusal to allow them to marry or to recognize their marriages entered elsewhere.

**Wisconsin's Exclusion of Same-Sex Couples from Marriage Is Not Rationally Related To A Legitimate Governmental Purpose, Let Alone Substantially Related To An Important Governmental Purpose Or Narrowly Tailored To A Compelling Governmental Purpose**

120. Wisconsin's discriminatory exclusion of same-sex couples from marriage does not serve any compelling, important, or even legitimate government interest.

121. While the government has an interest in protecting child welfare, the exclusion of same-sex couples from marriage does not further this interest. There is no rational connection between excluding lesbian and gay couples from marriage and encouraging "traditional" different-sex couples to have children within marriage. Further, there is a consensus among child welfare experts, reflecting over 30 years of research, that children raised by same-sex couples are just as well-adjusted as are children raised by different-sex couples. Moreover,

excluding same-sex couples from marriage serves only to harm the children raised by lesbian and gay couples.

122. There is no legitimate governmental interest in promoting traditional marriage or uniformity of marriage practices: a discriminatory marriage law cannot be justified solely on the basis of its long tradition or its common practice. Similarly, there is no state interest in promoting traditional marriage or uniformity of marriage practices with regard to same-sex couples who already have legal marriages from other jurisdictions. Such couples merely seek to enjoy—or continue to enjoy—a legal status that has already been conferred.

123. While the government may have fiscal interests, cost savings alone cannot justify a discriminatory allocation of a government benefit, absent an independent justification for why one class of people is burdened with the responsibility for the savings. Moreover, the exclusion of same-sex couples from marriage is not the least restrictive means nor is it sufficiently narrowly tailored to further, nor even rationally related to, this interest, because allowing same-sex couples to marry will not increase any costs for the State of Wisconsin. Indeed, experience shows that states that have ended the exclusion of same-sex couples from marriage, including Iowa, have experienced increases in state revenues as a direct result.

124. Providing same-sex couples access, via domestic partnership status, to only a portion of the protections and responsibilities of marriage, while denying them the esteem and universal recognition of marriage, can only be explained as an effort to denigrate lesbian and gay persons. Reminding lesbian and gay couples of the history of discrimination, the domestic partnership status is by definition separate and unequal. Labeling lesbian and gay couples as inferior is not a legitimate governmental interest but is per se discriminatory.

125. The State deprives same-sex couples of these freedoms for no other reason than their sexual orientation and their sex.

**Count One**  
**Violation of Due Process – Freedom to Marry**

126. Plaintiffs reallege paragraphs 1 through 125 as though fully set forth herein.

127. Amendment XIV, § 1 of the United States Constitution provides that no State shall “deprive any person of life, liberty, or property, without due process of law . . . .”

128. The Due Process Clause protects the fundamental right to marry the person of one’s choice and related constitutional rights to liberty, dignity, autonomy, family integrity, and association.

129. Wisconsin’s marriage ban does not permit same-sex couples to marry nor does it permit the recognition of the marriages of same-sex couples lawfully entered into outside of Wisconsin.

130. There is no adequate justification for the exclusion of Plaintiffs from marriage or the refusal to recognize Plaintiffs’ marriages. Moreover, the exclusion of same-sex couples from marriage is not narrowly tailored nor is it the least restrictive alternative to further a compelling or important government interest.

131. Defendants’ duties and actions to ensure compliance with the marriage ban preventing Plaintiffs from lawfully marrying in the State of Wisconsin and preventing the recognition of Plaintiffs’ marriages lawfully entered into outside Wisconsin deprive Plaintiffs of the fundamental right to marry and their constitutional rights to liberty, dignity, autonomy, family integrity, and association without due process of law.

**Count Two**  
**Violation of Due Process – Freedom to Remain Married**

132. Plaintiffs reallege paragraphs 1 through 125 as though fully set forth herein.

133. Amendment XIV, § 1 of the United States Constitution provides that no State shall “deprive any person of life, liberty, or property, without due process of law . . . .”

134. The Due Process Clause protects the fundamental right to remain married and prevents the state from inappropriately interfering with one’s existing marital relationship.

135. Wisconsin’s marriage ban operates to nullify the existing marriages of same-sex couples who move to Wisconsin from other states or countries.

136. There is no adequate justification for the State’s voiding of Plaintiffs Wallmann and Borden’s existing marriage. Moreover, the nullification of existing same-sex marriages is not narrowly tailored nor is it the least restrictive alternative to further a compelling or important government interest.

137. Defendants’ duties and actions to ensure compliance with the marriage ban preventing Plaintiffs Wallmann and Borden from continuing to rely upon and enjoy their existing marriage deprive Plaintiffs and other married same-sex couples who move to Wisconsin of the fundamental right to remain married and to be free from state interference with their marital relationships.

**Count Three**  
**Violation of Equal Protection Based on Sexual Orientation**

138. Plaintiffs reallege paragraphs 1 through 125 as though fully set forth herein.

139. Amendment XIV, § 1 of the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

140. Same-sex couples in committed relationships who wish to marry are similarly situated in every material respect to different-sex couples in committed relationships who wish to

marry. Same-sex couples who have lawfully married outside of Wisconsin are similarly situated in every material respect to different-sex couples who have lawfully married outside of Wisconsin.

141. Wisconsin's marriage ban does not permit same-sex couples to marry nor does it permit the recognition of the marriages of same-sex couples lawfully entered into outside of Wisconsin. It therefore discriminates facially and as applied to Plaintiffs and other lesbian and gay couples on the basis of sexual orientation.

142. Discrimination on the basis of sexual orientation is suspect and demands a heightened level of scrutiny under the United States Constitution, since the marriage ban and Defendant's actions in administering and enforcing it purposefully single out a minority group (lesbians and gay men) that historically has suffered discriminatory treatment and been relegated to a position of political powerlessness solely on the basis of stereotypes and myths regarding their sexual orientation—a characteristic that bears no relation to their ability to contribute to society and is immutable in that it is central to their core identity.

143. There is no adequate justification for the exclusion of Plaintiffs from marriage or the refusal to recognize Plaintiffs' marriages. Moreover, the exclusion of same-sex couples from marriage is not narrowly tailored nor is it the least restrictive alternative to further a compelling or important government interest. The marriage ban is not even rationally related to any legitimate government interest.

144. Defendants' duties and actions to ensure compliance with the marriage ban preventing Plaintiffs from lawfully marrying in the State of Wisconsin and preventing the recognition of Plaintiffs' marriages lawfully entered into outside Wisconsin deprive Plaintiffs of the equal protection of the laws based on their sexual orientation.

**Count Four**  
**Violation of Equal Protection Based on Gender**

145. Plaintiffs reallege paragraphs 1 through 125 as though fully set forth herein.

146. Amendment XIV, § 1 of the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

147. The Wisconsin marriage ban discriminates based on gender because it permits a man and woman to marry, but does not allow a man to marry a man, or a woman to marry a woman, and because it permits different-sex marriages lawfully entered into outside of Wisconsin to be recognized but does not allow the marriages of same-sex couples lawfully entered into outside of Wisconsin to be recognized.

148. Discrimination on the basis of sex is suspect and demands heightened scrutiny under the United States Constitution.

149. There is no adequate justification for the exclusion of Plaintiffs from marriage or the refusal to recognize Plaintiffs’ marriages. Moreover, the exclusion of same-sex couples from marriage is not narrowly tailored nor is it the least restrictive alternative to further a compelling or important government interest. The marriage ban is not even rationally related to any legitimate government interest.

150. Defendants’ duties and actions to ensure compliance with the marriage ban preventing Plaintiffs from lawfully marrying in the State of Wisconsin, and preventing the recognition of Plaintiffs’ marriages lawfully entered into outside Wisconsin, deprives Plaintiffs of the equal protection of the laws based on their gender.

**Prayer For Relief**

151. WHEREFORE, Plaintiffs request that this Court enter judgment:

(A) declaring that Article XIII, § 13 of the Wisconsin Constitution and all provisions of the Wisconsin marriage laws (Wis. Stat. ch. 765) that refer to marriage as a relationship between a “husband” and a “wife” and operate as a statutory ban on marriage for same-sex couples violate the Due Process Clause and the Equal Protection Clause of the United States Constitution (Amendment XIV, § 1) by preventing Plaintiffs from lawfully marrying in the State of Wisconsin and by preventing the recognition of Plaintiffs’ marriages lawfully entered into outside of the State;

(B) permanently enjoining all Defendants from enforcing Article XIII, § 13 and any other sources of state law that operate to exclude same-sex couples from marriage or to deny recognition of the marriages of same-sex couples validly contracted in another jurisdiction;

(C) permanently enjoining Defendants Van Hollen, Chisholm, and King from enforcing Wisconsin’s marriage evasion statute against same-sex couples who marry outside of Wisconsin;

(D) awarding Plaintiffs the costs and expenses of this action together with reasonable attorneys’ fees; and

(E) entering such other and further relief as deemed appropriate by the Court.

Dated: February 27, 2014

Respectfully submitted,

By: /s/ Laurence J. Dupuis

By Their Attorneys

JOHN A. KNIGHT  
American Civil Liberties Union Foundation  
Lesbian Gay Bisexual Transgender Project  
180 North Michigan Avenue  
Suite 2300  
Chicago, Illinois 60601  
(312) 201-9740  
jaknight@aclu.org

JAMES D. ESSEKS\*  
American Civil Liberties Union Foundation  
Lesbian Gay Bisexual Transgender Project  
125 Broad Street  
New York, New York 10004  
(212) 549-2623  
jesseks@aclu.org

LAURENCE J. DUPUIS  
SBN: 1029261  
American Civil Liberties Union of Wisconsin  
Foundation  
207 E. Buffalo Street, Suite 325  
Milwaukee, Wisconsin 53202  
(414) 272-4032  
ldupuis@aclu-wi.org

HANS GERMANN\*  
GRETCHEN E. HELFRICH\*  
FRANK DICKERSON\*  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, Illinois 60606-4637  
Telephone: (312) 782-0600  
Facsimile: (312) 701-7711  
hgermann@mayerbrown.com  
ghelfrich@mayerbrown.com  
fdickerson@mayerbrown.com

\* admitted *pro hac vice*

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin



Virginia Wolf, et al.,

Plaintiff

v.

Scott Walker, in his official capacity as Governor of Wisconsin, et al.

Defendant

)
)
)
)
)
)
)
)

Civil Action No. 14-cv-64

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) John T. Chisholm, District Attorney
Milwaukee County
Safety Building 821 W. State St.
Rm. 405
Milwaukee, WI 53233

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Laurence J. Dupuis
ACLU of Wisconsin Foundation, Inc.
207 E. Buffalo St., #325
Milwaukee, WI 53202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/27/2014

Signature of Clerk or Deputy Clerk

Civil Action No. 14-cv-64

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin



Virginia Wolf, et al.,

Plaintiff

v.

Scott Walker, in his official capacity as Governor of Wisconsin, et al.

Defendant

)
)
)
)
)
)
)
)

Civil Action No. 14-cv-64

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Wendy Christensen, Clerk
Racine County
730 Wisconsin Ave.
Racine, WI 53403

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Laurence J. Dupuis
ACLU of Wisconsin Foundation, Inc.
207 E. Buffalo St., #325
Milwaukee, WI 53202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/27/2014

Signature of Clerk or Deputy Clerk

Civil Action No. 14-cv-64

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: