

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

Plaintiffs,

vs.

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

Defendants,

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

and

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

Proposed Intervening  
Defendants.

---

**ANSWER OF INTERVENING DEFENDANTS**

---

The Intervening Defendants, Katharina Heyning, Judith Trampf, Wendy Woodruff, Mary Woodruff, Jayne Dunnun, Robin Timm, Virginia Wolf, Carol Schumacher, Diane Schermann, and Michelle Collins, state as follows:

A. Katharina Heyning and Judith Trampf live in Madison, Wisconsin, and on August 5, 2009, registered as domestic partners pursuant to Chapter 770, Wis. Stat.

B. Wendy Woodruff and Mary Woodruff live in Greenfield, Wisconsin, and on August 3, 2009 registered as domestic partners pursuant to Chapter 770, Wis. Stat.

C. Jayne Dunnum and Robin Timm live in Platteville, Wisconsin, and on August 11, 2009, registered as domestic partners pursuant to Chapter 770, Wis. Stat.

D. Virginia Wolf and Carol Schumacher live in Eau Claire, Wisconsin, and on August 3, 2009, registered as domestic partners pursuant to Chapter 770, Wis. Stat.

E. Diane Schermann and Michelle Collins live in Eau Claire, Wisconsin, and on August 25, 2009, registered as domestic partners pursuant to Chapter 770, Wis. Stat.

The Intervening Defendants answer the allegations in Plaintiffs' Complaint as follows:

#### INTRODUCTION

1. Intervening Defendants admit that Chapter 770 Wis. Stat. creates a domestic partner registry for same-sex couples. With regard to the nature of the action, Intervening Defendants state that Paragraph 1 states a legal conclusion to which no responsive pleading is required. Intervening Defendants deny that Chapter 770 violates Art XIII, Section 13 of the Wisconsin Constitution. Intervening Defendants state affirmatively that Plaintiffs have no legitimate basis for bringing this suit.

#### JURISDICTION AND VENUE

2. Intervening Defendants state that Paragraph 2 states a legal conclusion to which no responsive pleading is required. To the extent factual allegations related to venue are implied, Intervening Defendants admit that venue in this action is proper in Dane County.

#### PARTIES

3. Intervening Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 3, and therefore deny the same.

4. Intervening Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 4, and therefore deny the same.

5. Intervening Defendants admit that James E. Doyle is the Governor of the State of Wisconsin. Intervening Defendants state that the remaining allegations of Paragraph 5 state a legal conclusion to which no responsive pleading is required.

6. Intervening Defendants admit that Karen Timberlake is Secretary of Wisconsin Department of Health Services. Intervening Defendants state that the remaining allegations of Paragraph 6 state a legal conclusion to which no responsive pleading is required.

7. Intervening Defendants admit that John Kiesow is the Wisconsin Registrar of Vital Statistics and that this is an office of the Wisconsin Department of Health Services. Intervening Defendants state that the remaining allegations of Paragraph 7 state a legal conclusion to which no responsive pleading is required.

#### PLAINTIFFS' STANDING

8. Intervening Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 8, and therefore deny the same.

9. Intervening Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 9, and therefore deny the same.

10. Intervening Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10, and therefore deny the same.

11. Intervening Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11, and therefore deny the same.

## FACTUAL ALLEGATIONS

12. Intervening Defendants admit that voters approved an amendment to the state constitution, which is now known as Article XIII, Section 13 of the Wisconsin Constitution, and admit that the amendment is accurately quoted. Intervening Defendants otherwise deny the remaining allegations of Paragraph 12.

13. Intervening Defendants state that the decision of the Wisconsin Supreme Court in *McConkey v. Van Hollen*, 2010 WI 57 (2010), speaks for itself, and deny each and every allegation that is inconsistent with the decision of the Wisconsin Supreme Court in that case. Intervening Defendants admit that the quoted text in Paragraph 13 is taken from that decision but denies that there were italics in the original and state affirmatively that this text is quoted out of context. Intervening Defendants otherwise deny the allegations of paragraph 13.

14. Intervening Defendants admit that the 2009-11 Wisconsin state budget was signed into law on June 29, 2009, and includes Chapter 770 of the Wisconsin Statutes. Intervening Defendants state that Chapter 770 of the Wisconsin Statutes speaks for itself, and deny each and every allegation that is inconsistent with the text of Chapter 770.

15. Intervening Defendants admit that Wis. Stat. § 770.001 states that “it is in the interests of the citizens of this state to establish and provide the parameters for a legal status of domestic partnership,” but deny that italics are used in that statute and state affirmatively that Plaintiffs have only selectively quoted from that provision. Intervening Defendants otherwise deny the allegations of Paragraph 15.

16. Intervening Defendants state that Paragraph 16 states a legal conclusion to which no responsive pleading is required. Intervening Defendants further state the relevant Wisconsin Statutes and laws speak for themselves, and deny each and every allegation that is

inconsistent with the text those Statutes and laws. Intervening Defendants otherwise deny the allegations of Paragraph 16.

17. Intervening Defendants state that Paragraph 17 states a legal conclusion to which no responsive pleading is required. Intervening Defendants further state the relevant Wisconsin Statutes and laws speak for themselves, and deny each and every allegation that is inconsistent with the text those Statutes and laws. Intervening Defendants otherwise deny the allegations of Paragraph 17.

18. Intervening Defendants state that Paragraph 18 states a legal conclusion to which no responsive pleading is required. Intervening Defendants further state that the relevant Wisconsin Statutes and laws speak for themselves, and deny each and every allegation that is inconsistent with the text those Statutes and laws. Intervening Defendants otherwise deny the allegations of Paragraph 18.

19. Intervening Defendants state that Paragraph 19 states a legal conclusion to which no responsive pleading is required. Intervening Defendants further state that the relevant Wisconsin Statutes and laws speak for themselves, and deny each and every allegation that is inconsistent with the text those Statutes and laws. Intervening Defendants otherwise deny the allegations of Paragraph 19.

20. Intervening Defendants state that Paragraph 20 states a legal conclusion to which no responsive pleading is required. Intervening Defendants further state that the relevant Wisconsin Statutes and laws speak for themselves, and deny each and every allegation that is inconsistent with the text those Statutes and laws. Intervening Defendants otherwise deny the allegations of Paragraph 20.

21. Intervening Defendants state that Paragraph 21 states a legal conclusion to which no responsive pleading is required. Intervening Defendants further state that the relevant Wisconsin Statutes and laws speak for themselves, and deny each and every allegation that is inconsistent with the text those Statutes and laws. Intervening Defendants otherwise deny the allegations of Paragraph 21.

22. Intervening Defendants deny the allegations of Paragraph 22.

23. Intervening Defendants admit that certain legal consequences are associated with the Chapter 770 domestic partner status, but specifically deny that such consequences have historically been associated only with marital status. Intervening Defendants deny the remaining allegations of Paragraph 23.

24. Proposed Intervening Defendants admit that certain probate rights are conferred to surviving domestic partners pursuant to Wis. Stat. §§ 851 – 867 but deny that Plaintiffs have accurately and completely described them. Intervening Defendants deny the remaining allegations of Paragraph 24.

25. Intervening Defendants state that the provisions of 2009 Wisconsin Act 28 speak for themselves, and deny each and every allegation of Paragraph 25 that is inconsistent with the text of 2009 Wisconsin Act 28.

#### CAUSE OF ACTION

#### VIOLATION OF ARTICLE XIII, SECTION 13

#### OF THE WISCONSIN CONSTITUTION

26. Intervening Defendants hereby incorporate their answers to the preceding paragraphs as if set forth more fully herein.

27. Intervening Defendants state that Paragraph 27 states a legal conclusion to which no responsive pleading is required. To the extent that a response is required, Intervening Defendants deny each and every allegation that is inconsistent with Article XIII, Section 13 of the Wisconsin Constitution.

28. Intervening Defendants state that Paragraph 28 states a legal conclusion to which no responsive pleading is required. To the extent that a response is required, Intervening Defendants state that Wis. Stat. §§ 765.001(2) and 765.01 speak for themselves, and deny each and every allegation that is inconsistent with the text of Wis. Stat. §§ 765.001(2) and 765.01.

29. Intervening Defendants state that Paragraph 29 states a legal conclusion to which no responsive pleading is required. To the extent that a response is required, Intervening Defendants state that the provisions of Chapter 770 speak for themselves, and deny each and every allegation that is inconsistent with the text of Chapter 770.

30. Intervening Defendants state that Paragraph 30 states a legal conclusion to which no responsive pleading is required. To the extent that a response is required, Intervening Defendants state that the provisions of Chapter 770 speak for themselves, and deny each and every allegation that is inconsistent with the text of Chapter 770.

31. Intervening Defendants state that Paragraph 31 states a legal conclusion to which no responsive pleading is required. To the extent that a response is required, Intervening Defendants state that the provisions of Chapter 770 speak for themselves, and deny each and every allegation that is inconsistent with the text of Chapter 770.

32. Intervening Defendants state that Paragraph 32 states a legal conclusion to which no responsive pleading is required. To the extent that a response is required, Intervening

Defendants state that the provisions of Chapter 770 and related laws speak for themselves, and deny each and every allegation that is inconsistent with the text of Chapter 770 and related laws.

33. Intervening Defendants deny the allegations of Paragraph 33.

34. Intervening Defendants deny the allegations of Paragraph 34.

#### PLAINTIFFS' PRAYER FOR RELIEF

Intervening Defendants incorporate herein by reference their responses to the preceding paragraphs as if fully set forth, and deny that Plaintiffs are entitled to any relief or judgment whatsoever in this case, either as prayed for in the Complaint or otherwise.

#### AFFIRMATIVE DEFENSES

##### First Affirmative Defense – Failure to State a Claim

35. The allegations set forth in the Complaint fail to state a claim upon which relief can be granted.

##### Second Affirmative Defense - Standing

36. The Plaintiffs lack standing to bring their Complaint.

##### Third Affirmative Defense - Waiver

37. The Plaintiffs have waived their right to bring the claims set forth in the Complaint.

##### Fourth Affirmative Defense – Equitable Estoppel

38. Plaintiffs are equitably estopped from bringing the claims set forth in the Complaint.

##### Fifth Affirmative Defense – Laches

39. Plaintiffs are barred by the doctrine of laches from bringing the claims set forth in the Complaint.



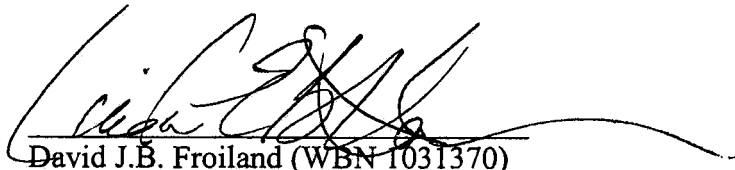
PRAYER FOR RELIEF

WHEREFORE, Intervening Defendants respectfully request that judgment be entered against the Plaintiffs as follows:

- a. Dismissing the Complaint on the merits, and ordering that judgment be entered in favor of Defendants and Intervening Defendants and that Plaintiffs be denied all relief requested in the Complaint;
  - b. Awarding Intervening Defendants all costs and reasonable attorneys fees;
- and
- c. Granting Proposed Intervening Defendants such other relief as this Court deems just, equitable, and proper.

Laurence J. Dupuis (WBN 1029261)  
ACLU of Wisconsin Foundation, Inc.  
207 East Buffalo Street, #325  
Milwaukee, WI 53202  
(414) 272-4032  
(414) 272-0182 Facsimile

John A. Knight\*  
American Civil Liberties Union  
Foundation  
180 North Michigan Avenue  
Suite 2300  
Chicago, IL 60601  
(312) 201-9740  
(312) 288-5225 Facsimile



David J.B. Froiland (WBN 1031370)  
Linda E.B. Hansen (WBN 1000660)  
Daniel A. Manna (WBN 1071827)  
FOLEY & LARDNER LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306  
(414) 271-2400  
(414) 297-4900 Facsimile

David B. Goroff\*  
FOLEY & LARDNER LLP  
321 North Clark  
Chicago, IL 60654  
(312) 832-5160  
(312) 832-4700 Facsimile

\* motion for admission *pro hac vice*  
pending