

STATE OF WISCONSIN  
DANE COUNTY BRANCH  
CIRCUIT COURT

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DANE CO. CIRCUIT COURT

JULAIN K. APPLING,  
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JO EGELHOFF  
222 S. Hamilton Street, Suite 24  
Madison, WI 53703

JAREN E. HILLER,  
222 S. Hamilton Street, Suite 24  
Madison, WI 53703

RICHARD KESSEINICH  
222 S. Hamilton Street, Suite 24  
Madison, WI 53703

EDMUND L. WEBSTER,  
222 S. Hamilton Street, Suite 24  
Madison, WI 53703

Plaintiffs,

v.

JAMES E. DOYLE,  
Office of the Governor  
115 East State Capitol  
Madison, WI 53702  
In his official capacity as  
Governor of the State of Wisconsin,

KAREN TIMBERLAKE,  
1 W. Wilson Street  
Madison, WI 53703  
In her official capacity as  
Secretary of the Wisconsin  
Department of Health Services,

JOHN KIESOW,  
1 W. Wilson Street  
Madison, WI 53703  
In his official capacity as  
State Registrar of Vital Statistics,

Defendants.

Case No.: **10CV4434**

Declaratory Judgment: 30701

Other Injunction: 30704

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ORIGINAL DOCUMENT FILED WITH THE DANE  
COUNTY CLERK OF CIRCUIT COURT.

CARLO ESQUEDA  
CLERK OF CIRCUIT COURT

COMPLAINT

Plaintiffs Julaine K. Appling, Jaren E. Hiller, and Edmund L. Webster allege the following for their Complaint against the Defendants.

### **INTRODUCTION**

1. This is an action for declaratory and injunctive relief challenging the constitutionality of Chapter 770, Wis. Stat., which creates a domestic-partner registry for same-sex couples. Chapter 770 violates Art. XIII, Section 13 of the Wisconsin Constitution by creating and requiring official recognition of a legal status “substantially similar to that of marriage.”

### **JURISDICTION AND VENUE**

2. The Plaintiffs bring this action under Wis. Stat. Sections 801.01, 806.04 (Uniform Declaratory Judgments Act), and 813. Venue in this action is proper in Dane County pursuant to Section 801.50(3).

### **PARTIES**

3. The Plaintiff Julaine K. Appling is an adult resident and taxpayer of the State of Wisconsin and is President of Wisconsin Family Action, Inc., located at 222 S. Hamilton Street, Suite 24, Madison, Wisconsin.

4. The Plaintiffs Jo Egelhoff, Jaren E. Hiller, Richard Kessenich, and Edmund L. Webster are adult residents and taxpayers of the State of Wisconsin and are members of the board of directors of Wisconsin Family Action, Inc., located at 222 S. Hamilton Street, Suite 24, Madison, Wisconsin.

5. The Defendant James E. Doyle is Governor of the State of Wisconsin. Gov. Doyle is ultimately responsible for all executive-department administration of the domestic-partner-registration system enacted under Chapter 770, Wis. Stat.

6. The Defendant Karen Timberlake is Secretary of the Wisconsin Department of Health Services. Through the Department's Office of Vital Records, Secretary Timberlake is responsible for administration of the domestic-partner-registration system enacted under Chapter 770, Wis. Stat.

7. The Defendant John Kiesow is Wisconsin Registrar of Vital Statistics, an office of the Wisconsin Department of Health Services. Registrar Kiesow is responsible for administration of the domestic-partner-registration system enacted under Chapter 770, Wis. Stat.

### **PLAINTIFFS' STANDING**

8. The Plaintiffs suffered actual injury from the enactment of Chapter 770 because it results in Defendants' disbursement of tax revenues to meet increased costs of the Department of Health Services and Registrar of Vital Statistics to implement the domestic-partner registry and registration system created under Chapter 770.

9. The 2009-11 state budget, 2009 Wisconsin Act 28, provides that tax revenues obtained from Plaintiffs and other Wisconsin taxpayers shall be expended for payment of costs of the Department of Health Services and Registrar of Vital Statistics, which have implemented the domestic-partner registry and registration system created under Chapter 770. In addition, Chapter 770 and its new domestic-partnership status will impose a heavier tax burden on the Plaintiffs with a cognizable fiscal effect by providing certain state benefits to the newly created population of domestic partners and by exempting registered same-sex couples from certain taxes and fees.

10. As a result, Chapter 770 requires the illegal and unconstitutional expenditure of public funds and extends illegal and unconstitutional exemptions from taxes. These unlawful expenditures directly affect Plaintiffs and similarly situated taxpayers and cause them to sustain a

pecuniary loss — either because the State of Wisconsin has less money to spend for other governmental objectives, or because the State of Wisconsin must levy additional taxes to make up for the loss resulting from the illegal and unconstitutional expenditures and exemptions created by Chapter 770.

11. Therefore, Plaintiffs and other Wisconsin taxpayers are damaged and injured by Defendants' expenditure of tax revenues for the implementation and administration of the unconstitutional and illegal domestic-partner registry, registration system, and Plaintiffs have standing to assert this challenge.

### FACTUAL ALLEGATIONS

12. In 2006, the voters of the state of Wisconsin overwhelmingly approved an amendment to the state constitution. That amendment, now Article XIII, Section 13 of the Wisconsin Constitution provides as follows:

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.

13. The Wisconsin Supreme Court unanimously upheld the validity of the entire amendment's enactment in *McConkey v. Van Hollen*, 2010 WI 57 (2010). The Court found that “[b]oth sentences of the marriage amendment relate to marriage and tend to effect or carry out the same general purpose of preserving the *legal status* of marriage in Wisconsin as between only one man and one woman.” *Id.* at ¶6 (emphasis added).

14. On June 29, 2009, the 2009-11 state budget was signed into law (2009 Wisconsin Act 28), which included Chapter 770 of the Wisconsin statutes. Chapter 770 created a new legal status of “domestic partner” for persons of the same sex who share the same household, are at least 18 years of age, are not more closely related than second cousins, and are not presently

married or in another domestic partnership. Chapter 770 also established a statewide domestic-partner registry and registration system for same-sex couples.

15. The explicit purpose of Chapter 770 was to “establish and provide the parameters for a *legal status* of domestic partnership.” Wis. Stat. § 770.001.

16. The legal status of “domestic partnership” is defined and created under Chapter 770 alone, irrespective of any other statutory provisions that may reference that legal status. Wis. Stat. § 770.01(2) (“‘Domestic partnership’ means the legal relationship that is formed between 2 individuals *under this chapter*.” (Emphasis added.)) (*See also* Wis. Stat. § 770.001, “The legislature finds that the legal status of domestic partnership as established *by this chapter . . .*”)

17. Compliance with the criteria and procedures provided in Chapter 770 is the sole and exclusive method and requirement for acquiring the legal status of “domestic partner,” irrespective of any other statutory provisions that may reference that legal status. Wis. Stat. § 770.01(1) (“‘Domestic partner’ means an individual who has signed and filed a declaration of domestic partnership in the office of the register of deeds of the county in which he or she resides.”)

18. The criteria provided in Wis. Stat. § 770.05 for entry into a domestic partnership created under Chapter 770 replicate those for entry into marriage, except for domestic-partnership’s requirement that the partners be of the same sex. *Compare* Wis. Stat. § 770.05, *with* §§ 765.02, 765.03(1) (defining who shall not marry). Domestic-partnership applicants must be at least 18 years of age and competent, which is the same requirement for a marriage license. *Compare* Wis. Stat. § 770.05(1), *with* § 765.02(1). Couples seeking to register as domestic partners must share a common residence, which is an integral quality of marriage. *Compare* Wis. Stat. § 770.05(3), *with Harris v. Kunkel*, 227 Wis. 435, 437-38 (1938). Additionally, domestic

partners may not be of closer kin than comparable marriage statutes allow for individuals seeking a marriage license. *Compare* Wis. Stat. § 770.05(4), *with* § 765.03(1).

19. The procedures provided in Wis. Stat. §§ 770.07 and .10 for entry into a domestic partnership created under Chapter 770 also mirror the procedure for entry into marriage. If same-sex couples seeking to register as domestic partners under Chapter 770 meet these criteria, they must go to the county clerk's office, which is the same authority responsible for issuing marriage licenses. *Compare* Wis. Stat. § 770.07, *with* § 765.05. Moreover, same-sex couples must go to the clerk's office in a county in which one applicant has lived for at least thirty days, just as a couple seeking a marriage license must do. *Compare* Wis. Stat. § 770.07(1)(a), *with* § 765.05. Upon showing the same proof of identification required for marriage (*compare* Wis. Stat. § 770.07(d), *with* § 765.09(3)), domestic-partnership applicants are required to pay the same fee required for a marriage license. Wis. Stat. § 770.17 (stating that the declaration fee will be the same as the marriage-license fee). They must also sign an application to obtain a declaration of domestic partnership that requires their social security numbers and confidential data, the same data required from a couple seeking a marriage license. *Compare* Wis. Stat. § 770.07(c) with § 765.09(2). Domestic-partnership applicants must then wait the same number of days that a couple must wait to obtain a marriage license. *Compare* Wis. Stat. § 770.07(1)(b)(1) with § 765.08(1). Domestic-partner applicants may accelerate the process by paying an additional fee to the clerk. The additional fee is a comparable amount charged to a couple to accelerate a marriage-license application. *Compare* Wis. Stat. § 770.07(1)(b)(2) with § 765.08(2).

20. Once these steps are completed, the domestic partnership is recorded and acknowledged in a way that mimics the process for recording and acknowledging marriage. Under Chapter 770, the county clerk issues a declaration of domestic partnership to a same-sex

couple, just as the county clerk issues a marriage license to an opposite-sex couple. *Compare* Wis. Stat. § 770.10 with §§ 765.02(2) and 765.12. Chapter 770 even requires the county clerk to provide newly registered domestic partners with the same information on fetal alcohol syndrome that the comparable marriage statute requires to be given to married couples. *Compare* Wis. Stat. § 770.07(2) with § 765.12(1)(a).

21. The domestic partners are then required to sign and acknowledge the declaration before a notary public. Similarly, married couples must sign the marriage license before an authorized minister or official. *Compare* Wis. Stat. § 770.10 with § 765.002(3). The domestic partners must then give the completed declaration for recording to the register of deeds, who is also the custodian of completed marriage documents. *Compare* Wis. Stat. § 770.10 with § 765.19. The register of deeds then forwards the original of the declaration to the state registrar of vital statistics, the same official who also receives a completed marriage-license worksheet. *Compare* Wis. Stat. § 770.10 with § 765.13.

22. Once a domestic partnership is registered, the partners receive many of the core legal incidents associated with marital status. Chapter 770 embeds this new legal status throughout Wisconsin's statutes to provide domestic partners with legal consequences that have historically been associated only with marital status.

23. Such legal consequences associated with domestic-partner status include access to medical-treatment records, hospital-visitation rights, decision-making for health care and anatomical gifts; ability to bring a wrongful death action; ability to invoke spousal evidentiary privilege in court proceedings; eligibility for victim's compensation; eligibility for Worker's Compensation death benefits; eligibility for family leave; holding property as joint tenants if

both partners are owners in a document of title; and exemption from transfer fees for transfers of title between domestic partners.

24. Surviving domestic partners are conferred rights to the estate of the deceased partner that does not pass by will (intestacy) just as a married spouse; a qualified interest in the deceased-partner's interest in a home; the ability to petition a probate court for an allowance for support from the deceased-partner's estate; authority to select from the deceased-partner's estate designated personal and household items; a limited exemption of the deceased-partner's estate from creditors' claims; and the ability to transfer a deceased-partner's interest in a motor vehicle.

25. Finally, 2009 Wisconsin Act 28 provides that a local unit of government may provide health and life insurance for a local employee's or officer's domestic partner and dependent children.

#### CAUSE OF ACTION

#### VIOLATION OF ARTICLE XIII, SECTION 13

#### OF THE WISCONSIN CONSTITUTION

26. Plaintiffs incorporate the preceding paragraphs herein the same as if pleaded in full.

27. Article XIII, Section 13 of the Wisconsin Constitution prohibits the recognition of any "legal status identical or substantially similar to that of marriage for unmarried individuals."

28. Wisconsin statutes define marriage as a "legal relationship between 2 equal persons, a husband and wife . . . ." Wis. Stat. § 765.001(2). It is "a civil contract . . . which creates the legal status of husband and wife." Wis. Stat. § 765.01.

29. A domestic partnership formed under Chapter 770 is a civil contract between two persons creating a legal status that is substantially similar to the legal status of husband and wife.

30. Chapter 770, creates and recognizes a domestic-partner status that is clearly intended to mirror the substance of marital status. In all relevant respects as articulated above, domestic-partner status mirrors and mimics the legal status of married couples.

31. Chapter 770 creates a parallel legal status for same-sex domestic partners and attaches to that status central legal consequences, privileges and benefits that have historically *only* been associated with a legal marriage.

32. Except for its same-sex requirement, domestic-partner legal status is limited to couples that fit into the same requirements of limited kinship, exclusivity, and age that are required for marital status.

33. In enacting Article XIII, Section 13, the voters sought to prevent the recognition of other legal statuses that might offer a legally sanctioned, officially endorsed, normative alternative to marriage as defined in the amendment.

34. Therefore, the central allegation of this complaint is that the legal status created by Chapter 770 is “substantially similar to that of marriage.” Accordingly, domestic-partnership status is prohibited by the second sentence of Article XIII, sec. 13.

### **RELIEF SOUGHT**

WHEREFORE, Plaintiffs request that the Court:

A. Enter a declaratory judgment that Chapter 770’s domestic-partner registry is unconstitutional;

B. Enter a declaratory judgment that Chapter 770 and the “domestic partner” status that it creates are unconstitutional;

C. Enter an order enjoining Defendants from enforcing Chapter 770, including, but not limited to, the provision of forms for the registration and dissolution of domestic partnerships

or their recording with the Office of Vital Records or the provision of any state benefits or the enforcement by the State of Wisconsin of any obligations predicated upon domestic-partnership status as defined in Chapter 770;

D. Award any other and further relief the Court deems necessary; and

E. Award the Plaintiffs their reasonable costs and attorneys' fees.

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Dated: August 12 2010



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