

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

KIERSTEN and ANGELA BLOECHL-
KARLSEN, STACIE CHRISTIAN and JULIE
TETZLAFF, JAMES and ALEXIS
LANGREDER, NATHANIEL WALKER and
LEON LAUFER,

Plaintiffs,

v.

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, ELOISE ANDERSON, in her
official capacity as Secretary of the Wisconsin
Department of Children and Families, BOARD
OF REGENTS OF THE UNIVERSITY OF
WISCONSIN SYSTEM, JOHN R. BEHLING,
MARK J. BRADLEY, JOSÉ M. DELGADO,
TONY EVERS, MICHAEL J. FALBO,
MARGARET FARROW, EVE M. HALL,
NICOLAS A. HARSY, TIM HIGGINS,
EDMUND MANYDEEDS, REGINA
MILLNER, JANICE MUELLER, DREW
PETERSEN, CHARLES PRUITT, ANICKA
S. PURATH, JOSÉ F. VÁSQUEZ, DAVID G.
WALSH, GERALD WHITBURN, in their
official capacity as Regents of the Board of
Regents of the University of Wisconsin
System, DR. GARY A. MILLER, in his
official capacity as Chancellor of the
University of Wisconsin—Green Bay, CATHY
STEPP, in her official capacity as Secretary of
Natural Resources of the Wisconsin
Department of Natural Resources, JOHN A.
SCOCOS, in his official capacity as Secretary
of the Wisconsin Department of Veterans
Affairs,

Defendants.

CASE NO. 14-CV-627

HON.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs Kiersten and Angela Bloechl-Karlsen, Stacie Christian and Julie Tetzlaff, James and Alexis Langreder, and Nathaniel Walker and Leon Laufer (collectively, “Plaintiffs”) are four loving, committed same-sex couples who solemnized their marriages in Wisconsin between June 6 and June 13, 2014, but who, along with their families, are now being denied the dignity, recognition, privileges, and benefits that all couples legally married in Wisconsin and their families deserve and are entitled to under the law.

2. Plaintiffs do not seek recognition of their right to *get* married; they seek a declaration that they actually *are* married, and recognition of their *existing* Wisconsin marriages. Plaintiffs’ marriages were legal, valid, and recognized by State officials acting in good faith within the scope of their official duties under Wisconsin law when the Plaintiffs entered into the marriages between June 6 and June 13. Equal Protection and Due Process protect these marriages from being retroactively invalidated by the State, regardless of what ultimately happens in the separate litigation challenging Wisconsin’s ban on marriage for same-sex couples.

3. Plaintiffs, and approximately 500 other same-sex couples, were married in Wisconsin between June 6 and June 13, 2014, during the one-week period *after* the United States District Court for the Western District of Wisconsin issued a ruling on June 6 declaring unconstitutional Article XIII, Section 13, of the Wisconsin Constitution and the various Wisconsin statutes limiting married spouses to “husband” and “wife,” *Wolf v. Walker*, Case No. 14-cv-64-bbc, 986 F. Supp. 2d 982 (W.D. Wis. June 6, 2014) (Crabb, J.) (Dkt. 118), but *before* the District Court stayed the declaratory judgment pending appeal, *Wolf v. Walker*, Case No. 14-cv-64-bbc, — F. Supp. 2d —, 2014 WL 2693963 (W.D. Wis. June 13, 2014) (Crabb, J.) (Dkt. 134).

4. Because no same-sex couples had been permitted to marry in Wisconsin before the District Court's June 6 Order in *Wolf*, the question of the validity and recognition of such existing Wisconsin marriages of same-sex couples was not before the District Court. In its June 13 Order in *Wolf*, the District Court did not address questions regarding the validity and recognition of the marriages of same-sex couples entered into in Wisconsin during the period between June 6 and the District Court's entry of a stay on June 13. Indeed, the District Court has never addressed these questions.

5. When Plaintiffs were married between June 6 and June 13, they gained vested rights in the validity and recognition of their marriages under Wisconsin law. Their marriages, and the protections, benefits, rights, and responsibilities that flow to them and their families from their married status, are thus protected by the Fourteenth Amendment to the United States Constitution and must be recognized by State officials.

6. J.B. Van Hollen, the Attorney General of Wisconsin, has stated publicly that the marriages of same-sex couples entered into in Wisconsin between June 6 and June 13 are not valid. And in their Emergency Motion for Temporary Stay filed on the same day as the District Court's June 6 ruling, Van Hollen and his codefendants in *Wolf* urged the District Court to "preserve the status quo," which in their view required the State's ban against on marriage for same-sex couples to remain in effect. *See Wolf v. Walker*, Case No. 14-cv-64-bbc (W.D. Wis. June 6, 2014) (Crabb, J.) (Dkt. 119).

7. By seeking retroactively to withdraw the validity and legal recognition of Plaintiffs' Wisconsin marriages, the Governor of Wisconsin and other State officials have placed Plaintiffs and their families in an intolerable state of legal limbo that threatens their well-being, health, financial security, and family integrity, and denies their dignity as free and equal citizens.

Absent relief from this Court, Plaintiffs will be denied critical protections and benefits for themselves and their families that are enjoyed as of right by all other couples legally married in Wisconsin.

8. Plaintiffs therefore seek a declaratory judgment that their marriages are valid, as well as injunctive relief requiring immediate and ongoing recognition of the marriages by the State of Wisconsin, as required by the due-process and equal-protection guarantees of the United States Constitution.

JURISDICTIONAL STATEMENT

9. 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 under 28 U.S.C. §§ 1331 and 1343(a)(3).

10. This Court has authority to grant the requested declaratory judgment pursuant to 28 U.S.C. § 2001 and 2002 and Federal Rule of Civil Procedure 57.

11. This Court has authority to issue the requested injunctive relief pursuant to 42 U.S.C. § 1983 and the Federal Rule of Civil Procedure 65.

12. This Court has authority to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

VENUE

13. Venue is proper in this district under 28 U.S.C. § 1391(b)(1)-(2) because Defendants Walker, Van Hollen, Chandler, Oskar Anderson, Eloise Anderson, Behling, Bradley, Evers, Harsy, Manydeeds, Millner, Mueller, Petersen, Walsh, Whitburn, Stepp, and Scocos reside and/or have offices within this District, all Defendants reside in the State of Wisconsin,

and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred, are occurring, or will occur in this district.

THE PLAINTIFFS

14. Plaintiffs Kiersten and Angela Bloechl-Karlsen (pronounced "BLEK-el Karlsen") are residents of Oshkosh, Wisconsin, in Winnebago County. Kiersten and Angie were married in Winnebago County on June 13, 2014.

15. Plaintiffs Stacie Christian and Julie Tetzlaff are residents of Green Bay, Wisconsin, in Brown County. Stacie and Julie were married in Brown County on June 9, 2014.

16. Plaintiffs James and Alexis Langreder are residents of Delafield, Wisconsin, in Waukesha County. Jim and Alex were married in Waukesha County on June 9, 2014.

17. Plaintiffs Nathaniel Walker and Leon Laufer are residents of Bayside, Wisconsin, in Milwaukee County. Nathan and Lee were married in Milwaukee County on June 6, 2014.

THE DEFENDANTS

18. Defendant Scott Walker is sued in his official capacity as Governor of the State of Wisconsin. 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 is charged with the appointment and supervision of department heads, including the Secretary of Revenue and the Secretary of the Department of Health Services (which oversees the State Registrar). *See* Wis. Stat. § 15.05(1)(a) (department heads "serve at the pleasure of the governor"); Wis. Stat. § 15.43 (creating Department of Revenue overseen by Secretary of Revenue); Wis. Stat. § 15.19 (creating Department of Health Services overseen by Secretary of Health Services); Wis. Stat. § 69.02(1)(b) (Department of Health Services appoints State Registrar); Wis. Stat. § 15.49(2) (creating Department of Veterans Affairs overseen by Secretary of Veterans Affairs); Wis. Stat. § 15.34 (creating Department of Natural Resources overseen by Secretary of Natural Resources). In addition, Walker has

exercised the authority as Governor to direct the Wisconsin Vital Records Office to fulfill its administrative duties.

19. Defendant J.B. Van Hollen is sued in his official capacity as Attorney General of Wisconsin. Van Hollen 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 statutory authority to take actions related to the issuance and solemnization of marriages. For example, Wis. Stat. § 765.30(2) provides for criminal penalties for unlawful issuance of a marriage license, and Wis. Stat. § 765.30(3) provides for criminal penalties for unlawful solemnization of a marriage. These provisions purport to authorize the Attorney General to enforce the unconstitutional marriage ban by targeting for prosecution all county clerks or officiants who have solemnized marriages of same-sex couples. In addition, Van Hollen has exercised responsibility to direct the Department of Vital Records regarding its obligations with respect to marriage licenses for same-sex couples.

20. Defendant Richard G. Chandler is sued in his official capacity as Secretary of Revenue of the State of Wisconsin. Chandler 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 of married couples for revenue purposes.

21. Defendant Oskar Anderson is sued in his official capacity as State Registrar. Anderson 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 vital records, including marriage licenses and birth certificates, in Wisconsin, and to accept for registration and assign a date of registration to such vital records.

22. Defendant Eloise Anderson is sued in her official capacity as Secretary of the Wisconsin Department of Children and Families. Anderson was, is, and will be acting under color of state law at all times relevant to this Complaint. In her capacity as Secretary of the Wisconsin Department of Children and Families, Anderson has responsibility for implementing various laws relating to non-marital children. Wis. Stat. § 48.48(1). In this capacity, Anderson also has authority to place children under the Department of Children and Families' guardianship for adoption, Wis. Stat. § 48.48(8), consistent with the restrictions under Wisconsin law that prohibit joint adoption of a child by an unmarried same-sex couple, Wis. Stat. § 48.82(1).

23. Defendant Board of Regents of the University of Wisconsin System is sued in its own right and on the basis of the acts of its regents. As established by Chapter 36 of the Wisconsin Statutes, the Board of Regents governs the University of Wisconsin System, which includes the University of Wisconsin—Green Bay. The regents of the Board of Regents establish the regulatory framework within which the individual University units operate. *See* Wis. Stat. § 36.09(1) (“The primary responsibility for governance of the [University of Wisconsin System] shall be vested in the [Board of Regents], which shall enact policies and promulgate rules for governing the system[.]”). The Board of Regents is also responsible for appointing the chancellors of the University of Wisconsin System, Wis. Stat. § 36.09(1)(e), and the chancellors serve as the “executive heads” of the University of Wisconsin institutions and are responsible for their operation and administration, Wis. Stat. § 36.09(3)(a).

24. Defendants John R. Behling, Mark J. Bradley, José M. Delgado, Tony Evers, Michael J. Falbo, Margaret Farrow, Eve M. Hall, Nicolas A. Harsy, Tim Higgins, Edmund Manydeeds, Regina Millner, Janice Mueller, Drew Petersen, Charles Pruitt, Anicka S. Purath, José F. Vásquez, David G. Walsh, and Gerald Whitburn, are sued in their official capacity as

Regents of the Board of Regents of the University of Wisconsin System. These defendants were, are, and will be acting under color of state law at all times relevant to this Complaint. As established by Chapter 36 of the Wisconsin Statutes, the regents of the Board of Regents govern the University of Wisconsin System, which includes the University of Wisconsin—Green Bay. The regents of the Board of Regents establish the regulatory framework within which the individual University units operate. *See* Wis. Stat. § 36.09(1) (“The primary responsibility for governance of the [University of Wisconsin System] shall be vested in the [Board of Regents], which shall enact policies and promulgate rules for governing the system[.]”). The Board of Regents is also responsible for appointing the chancellors of the University of Wisconsin System, Wis. Stat. § 36.09(1)(e), and the chancellors serve as the “executive heads” of the University of Wisconsin institutions and are responsible for their operation and administration, Wis. Stat. § 36.09(3)(a).

25. Defendant Dr. Gary L. Miller is sued in his official capacity as Chancellor of the University of Wisconsin—Green Bay. Miller was, is, and will be acting under color of state law at all times relevant to this Complaint. As established by Chapter 36 of the Wisconsin Statutes, the chancellors including Miller serve as the “executive heads” of the University of Wisconsin institutions and are responsible for their operation and administration. Wis. Stat. § 36.09(3)(a). The Board of Regents of the University of Wisconsin System is responsible for appointing the chancellors of the University of Wisconsin System. Wis. Stat. § 36.09(1)(e).

26. Defendant Cathy Stepp is sued in her official capacity as Secretary of the Wisconsin Department of Natural Resources. Stepp was, is, and will be acting under color of state law at all times relevant to this Complaint. In her capacity as Secretary of the Wisconsin Department of Natural Resources, Stepp has the authority to issue combined husband-and-wife

resident fishing licenses, which “confer[] upon both husband and wife the privileges of resident fishing licenses” at a lower cost than two individual annual fishing licenses. Wis. Stat. § 29.219(4).

27. Defendant John A. Scocos is sued in his official capacity as Secretary of the Wisconsin Department of Veterans Affairs. Scocos was, is, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as Secretary of the Wisconsin Department of Veterans Affairs, Scocos has the authority to oversee the Department’s grant of benefits to veterans and their spouses, including the rights of veterans and their spouses to be buried next to each other as spouses in Wisconsin’s veterans’ cemeteries, *see* Wis. Stat. § 45.61(2); to gain admission into a veterans’ home, *see* Wis. Stat. § 45.51(2); and to receive certain educational fee reductions or to participate in tuition-remission programs, *see* Wis. Stat. §§ 36.27, 38.24.

BACKGROUND AND FACTS

Wisconsin’s Ban On Marriage For Same-Sex Couples

28. In 2006, Wisconsin amended its State constitution to enact one of the most restrictive bans on marriage for same-sex couples in the nation.

29. Wisconsin prohibited same-sex couples from marrying by the so-called “Marriage Amendment” to the State constitution, which provides: “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.

30. In addition, marriage is defined under state law as a “legal relationship between . . . a husband and wife.” Wis. Stat. § 765.001(2). Consistent with that definition, married spouses are referred to throughout the Wisconsin Statutes as “husband” and “wife.”

31. Before June 6, 2014, same-sex couples were not permitted to marry in Wisconsin.

Wisconsin's Ban on Marriage For Same-Sex Couples Is Declared Unconstitutional

32. On February 3, 2014, four same-sex couples who sought either to marry in Wisconsin or to have Wisconsin recognize their marriages entered into in other states filed a complaint in *Wolf v. Walker*, Case No. 14-cv-64-bbc (W.D. Wis. Feb. 3, 2014) (Dkt. 1), challenging the constitutionality of Wisconsin's ban on marriage for same-sex couples under the United States Constitution's Due Process and Equal Protection Clauses. Four additional same-sex couples were later named in the Amended Complaint (First) filed in *Wolf*. Case No. 14-cv-64-bbc (W.D. Wis. Feb. 27, 2014) (Dkt. 26). No plaintiffs in *Wolf* have entered into a marriage in Wisconsin.

33. On June 6, 2014, following expedited discovery and summary-judgment proceedings, the District Court entered an Opinion and Order denying the *Wolf* defendants' motion to dismiss and granting the plaintiffs' motion for summary judgment, thereby declaring that Article XIII, Section 13, of the Wisconsin Constitution violates the plaintiffs' fundamental right to marry and right to equal protection of laws under the Fourteenth Amendment. The District Court further declared that "any Wisconsin statutory provisions . . . that limit marriages to a 'husband' and a 'wife' are unconstitutional as applied to same-sex couples." Case No. 14-cv-64-bbc, 986 F. Supp. 2d 982, 1028 (W.D. Wis. June 6, 2014) (Crabb, J.) (Dkt. 118). The June 6 Order did not enter an injunction. Instead, the District Court established a briefing schedule for litigating the scope of an appropriate injunction and deferred the question whether it would be appropriate to stay any injunction. *Id.*

Approximately 500 Same-Sex Couples Are Married In Wisconsin

34. Throughout Wisconsin, county clerks are charged with issuing marriage licenses. Following the District Court's June 6 Order in *Wolf*, some county clerks began issuing marriage

licenses to same-sex couples in accordance with Wisconsin's general marriage requirements, based on the opinions of their County Corporation Counsels that the District Court's ruling nullified the ban on marriages for same-sex couples. Ashley Luthern & Megan Tribble, *Counties Split on Issuing Marriage Licenses to Gay Couples*, MILWAUKEE JOURNAL-SENTINEL (June 9, 2014), <http://www.jsonline.com/news/wisconsin/counties-split-on-whether-to-issue-marriage-licenses-to-gay-couples-b99287392z1-262397131.html>.

35. The County Clerk for Dane County—which includes Madison—began issuing marriage licenses to same-sex couples at 5 p.m. on Friday, June 6, and continued throughout the night. When asked about this decision, the Clerk explained that he issued the licenses because “the law right now is that the marriage ban is unconstitutional. If someone comes in and says, ‘Can you marry me?’ I have to follow the federal court.” Nico Savidge, *Weddings Continue After Judge Declares Ban Unconstitutional*, WIS. STATE J. (June 7, 2014), http://host.madison.com/news/local/weddings-continue-after-judge-declares-ban-unconstitutional/article_100865d0-c06e-5254-8cee-0d4733f17942.html#ixzz37SaQ5dIC.

36. The Milwaukee County Clerk also issued marriage licenses throughout the night of Friday, June 6, and all the next day. *Id.*

37. By the afternoon of Monday, June 9, 46 of Wisconsin's 72 counties had begun processing marriage licenses for same-sex couples. Ed Treleven, *Judge Declines to Stay Marriage Ruling, Is Silent on Whether Clerks Should Issue Licenses*, WIS. STATE J. (June 10, 2014), http://host.madison.com/news/local/govt-and-politics/judge-declines-to-stay-marriage-ruling-is-silent-on-whether/article_e3b7d56c-85ef-545b-9b06-9312ea677d77.html#ixzz37TS7QaBM.

38. On June 9, three days after striking down Wisconsin's ban on marriage for same-sex couples, the District Court rejected Van Hollen's request to stay the June 6 Order in *Wolf*. During a hearing on Monday, June 9, and in a written order released later that day, the District Court said that it would leave the "status quo" in place before issuing specific orders to public officials at a later date. Jason Stein et al., *Federal Judge Declines to Stop Gay Marriages in Wisconsin*, MILWAUKEE JOURNAL-SENTINEL (June 9, 2014), <http://www.jsonline.com/news/wisconsin/as-more-gay-couples-seek-to-marry-some-counties-tell-them-to-wait-b99287197z1-262367731.html>.

39. Accordingly, the Dane County Clerk continued to issue licenses to same-sex couples, explaining that under the June 6 Order, "the status quo is what we're doing now . . . which is issuing marriage licenses." *Id.* The assistant corporation counsel in Dane County was of the view that the June 6 Order was "unambiguous," and that, after the order, there was no longer any prohibition against marriages for same-sex couples. Treleven, *Judge Declines to Stay Marriage Ruling, supra*, at ¶ 37.

40. Similarly, the County Clerk for La Crosse County determined that it was her duty to continue issuing marriage licenses to same-sex couples unless and until a stay issued. Steven Verburg, *Two-Thirds of Wisconsin Counties Say They are Ready to Marry Same-Sex Couples*, WIS. STATE J. (June 10, 2014), http://host.madison.com/news/local/govt-and-politics/two-thirds-of-wisconsin-counties-say-they-are-ready-to/article_43e275c7-7029-59c8-9c3a-31e2115f4504.html#ixzz37TAX2p4a.

41. After the District Court rejected Van Hollen's stay request in *Wolf*, the legal counsel for the Wisconsin Counties Association issued a memorandum providing guidance to the state's County Clerks on the issue. The memorandum suggested two options: "[T]he [county]

clerk could 1) accept marriage license applications from same sex couples and advise those couples that state statute provides for at least a five-day waiting period between the time an application is filed and a license is granted. The Clerk may wish to inform the applicants that further court rulings may impact the application or execution of the license; or 2) accept marriage license applications from same sex couples and approve and expedite at the discretion of the clerk.” Memorandum from the law firm of Phillips Borowski on the Status of Same Sex Marriages in Wisconsin to Wisconsin County Clerks (June 9, 2014), *available at* <http://www.scribd.com/doc/228968968/Guidance-to-WI-Counties-re-Marriage-Equality>. Significantly, the guidance document did not pose as a lawful alternative the refusal to accept applications and issue licenses.

42. In the wake of these developments, on June 11 Governor Walker’s administration stated publicly that it was processing marriage certificates from the same-sex couples who married after the June 6 Order in *Wolf*. Jason Stein & Patrick Marley, *State Changes Course, Says It is Processing Gay Marriage Paperwork*, MILWAUKEE JOURNAL-SENTINEL (June 11, 2014), <http://www.jsonline.com/news/statepolitics/clarity-still-lacking-for-ongoing-gay-marriages-b99289097z1-262713011.html>.

43. Ultimately, County Clerks in at least 60 of Wisconsin’s 72 counties issued marriage licenses and certificates of marriage to same-sex couples. *Scott Walker, Mary Burke trade jobs on gay marriage*, APPLETON POST-CRESCENT (June 16, 2014), <http://archive.postcrescent.com/article/20140616/APC010401/306160325/Scott-Walker-Mary-Burke-trade-jobs-gay-marriage>; Sharif Durhams, *Nearly all Wisconsin counties are allowing marriage licenses for same-sex couples*, MILWAUKEE JOURNAL-SENTINEL (June 12, 2014), <http://www.jsonline.com/blogs/news/262901321.html>.

44. Approximately 500 same-sex couples, including Plaintiffs, were married in Wisconsin after the issuance of the June 6 Order in *Wolf* and obtained marriage licenses from County Clerks across the state. *More lawsuits expected over gay marriage*, APPLETON POST-CRESCENT (June 17, 2014), <http://www.postcrescent.com/article/20140617/APC0101/306170205/>.

45. These couples—including the four couples who are Plaintiffs here—followed all the steps required to marry in Wisconsin, including: (1) applying in person in a County Clerk’s office for a marriage license and, where required, paying for and receiving a waiver of any applicable waiting period; (2) providing required documents including certified birth certificates, Social Security cards, proof of age and residence (Wisconsin Driver’s License or Wisconsin State ID cards), and other official documents; (3) applying for the certificate of marriage; (4) solemnizing their marriages by having a justice of the peace or a member of the clergy perform the ceremony and sign the marriage license in front of two adult witnesses; (5) having the officiant sign the marriage license and send it to the Register of Deeds of the county in which the marriage took place; (6) paying any necessary fees for the marriage license; and (7) following all other local policies and procedures for marrying. These couples’ marriage licenses were duly accepted by the Wisconsin Department of Vital Records under Wis. Stat. § 59.43(1)(h) (stating that the Register of Deeds shall “register, file and index all marriages contracted, deaths and births occurring in the county”); *see also Vital Records office will process same-sex marriage licenses*, WSAU.COM (June 12, 2014), <http://wsau.com/news/articles/2014/jun/12/vital-records-office-will-process-same-sex-marriage-licenses/>; *Wisconsin begins processing same-sex marriage licenses*, WISN.COM (June 11, 2014), <http://www.wisn.com/news/wisconsin-begins-processing-samesex-marriage-licenses/26434646#!beQVHf>.

46. The County Clerks had a legitimate and reasonable basis for issuing marriage licenses to same-sex couples, including the four couples who are Plaintiffs here, because the only legal barriers to their doing so—the state bans on marriage for same-sex couples—had been declared unconstitutional by a federal court. Moreover, their decision to issue licenses is consistent with the advice given by Wisconsin public officials who determined that the Department of Vital Records must process the marriage records of same-sex couples who were married in Wisconsin. As one news source reported:

The Wisconsin Vital Records Office started processing marriage licenses on Wednesday that had been issued by county clerks, after receiving guidance from Attorney General J.B. Van Hollen’s office that it could move ahead. The office had been holding the licenses.

“It’s incumbent upon them to fulfill their administrative duties and that’s what they’re going to do in this case,” said Jocelyn Webster, a spokeswoman for Gov. Scott Walker. “They are now processing the licenses.”

Wisconsin begins processing same-sex marriage licenses, WISN.COM (June 11, 2014), <http://www.wisn.com/news/wisconsin-begins-processing-samesex-marriage-licenses/26434646#!beQVHf>.

The District Court Stays The Effect Of Its Declaratory Order Pending Appeal

47. On June 13, 2014, following the *Wolf* parties’ briefing and a hearing on the plaintiffs’ proposed injunction, the District Court issued a second Opinion and Order enjoining the defendants from enforcing Wisconsin’s marriage ban.

48. At the same time, the District Court granted the *Wolf* defendants’ motion to stay all relief in that case—including both the injunction and the “effect” of the declaration—pending the defendants’ appeal to the Seventh Circuit court of appeals. *Wolf v. Walker*, Case No. 14-cv-64-bbc, — F. Supp. 2d —, 2014 WL 2693963, at *7 (W.D. Wis. June 13, 2014) (Dkt. 134). In doing so, the District Court observed that the June 6 Order declaring Wisconsin’s marriage ban

unconstitutional did “not address the question whether county clerks were entitled under state law to issue marriage licenses to same-sex couples in the absence of an injunction.” *Id.* at *5. The District Court acknowledged that “there has been much confusion among county clerks regarding the legal effect of the declaration” issued on June 6 and that “[t]o avoid further confusion among the clerks, I will issue a stay of all relief.” *Id.* at *7.

49. The District Court’s stay order in *Wolf* was entered after Plaintiffs in this action and approximately 500 other same-sex couples married in Wisconsin and at least 670 more submitted marriage applications. Ed Treleven, *Judge Bars Enforcement of Same-Sex Marriage Ban but Halts Marriages While State Appeals*, WIS. STATE J. (June 14, 2014), http://host.madison.com/news/local/govt-and-politics/judge-bars-enforcement-of-same-sex-marriage-ban-but-halts/article_bf652993-a3b8-5c2b-a20b-06c4f46172c6.html#ixzz37TeR04o3.

50. When the District Court entered the stay in *Wolf* on June 13, County Clerks in Wisconsin stopped issuing marriage licenses to same-sex couples.

51. The District Court’s stay order in *Wolf* did not address the legal status of the marriages that same-sex couples entered into in Wisconsin between June 6 and June 13.

52. Van Hollen, as the Attorney General of Wisconsin, stated that same-sex couples who wedded between June 6 and June 13 were not married in the eyes of the law, and that the ban on marriage for same-sex couples remained in full force during that period. *See* Patrick Marley & Dana Ferguson, *Van Hollen: Clerks issuing licenses to gay couples could be charged*, MILWAUKEE JOURNAL-SENTINEL (June 12, 2014), <http://www.jsonline.com/news/statepolitics/van-hollen-clerks-issuing-licenses-to-gay-couples-could-be-charged-b99289932z1-262892731.html>; *Wisconsin begins processing same-sex marriage licenses*, WISN.com (June 11, 2014), <http://www.wisn.com/news/wisconsin-begins-processing-samesex-marriage-licenses/>

26434646#!beQVHf; Scott Bauer, *Wisconsin Gay Marriages Halted By Federal Judge Who Struck Down Ban*, HUFFINGTON POST (June 13, 2014),

http://www.huffingtonpost.com/2014/06/13/wisconsin-gay-marriages-halted_n_5493690.html;

ACLU prepares lawsuit to preserve same-sex marriages, MILWAUKEE JOURNAL-SENTINEL (July 2, 2014), <http://www.jsonline.com/news/wisconsin/aclu-prepares-lawsuit-to-preserve-week-of-same-sex-marriages-b99303648z1-265574511.html>.

53. Indeed, Van Hollen not only stated that the marriages between June 6 and June 13 would not be recognized, but also emphasized that the County Clerks who issued licenses to same-sex couples could face criminal prosecution:

“You do have many people in Wisconsin basically taking the law into their own hands and there can be legal repercussions for that,” Van Hollen said in an interview with the Milwaukee Journal Sentinel. “So, depending on who believes they’re married under the law and who doesn’t believe they’re married under the law may cause them to get themselves in some legal problems that I think are going to take years for them and the courts to work out.”

The Republican attorney general said he did not believe same-sex couples could be prosecuted but that county clerks risked charges.

“That’s going to be up to district attorneys, not me,” he said. “There are penalties within our marriage code, within our statutes, and hopefully they’re acting with full awareness of what’s contained therein.”

Id. These statements have harmed Plaintiffs by creating uncertainty regarding the validity and recognition of their marriages.

54. Following the District Court’s issuance of the stay order on June 13 in *Wolf*, the Wisconsin Department of Employee Trust Funds—the state agency that oversees state employee benefits—published a statement that “[u]ntil the federal courts reach a final decision on Wisconsin’s same-sex marriage prohibition, please note that Chapter 40 of the Wisconsin Statutes continues to provide for domestic partnerships. This provides some, but not all, of the

rights of marriage, such as the right to include a domestic partner as a dependent on one's health insurance coverage." *Update: Impact of Recent Federal Court Ruling on the WRS*, WIS. DEP'T OF EMP. TRUST FUNDS (June 13, 2014, revised June 27, 2014), <http://etf.wi.gov/news/ht-2014-same-sex-marriage.htm>.

The Seventh Circuit Affirms The District Court's Judgment Invalidating And Enjoining Wisconsin's Prohibition Against Marriage Of Same-Sex Couples; The *Wolf* Parties Seek Supreme Court Review

55. On September 4, 2014, the United States Court of Appeals for the Seventh Circuit unanimously affirmed the District Court's judgment invaliding and enjoining Wisconsin's prohibition of marriage for same-sex couples. *Baskin v. Bogan*, No. 14-2526, — F. 3d —, 2014 WL 4359059 (7th Cir. Sept. 4, 2014).¹ The Seventh Circuit held that Wisconsin's marriage ban violates the Equal Protection Clause and therefore concluded that it need not reach the plaintiffs' challenge under the Due Process Clause. The Seventh Circuit held that Wisconsin had not provided any "reason to think that [it had] a 'reasonable basis' for forbidding same-sex marriage" and that more than a "reasonable basis" was required because the challenged discrimination is "along suspect lines." *Id.* at *1.

56. Five days after the Seventh Circuit issued its ruling, the *Wolf* defendants filed a Petition for a Writ of Certiorari in the United States Supreme Court, asking the Court to take the case in order to determine whether the Fourteenth Amendment prohibits a state from defining and recognizing marriage as only the legal union between one man and one woman. *Walker v. Wolf* (No. 14-278, docketed September 9, 2014). In seeking a Writ of Certiorari, the *Wolf* defendants asked the Court to conclude that Wisconsin's traditional marriage laws do not violate the Equal Protection Clause.

¹ On appeal, this case was consolidated for argument and disposition with *Baskin v. Bogan* (Nos. 14-2386 to 14-2388), and the Seventh Circuit also struck down the Indiana marriage ban.

57. In a response filed the same day, the *Wolf* plaintiffs acquiesced in the petition given the exceptional importance of the issues, arguing that the Court should affirm the Seventh Circuit's judgment. The *Wolf* parties' briefs have been distributed to the Court initially for a Conference scheduled on September 29, 2014.

Plaintiffs Kiersten and Angie Bloechl-Karlsen

58. Kiersten and Angie Bloechl-Karlsen have been together as a committed couple for 9 years. They are both lifelong Wisconsin residents. Angie was born and raised in Manawa, and Kiersten grew up in Burlington. They reside together in Oshkosh.

59. Kiersten is a Corporate Trainer at a company that manages residential facilities for people with developmental disabilities and mental illness. Angie is Chief of Operations at Valley Pest Control, Inc., a local, family-owned company started by her father and uncle and now owned by her father.

60. Kiersten and Angie met when they were both students at the University of Wisconsin–Oshkosh, and they later attended graduate school together. In 2009 they registered as Domestic Partners under Wis. Stat. § 770 in Winnebago County.

61. The couple wanted to start a family, and they were overjoyed when Angie became pregnant and gave birth to a little girl, who is now two years old. Currently, Angie is the child's sole legal parent, though Angie and Kiersten have always acted as co-parents. They want Kiersten to adopt their daughter as a legally recognized second parent, but Wisconsin law prevents them from pursuing the second-parent adoption procedure available to unmarried couples in many other states, and step-parent adoption is unavailable to them in Winnebago County so long as their marriage is denied recognition. Wis. Stat. § 48.82. Despite the fact that Kiersten has parented and raised her daughter since birth, in the eyes of the State law Kiersten is a stranger to the girl.

62. What is more, Angie's will provides that if she dies as the sole parent of a minor child or children, she appoints Kiersten as the Guardian. Angie and Kiersten both have a Power of Attorney for Health Care and have selected each other to serve as one another's Health Care Agent to make health-care decisions in the event that one of them is determined to be incapable to make health-care decisions for herself as provided under state law. Without the protections of a recognized marriage, however, there is no guarantee that Kiersten could continue to raise her daughter and make important decisions about the girl's upbringing because a probate court is not required to comply with Angie's wishes expressed in her will as long as Kiersten is not their child's family member under Wisconsin law. Such concerns are especially serious because Angie suffered two major health scares during her pregnancy, forcing the couple to confront a lot of "what ifs" with regard to Angie's health.

63. Because she lacks parental rights, Kiersten does not have the legal right to make health-care decisions for the couple's daughter. Therefore, in order to protect their daughter in the event of a medical emergency, Kiersten carries a Medical Treatment Consent for Minors card, which the couple received from Affinity Health System. Angie signed the card, thereby granting Kiersten the authority to consent to emergency medical treatment for their daughter in Angie's absence. The card states that if their daughter is in need of emergency medical treatment in the absence of the parent or guardian, the hospital is authorized to proceed with treatment without delay. The card contains Angie's contact information, physician and insurance information, and information about their daughter's pre-existing medical conditions and allergies. Typically, a Medical Treatment Consent for Minors card would be held by a non-family member (such as a babysitter), but Kiersten must carry the card because the State does not

recognize her as their daughter's parent with inherent legal authority to make emergency health-care decisions.

64. After waiting several years for the right to marry, Kiersten and Angie were thrilled when Wisconsin's ban on marriage for same-sex couples was struck down on June 6. The couple had previously considered various options, such as getting married out-of-state or even moving out-of-state in order to marry. But they knew that Wisconsin would not recognize an out-of-state marriage of a same-sex couple, and they decided to forgo moving elsewhere because they are lifelong Wisconsinites; their family, friends, and livelihood are in Wisconsin, meaning that moving would entail great hardships for them and for their daughter. Kiersten and Angie wanted to wait for the opportunity to get married in their home state of Wisconsin someday.

65. The days following the District Court's June 6 Order in *Wolf* were particularly busy for Kiersten and Angie, as they were in the midst of planning for Angie's mother's retirement party at their home on June 13. On that very day, June 13, they learned that the District Court was expected to rule on the *Wolf* defendants' motion to stay. So Kiersten, Angie, their daughter, and Angie's sister quickly gathered the couple's birth certificates and traveled to the courthouse to get married. Upon their arrival, they could not find an officiant to meet them, but one of the judges offered to perform the ceremony. The court officer waived the waiting period for issuing the marriage license.

66. Kiersten and Angie got married and received their marriage license in Winnebago County on June 13. They were one of the last couples to be married in Winnebago County before the District Court issued the stay in *Wolf*. As soon as they were married, they returned to their home to celebrate both their marriage and Angie's mother's retirement.

67. As set forth on Kiersten and Angie's Original Certificate of Marriage, the couple's marriage license (number 13901589) was issued by Julie Barthels (the Winnebago County Clerk) on June 13, 2014. The certification was signed on June 13 by Judge David W. Keck as officiant and by two adult witnesses. Julie Pagel, the Winnebago County Register of Deeds, signed the certification on June 13, the date on which the certification was received by the local registrar. The Official Certificate of Marriage was issued on June 13 and signed again by Julie Pagel next to this statement: "I certify that this document contains a true and correct reproduction of facts on file with the Wisconsin Vital Records Office."

68. As excited as they and their family and friends were about the marriage, Kiersten and Angie were also deeply saddened to learn about Van Hollen's declaration that the same-sex-marriage ban remained in full force between June 6 and June 13, because they knew that the State's refusal to recognize their marriage would put a cloud over their ability to move forward with Kiersten's adoption of their daughter. Kiersten and Angie wish to pursue step-parent adoption of their daughter, see Wis. Stat. § 891.41(1); absent clarity from the State that their marriage should be recognized, however, Kiersten and Angie are in legal limbo regarding their ability to seek the adoption. Also, Kiersten and Angie had hoped that they could move forward with the adoption process so that their daughter's birth certificate could finally show both Kiersten's and Angie's names and that their daughter's status in the event of a healthcare emergency for Angie or their daughter could finally be ensured. See Wis. Stat. § 69.15 (permitting changes of fact on birth certificates in the case of adoption).

69. Moreover, Kiersten and Angie plan to have additional children in the future, and they want Wisconsin's statutory presumption of parenthood to apply to any additional children they will have. See Wis. Stat. § 891.41(1). In light of the uncertainty about the status of their

marriage, however, they now feel a great deal of anxiety and apprehension about whether their family will ever be officially recognized in the eyes of the State.

70. On September 8, 2014, counsel for Kiersten and Angie sent a letter to the State Registrar of Wisconsin, asking him to confirm in writing that he had accepted for registration, assigned a date of acceptance for, and indexed and preserved their marriage documents. They also asked the State Registrar to confirm in writing that he would accept for registration, assign a date of registration, and index and preserve, pursuant to Wis. Stat. § 69.03(5), a birth certificate for the Bloechl-Karlsens' planned second child with both Angela's and Kiersten's names as parents, pursuant to Wis. Stat. § 891.41. In response, an assistant attorney general wrote that defendant Oskar Anderson "confirms that the Wisconsin Vital Records Office has processed, assigned a state file number, and preserved" Kiersten and Angie's marriage documents dated June 13, 2014. But the assistant attorney general also wrote that "Mr. Anderson cannot presently confirm that the Wisconsin Vital Records Office will, at some unknown time in the future, accept for registration, assign a date of registration, and index and preserve a birth certificate" for Kiersten and Angie's planned second child that identifies both Kiersten and Angie as the child's parents pursuant to Wis. Stat. § 891.41.

71. If their marriage is not recognized as valid, Kiersten and Angie will not be eligible to seek Wisconsin's "married persons credit," which allows married persons filing a joint tax return to claim a credit of 3% of the earned income of the spouse with the lower earned income, up to a total of \$480, against state income-tax owed. Wis. Stat. § 71.07(6). Kiersten and Angie want to file their tax returns as married, filing either jointly or separately depending on which approach would be most advantageous to them. They need clarity about whether they are treated as single or married for tax purposes.

72. Furthermore, Kiersten and Angie enjoy going fishing together and would like to take advantage of the world-class fishery on Lake Winnebago near Oshkosh where they live by obtaining a lower-priced joint fishing license, to which married couples are entitled under Wisconsin law. *See* Wis. Stat. § 29.219(4) (Husband and wife resident licenses) (conferring upon both husband and wife the privileges of resident fishing licenses). Even though the financial benefit of the joint fishing license is minimal, Kiersten and Angie feel that there is a dignitary value to being able to take advantage of this law to the same extent that other married couples in Wisconsin have the right to do.

73. Given the uncertainty surrounding the current validity of their marriage in the eyes of Wisconsin state officials, Kiersten and Angie have experienced feelings of indignity and humiliation over Wisconsin's apparent withdrawal of legal recognition of their marriage and are concerned about how refusing to recognize their marriage may harm their daughter by labeling their family as second-class. They are also concerned that Wisconsin's refusal to recognize their marriage will undermine their ability as a married couple to make legal decisions for one another in the event of incapacitation or death, as other married couples have the right to do.

Plaintiffs Stacie Christian and Julie Tetzlaff

74. Stacie Christian and Julie Tetzlaff have been together as a committed couple for 21 years. They are both lifelong Wisconsin residents. Stacie grew up in Eagle River, and Julie was born and raised in Green Bay, where the couple now lives.

75. Julie is Director of the Adult Program at the Cerebral Palsy Center in Green Bay, where she has been employed for 20 years. Julie is also a Gulf War veteran. She received her commission on May 20, 1989, served as a First Lieutenant in the Army, received two commendation medals, and served in the active reserves until August 30, 1993. At that time she went into the individual ready reserve until September of 1997. Stacie has been employed by the

University of Wisconsin–Green Bay for more than 21 years. She currently serves as Lecturer for academic programs including Human Development/Psychology and Adult Degree, and as coordinator of the LGBTQ-focused Pride Center. In addition, Stacie serves as Coordinator for Inclusive Excellence, in which capacity she focuses on the development and success of campus-wide Inclusive Excellence initiatives.

76. Stacie and Julie met each other when they both worked together early in their careers. They celebrate the anniversary of their relationship on August 14, 1993, which is the day on which they committed to one another to being lifelong partners. They registered as Domestic Partners under Wis. Stat. § 770 in Marinette County in 2009, and they had a religious marriage ceremony in their church on their 17th anniversary, August 14, 2010.

77. After hearing about the June 6 *Wolf* decision, Stacie and Julie made plans to obtain their marriage license and solemnize their marriage at the Brown County courthouse on June 9, 2014. On that day, they went to the courthouse, accompanied by one of Stacie’s adult daughters from a previous marriage. They arrived at 8 a.m., but county staff said that they were not issuing marriage licenses to same-sex couples just yet. The staff told all the same-sex couples who had gathered to go home, but some of the couples, including Stacie and Julie, decided to stay at the courthouse to see what would happen. Then, at 10 a.m., the county staff said that they would indeed issue marriage licenses to same-sex couples, and that the couples could get a waiver of the five-day waiting period so that they could get married that day. Eager to obtain their marriage license but unable to reach their own pastor, Stacie and Julie were married by another couple’s pastor instead. Stacie recalls: “It was so stressful, but in a good way! Everyone was crying. We stepped outside and people were beeping their horns and clapping.”

78. As set forth on Stacie and Julie's Original Certificate of Marriage, the couple's marriage license (number 14-0554) was issued by Sandra L. Juno (the Brown County Clerk) on June 9, 2014. The certification was signed on June 9 by Pastor Catherine Brower as officiant and by two adult witnesses. Cathy Williquette Lindsay, the Brown County Register of Deeds, signed the certification on June 9, the date on which the certification was received by the local registrar. The Official Certificate of Marriage was issued on June 9 and signed again by Cathy Williquette Lindsay next to this statement: "I certify that this document contains a true and correct reproduction of facts on file with the Wisconsin Vital Records Office."

79. As a result of learning about Van Hollen's retroactive declarations that the ban on marriage for same-sex couples applied between June 6 and June 13 and Walker's refusal to advise State agencies to recognize the validity of marriages of same-sex couples, Stacie and Julie have experienced anxiety, uncertainty, and concrete economic harm.

80. For example, Stacie and Julie would like to stop paying the tax on imputed income that Stacie, who is employed by the University of Wisconsin—Green Bay, is required to pay for the value of health insurance that she provides to Julie as a domestic partner, because the University of Wisconsin—Green Bay refuses to recognize the couple's marriage. Currently, Stacie is taxed \$511.80 per month in imputed income. Stacie confirmed with her employer that as a result of being in a domestic partnership but unmarried to Julie, she must pay an additional \$2,040 per year (\$170 per month) in tax on the value of Julie's health-care benefits. After obtaining the marriage license on June 9, Stacie contacted the Payroll & Benefits Specialist in the Human Resources Department of the University of Wisconsin—Green Bay, to find out information about the couple's eligibility for spousal employee benefits. The Human Resources Department told Stacie that Julie and she were not eligible for spousal benefits even though they

had been issued a marriage license, and the Human Resources Department stated that it did not have authority to process Julie and Stacie as a married couple for benefits purposes.

81. Furthermore, given Julie's veteran status, Stacie and Julie would like to access certain State benefits available to veterans and their families. For example, they would like to be eligible for all benefits available to veterans and their spouses, including the right to be buried next to each other as spouses in Wisconsin's veterans' cemeteries, *see* Wis. Stat. § 45.61(2); and to both be eligible for admission into a veterans' home, *see* Wis. Stat. § 45.51(2).

82. Also, if their marriage is not recognized as valid, Stacie and Julie will not be eligible to seek Wisconsin's "married persons credit," which allows married persons filing a joint tax return to claim a credit of 3% of the earned income of the spouse with the lower earned income, up to a total of \$480, against state income tax owed. Wis. Stat. § 71.07(6). Stacie and Julie want to file their tax returns as married, filing either jointly or separately depending on which approach would be most advantageous to them. They need clarity about whether they are treated as single or married for tax purposes.

83. Furthermore, Stacie and Julie have always enjoyed going fishing together—indeed, they went fishing on the day that they committed to a permanent relationship with each other over 21 years ago. They would like to obtain a lower-priced joint fishing license, to which married couples are entitled under Wisconsin law. (Wis. Stat. § 29.219(4), Husband and wife resident licenses (conferring upon both husband and wife the privileges of resident fishing licenses).) Even though the financial benefit of the joint fishing license is minimal, Stacie and Julie feel that there is a dignitary value to being able to take advantage of this law to the same extent that other married couples in Wisconsin have the right to do.

84. In addition, Stacie and Julie have experienced feelings of indignity and humiliation over Wisconsin's lack of legal recognition of their marriage. They are also concerned that the State's refusal to recognize their marriage may cause them to be unable to make legal decisions for one another in the event of incapacitation or death, as other married couples have the right to do.

Plaintiffs Jim and Alex Langreder

85. Jim and Alex Langreder have been together as a committed couple for almost 12 years. They are both lifelong Wisconsin residents. Jim has lived in the Delafield area for his entire life. Alex grew up in Pembine, a small town in northern Wisconsin. They reside together in Delafield.

86. Jim works as the Music Director for Emmanuel United Church of Christ in Oconomowoc, where the couple has attended services since 2004. Alex owns his own business, ElleBelle Salon LLC in Wales, Wisconsin.

87. Jim and Alex met each other at a Christian bookstore that Jim had managed for many years. During that time, Alex was studying at a nearby evangelical Bible college. Jim and Alex consider December 14, 2002, to be the anniversary date of the beginning of their relationship, and they registered as Domestic Partners under Wis. Stat. § 770 in Waukesha County on August 8, 2009.

88. Jim and Alex have been active parents in Wisconsin's foster-care system for more than ten years, and together they have provided temporary care for several children placed with them by the foster-care system through Waukesha County. In 2008, with the assistance of Children's Services Society of Wisconsin, Jim adopted a twenty-two-month-old child for whom the couple had cared as foster parents since the child was four weeks old. In December 2008, Alex filed a Petition for Guardianship of the adopted child, seeking guardianship in concert with

Jim under a Joint Parenting Agreement that both men had signed. On April 29, 2009, the presiding judge of the Circuit Court of Waukesha County denied Alex's Petition for Guardianship because of Alex and Jim's status as an unmarried same-sex couple. Later, in 2011, with the assistance of Children's Services Society of Wisconsin, Alex adopted an eighteen-month-old child for whom the couple had cared as foster parents since the child was eight weeks old. Both children call Alex "Papa" and Jim "Daddy." Both have special developmental needs, for which Alex and Jim are providing treatment with the help of teachers and professional therapists. Jim has not petitioned for guardianship of Alex's adopted child because of their previous negative experience with Alex's efforts to petition for guardianship of Jim's adopted child.

89. Currently, Jim is their older child's sole legal parent, and Alex is their younger child's sole legal parent. Jim wants to be able to adopt the younger child as a second parent, and Alex wants to be able to adopt the older child as a second parent. Again, however, neither the second-parent adoption procedure available to unmarried couples in many states outside Wisconsin nor step-parent adoption is available to them in Waukesha County so long as their marriage is being denied recognition. Wis. Stat. § 48.82. Despite the fact that Alex and Jim have co-parented in raising both children, in the eyes of the State they are strangers to each others' adopted child. Should something happen to Jim, there is no guarantee that Alex could continue to raise their older child and make important decisions about the child's upbringing; conversely, should something happen to Alex, there is no guarantee that Jim could continue to raise their younger child and make important decisions about the child's upbringing.

90. Jim and Alex were thrilled when they heard about the District Court's June 6 Order in *Wolf*. The couple had previously considered moving out of state or to Canada in order to marry, but they had decided to forgo marrying elsewhere, hoping to do so in their home state.

91. During the weekend following the *Wolf* decision, Jim and Alex excitedly prepared to obtain their marriage license. On Monday morning, June 9, Alex called the Waukesha County courthouse to determine whether the Clerk's office would be issuing marriage licenses to same-sex couples. After learning that it would, Alex and Jim brought together their two children and their pastor and traveled to the courthouse together. Upon arrival, Alex and Jim learned that the Clerk's office would be waiving the normal five-day waiting period for them to obtain a marriage license. They proceeded to marry and obtained their marriage license that day, with two friends serving as witnesses.

92. As set forth on Jim and Alex's Original Certificate of Marriage, the couple's marriage license (number 611) was issued by Kathleen O. Novack (the Waukesha County Clerk) on June 9, 2014. The certification was signed on June 9 by officiant Nansi H. Hawkins and by two adult witnesses. James R. Behrend, the Waukesha County Register of Deeds, signed the certification on June 9, the date on which the certification was received by the local registrar. The Official Certificate of Marriage was issued on August 27, 2014, and signed again by James R. Behrend, next to this statement: "I certify that this document contains a true and correct reproduction of facts on file with the Wisconsin Vital Records Office."

93. Although they were excited to have received their marriage license, Jim and Alex were then deeply saddened to learn about Van Hollen's retroactive declarations that the ban on marriage for same-sex couples remained in full force between June 6 and June 13. They knew that this uncertainty would inhibit their ability to move forward with Alex's adoption of their

older child and Jim's adoption of their younger child. Jim and Alex wish to pursue step-parent adoptions of their current children, *see* Wis. Stat. § 891.41(1). Absent clarity from the state that their marriage should be recognized, Jim and Alex are in legal limbo regarding their ability to seek such adoptions. Jim and Alex had hoped that they could move forward with the adoption process so that their children's birth certificates could finally show both names. *See* Wis. Stat. § 69.15 (permitting changes of fact on birth certificates in the case of adoption). With such uncertainty about the status of their marriage, however, they now feel a great deal of anxiety and apprehension about whether their family will ever again be officially recognized in the eyes of the State. Further, Jim and Alex are hoping to adopt other children, but the foster care workers have advised them that the State will not recognize their marriage for purposes of allowing them to adopt any foster children jointly.

94. In addition, if their marriage is not recognized as valid, Jim and Alex will not be eligible to seek Wisconsin's "married persons credit," which allows married persons filing a joint tax return to claim a credit of 3% of the earned income of the spouse with the lower earned income, up to a total of \$480, against state income tax owed. Wis. Stat. § 71.07(6). Jim and Alex want to file their tax returns as married, filing either jointly or separately depending on which approach would be most advantageous to them. They need clarity about whether they are treated as single or married for tax purposes.

95. Jim and Alex have also experienced feelings of indignity and humiliation over Wisconsin's withdrawal of legal recognition of their marriage. They are also concerned that the State's refusal to recognize their marriage may hurt their ability to make legal decisions for one another in the event of incapacitation or death, as other married couples have the right to do.

They are especially worried about the impact that the State's refusal to recognize their marriage will have on their children's psychological and emotional well-being.

Plaintiffs Nathan Walker and Lee Laufer

96. Nathan Walker and Lee Laufer have been together as a committed couple for 19 years. They met each other during the early 1990s, when Nathan, who is originally from Chicago, was stationed with the Marines in Milwaukee working at the recruiting station there. At that time, Lee was living in West Bend, a town about 35 miles northwest of Milwaukee. Nathan and Lee met through friends. For the past 12 years they have resided together in Bayside.

97. Nathan works as a client-support coordinator for an investment-management firm. Previously, he served for eleven years in the U.S. Marine Corps, earning a Navy Achievement Medal, a Good Conduct Medal, and several Meritorious Letters of Commendation before retiring as a Sergeant with an honorable discharge. Lee is a technology analyst for a Fortune 500 bank, where he has worked for the past 12 years.

98. Nathan and Lee were overjoyed to learn about the District Court's June 6 decision in *Wolf*. The couple had previously considered getting married in Illinois, but had decided to forgo marrying elsewhere, hoping to do so in the state they have made their home.

99. As soon as they arrived home from work on June 6, Nathan and Lee gathered their birth certificates and other documents and drove to the Milwaukee County courthouse. Because of the short notice, they did not have time to invite their friends or family to serve as witnesses to their wedding, so another couple at the courthouse volunteered to fill that role. Nathan and Lee were eighteenth in line to get married at the courthouse. The courthouse stayed open until 9 p.m. to issue marriage licenses to same-sex couples, and the Clerk's office waived the waiting period for the marriage-license applications.

100. As set forth on Nathan and Lee's Original Certificate of Marriage, the couple's marriage license (number 141796) was issued by Joseph J. Czarnecki (the Milwaukee County Clerk) on June 6, 2014. The certification was signed on June 6 by Judge Bonnie L. Gordon as officiant and by two adult witnesses. John LaFave, the Milwaukee County Register of Deeds, signed the certification on June 9, the date on which the certification was received by the local registrar. The Official Certificate of Marriage was issued on June 30 and was signed again by John LaFave next to this statement: "I certify that this document contains a true and correct reproduction of facts on file with the Wisconsin Vital Records Office."

101. As a result of Van Hollen's retroactive declarations that the ban on marriage for same-sex couples remained in full force between June 6 and June 13, Nathan and Lee have experienced anxiety and uncertainty over the legal status of their marriage. For example, Nathan and Lee are concerned about their ability to receive certain State benefits that are available to veterans and their spouses under Wisconsin law. For example, they would like to be buried next to each other as spouses in Wisconsin's veterans' cemeteries, *see* Wis. Stat. § 45.61(2); both be eligible for admission into a veterans' home, *see* Wis. Stat. § 45.51(2); and both be eligible to receive certain educational-fee reductions or to participate in tuition-remission programs, *see* Wis. Stat. §§ 36.27, 38.24. On September 11, 2014, counsel for Nathan and Lee sent a letter to the Secretary of the Wisconsin Department of Veterans Affairs, asking him to confirm in writing that Nathan and Lee will be able to receive these benefits available to veterans and their spouses under Wisconsin law; Nathan and Lee have thus far received no response to this inquiry.

102. Furthermore, if their marriage is not recognized as valid, Nathan and Lee will not be eligible to seek Wisconsin's "married persons credit," which allows married persons filing a joint tax return to claim a credit of 3% of the earned income of the spouse with the lower earned

income, up to a total of \$480, against state income tax owed. Wis. Stat. § 71.07(6). Nathan and Lee want to file their tax returns as married, filing either jointly or separately depending on which approach would be most advantageous to them. They need clarity about whether they are treated as single or married for tax purposes.

103. In addition, Nathan and Lee have experienced feelings of indignity and humiliation over Wisconsin's withdrawal of legal recognition of their marriage. They are also concerned that the State's refusal to recognize their marriage may result in their inability to make legal decisions for one another in the event of incapacitation or death, as other married couples have the right to do.

All Plaintiffs Seek Clarity About The Recognition Of Their Marriages

104. On September 12, 2014, Plaintiffs' counsel in this action wrote a letter to defendants Walker and Van Hollen requesting information regarding the recognition of Plaintiffs' Wisconsin marriages. Specifically, counsel asked defendants Walker and Van Hollen to confirm in writing that Plaintiffs would have access to the full panoply of rights and responsibilities that Wisconsin accords to all other married couples under the Wisconsin Statutes. Plaintiffs have thus far received no response.

CAUSES OF ACTION

105. Defendants are state actors and at all times relevant to this Complaint were acting or failing to act, are acting or failing to act, or will act or fail to act under color of law.

106. All Plaintiffs are suing defendants Walker, Van Hollen, and Chandler in their official capacities. In addition, Kiersten and Angie Bloechl-Karlsen and Jim and Alex Langreder are suing Oskar Anderson in his official capacity; Jim and Alex Langreder are suing Eloise Anderson in her official capacity; Stacie Christian and Julie Tetzlaff are suing the Board of Regents of the University of Wisconsin System and the individual regents of the Board of

Regents (John R. Behling, Mark J. Bradley, José M. Delgado, Tony Evers, Michael J. Falbo, Margaret Farrow, Eve M. Hall, Nicolas A. Harsy, Tim Higgins, Edmund Manydeeds, Regina Millner, Janice Mueller, Drew Petersen, Charles Pruitt, Anicka S. Purath, José F. Vásquez, David G. Walsh, and Gerald Whitburn) in their official capacity; Stacie Christian and Julie Tetzlaff are suing defendant Miller in his official capacity; Kiersten and Angie Bloechl-Karlsen and Stacie Christian and Julie Tetzlaff are suing defendant Stepp in her official capacity; and Stacie Christian and Julie Tetzlaff and Nathan Walker and Lee Laufer are suing defendant Scocos in his official capacity.

COUNT ONE
SUBSTANTIVE DUE PROCESS

107. Plaintiffs restate and incorporate all the allegations set forth in paragraphs 1 through 106 as though set forth fully here.

108. The Fourteenth Amendment to the United States Constitution provides that no State “shall deprive any person of life, liberty, or property, without due process of law.”

109. It has long been recognized that the Due Process Clause guarantees more than fair process; it includes a substantive component that provides heightened protection against governmental interference with certain fundamental rights and liberty interests.

110. The Due Process Clause specially protects those fundamental rights and liberties that are deeply rooted in our Nation’s history and tradition and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed.

111. The liberty interests protected by the Due Process Clause include the rights to marry, establish a home, raise children, and make personal decisions relating to procreation, family relationships, life partnerships, and education. They include protection against unwarranted governmental intrusions into the private realm of family life, the most intimate and

personal choices that people make in their lifetime, and decisions central to personal dignity and autonomy. The Due Process Clause thus prohibits laws that demean our private lives or deny our dignity as free persons. And it includes our rights generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free persons.

112. Due process protects the sanctity of the family because the institution of family is deeply rooted in our Nation's history and traditions. The relationship of love and duty in a recognized family unit is therefore an interest entitled to constitutional protection.

113. It has long been recognized at common law, and is deeply rooted in our Nation's history and traditions, that a legal marriage, once it is entered into, vests the married couple with benefits and rights that cannot be taken away by a legislative or executive act.

114. When Plaintiffs legally married under Wisconsin law, they acquired fundamental rights in their marriages that are protected by the Due Process Clause of the Fourteenth Amendment. Whether or not Wisconsin may constitutionally prohibit same-sex couples from entering into *new* marriages is a different question, albeit one answered by the District Court in *Wolf* and the Seventh Circuit in *Baskin*. At this time, that question has been presented in a petition for a writ of certiorari to the Supreme Court in *Walker v. Wolf* (No. 14-278). But regardless of the outcome of that case for couples who have not yet married or who are seeking recognition of their out-of-state marriages, the Due Process Clause independently prohibits the State from stripping recognition from Plaintiffs' existing marriages—marriages that were legal and valid in Wisconsin when they were solemnized between June 6 and June 13. In other words, Plaintiffs do not seek recognition of their right to *get* married; they seek a declaration that they actually *are* married, and recognition of their *existing* Wisconsin marriages.

115. Regardless of the ultimate outcome of the *Wolf* litigation, the Due Process Clause protects Plaintiffs’ marriages—which were legal, valid, and recognized by State officials acting in good faith within the scope of their official duties under Wisconsin law when the marriages were entered into between June 6 and June 13—from being retroactively invalidated by the State. Defendants violate, have violated, or would violate Plaintiffs’ due-process rights by refusing to recognize these marriages or by denying Plaintiffs and their families the dignity, privileges, and benefits that all couples legally married in Wisconsin and their families deserve and are entitled to under the law.

**COUNT TWO
EQUAL PROTECTION**

116. Plaintiffs restate and incorporate all the allegations set forth in paragraphs 1 through 115 as though set forth fully here.

117. The Fourteenth Amendment to the United States Constitution also provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

118. The Equal Protection Clause is a directive that all persons similarly situated should be treated alike.

119. Marriage is a fundamental right, and married status is a far-reaching legal acknowledgment of the intimate relationship between two people. The Equal Protection Clause is violated when, as here, a state or its officials refuse to treat all married couples alike; identify a subset of state-sanctioned marriages and specially favor or disfavor them; deprive some couples who were legally married in that state, but not other couples who were legally married in that state, of the recognition, benefits, rights, and privileges that are an essential part of married life; and tell those couples, and all the world, that their otherwise-valid marriages are unworthy of state recognition.

120. When Plaintiffs legally married under Wisconsin law, they acquired fundamental rights in their marriages. Whether or not Wisconsin may constitutionally prohibit other same-sex couples from entering into *new* marriages is a different question, which is currently on appeal in *Wolf*. But regardless of the outcome of that appeal, the Equal Protection Clause independently forbids the State to strip recognition from Plaintiffs' existing marriages—marriages that were legal and valid in Wisconsin when they were solemnized between June 6 and June 13. In other words, Plaintiffs do not seek recognition of their right to *get* married; they seek a declaration that they actually *are* married, and recognition of their *existing* Wisconsin marriages.

121. Regardless of the ultimate outcome of the *Wolf* litigation, the Equal Protection Clause protects Plaintiffs' marriages—which were legal, valid, and recognized by State officials acting in good faith within the scope of their official duties under Wisconsin law when the marriages were entered into between June 6 and June 13—from being denied the same recognition, benefits, rights and privileges given to all other couples who were legally married in Wisconsin. Defendants' withdrawal or repeal of the recognition, benefits, rights, and privileges of Plaintiffs' marriages because Plaintiffs are same-sex couples and Defendants' refusal to provide Plaintiffs and their families with equal treatment and recognition violate, have violated, or would violate Plaintiffs' rights to the equal protection of the laws.

RELIEF REQUESTED

Based on the foregoing, Plaintiffs request that this Court:

- a. Issue declaratory relief as follows:
 - i. declare that Defendants' refusal to recognize the marriages of couples—including Plaintiffs, who were legally married in Wisconsin between June 6 and June 13, 2014, and whose marriages were recognized as valid by state officials at the time they were entered into—violates the rights of those couples and their families to due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution;

- ii. declare that Defendants' refusal to afford those couples and their families—including Plaintiffs and their families—all the benefits, rights, and privileges under Wisconsin law given to other couples legally married in Wisconsin and their families, on account of those couples being of the same sex, violates the rights of those couples and their families to due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution;
- b. Grant preliminary and permanent injunctive relief as follows:
 - i. enjoin Defendants' refusal to recognize the marriages of same-sex couples, including Plaintiffs, who were legally married in Wisconsin between June 6 and June 13, 2014, and whose marriages were recognized as valid by state officials at the time they were entered into, and from refusing to afford to those couples and their families with all the benefits, rights, and privileges given to other couples legally married in Wisconsin and their families;
- c. Award Plaintiffs' costs and reasonable attorneys' fees under 42 U.S.C. § 1988; and
- d. Provide any other relief deemed just and equitable.

Dated: September 17, 2014

Respectfully submitted,

By: /s/ Hannah Y.S. Chanoine

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** Motions for admission *pro hac vice* filed forthwith.