

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

DANE COUNTY

JODY HELGELAND
JESSIE TANNER,

VIRGINIA WOLF
CAROL SCHUMACHER,

DIANE SCHERMANN
MICHELLE COLLINS,

MEGAN SAPNAR
INGRID ANKERSON,

ELOISE McPIKE
JANICE BARNETT,

and

JAYNE DUNNUM
ROBIN TIMM,

Plaintiffs,

v.

DEPARTMENT OF EMPLOYEE TRUST
FUNDS, DEPARTMENT OF EMPLOYEE
TRUST FUNDS BOARD, WISCONSIN GROUP
INSURANCE BOARD,

BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN,

Case No. 05-CV-1265

FRANK BUSALACCHI, Secretary of the
Department of Transportation, DEPARTMENT OF
TRANSPORTATION,

and

MATTHEW J. FRANK, Secretary of the Department of
Corrections, DEPARTMENT OF CORRECTIONS,

Defendants.

ANSWER

Defendants, by their attorneys, Attorney General Peggy A. Lautenschlager and Assistant Attorney General Christopher J. Blythe, answer the plaintiffs' complaint as follows:

1. Defendants deny that any of the statutes or administrative codes referenced in paragraph 1 violate article I, § 1 of the Wisconsin Constitution. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1.

2. Defendants deny the allegations of paragraph 2 to the extent that they contain legal conclusions regarding plaintiffs' equal access to state-provided employee benefits. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. Defendants admit the allegations of paragraph 4.

5. Defendants admit the allegations of paragraph 5.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

12. Defendants admit the allegations of paragraph 12 as regards Jody's status as an employee of the University of Wisconsin at Madison, and that she is therefore eligible for health insurance through the Wisconsin state insurance system. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation regarding Jody's status as a full-time graduate student.

13. Defendants admit that unless Jessie Tanner meets the definition of "dependent" in Wis. Admin. Code § ETF 10.01(2)(b), she cannot be covered under Jody Helgeland's group health insurance even if Jody switches to family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22.

23. Defendants admit the allegations of paragraph 23.

24. Defendants admit the allegations of paragraph 24.

25. Defendants deny that Jody Helgeland has designated Jessie Tanner as her beneficiary for purposes of Wisconsin Retirement System benefits, as provided under Wis. Stat. § 40.02(8)(a)1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25.

26. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26.

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29.

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30.

31. Defendants admit that the University of Wisconsin System reported that Virginia Wolf's employment ended in 2001, and that since February 13, 2001, she has been receiving a pension annuity from the Wisconsin Retirement System and that she is, in that sense, a retired UW employee. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 31.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33.

34. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35.

36. Defendants admit the allegation of paragraph 36 that as an insured state or local government employee retiring on an “immediate annuity,” as defined by Wis. Stat. § 40.02(38), Virginia Wolf was eligible under Wis. Stat. § 40.02(25)(b)4. for continued group health coverage under the program administered by the Department of Employee Trust Funds and Group Insurance Board. Defendants deny that there was any reduction in the cost of such insurance coverage upon her retirement (until she qualified for Medicare). In fact, after retirement she ceased to be eligible for the employer premium contributions and was required to pay the total health insurance premium herself. Defendants admit that an accumulated sick leave conversion credit account was established by the Department of Employee Trust Funds for Virginia Wolf, as provided by Wis. Stat. § 40.05(4)(b) and that the credits are available to pay her group health insurance premiums until exhausted.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37.

38. Defendants admit that accumulated sick leave conversion credits may be applied only to pay for employer-provided group health insurance, and that only an employee’s surviving insured dependents, as that term is defined by Wis. Stat. § 40.02(20), may utilize remaining accumulated sick leave conversion credits after the death of the employee in the manner provided by Wis. Stat. §§ 40.05(4)(b), (bc), (be), (bf), or 40.95(1)(a). Virginia Wolf has elected single coverage and therefore has no insured dependents. Defendants admit that spouses of

employees are able to use unused sick leave to purchase health insurance at retirement and after a state employee pre-deceases a spouse, and defendants admit that a non-marital partner of an employee is not afforded the same benefits.

39. Defendants admit the allegation of paragraph 39 that if Virginia Wolf died before exhausting her accumulated sick leave conversion credits, and there were no surviving insured dependents, the value (to Virginia Wolf) of the remaining credits would be lost.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.

41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

42. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42.

43. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43.

44. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44.

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46.

47. Defendants admit that Carol Schumacher and Virginia Wolf have named each other as their primary beneficiary on their most recent beneficiary designations, form ET 2320, filed with and accepted by the Department of Employee Trust Funds and applicable to both

Wisconsin Retirement System death benefits and coverage under the group life insurance program administered by the Group Insurance Board and the Department of Employee Trust Funds. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47.

48. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48.

49. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49.

50. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50.

51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53.

54. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55.

56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56.

57. Defendants admit that the Wisconsin Department of Transportation reported Diane Schermann to the Wisconsin Retirement System as a participating employee in 2000. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 57.

58. Defendants admit the allegations of paragraph 58.

59. Defendants deny the allegation of paragraph 59 that Michelle Collins is specifically and personally excluded from all Wisconsin state insurance contracts and plans. Defendants admit that because Michelle Collins is not a “dependent” of Diane Schermann, within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), she is not covered under Diane Schermann’s group health insurance family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 59.

60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61.

62. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63.

64. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64.

65. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66.

67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68.

69. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69.

70. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70.

71. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71.

72. Defendants admit the allegations of paragraph 72.

73. Defendants admit the allegations of paragraph 73.

74. Defendants admit the allegation of paragraph 74 that Diane Schermann's most recent beneficiary designation, form ET 2320, filed with and accepted by the Department of Employee Trust Funds and applicable to both Wisconsin Retirement System death benefits and her coverage under the group life insurance program administered by the Group Insurance Board and the Department of Employee Trust Funds, designates Michelle Marie Collins as her beneficiary. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 74.

75. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75.

76. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76.

77. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 77.

78. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78.

79. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 79.

80. Defendants admit the allegations of paragraph 80 as regards the University of Wisconsin. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80 as regards the City of Madison.

81. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81.

82. Defendants admit the allegations of paragraph 82.

83. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83.

84. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84.

85. Defendants admit the allegations of paragraph 85.

86. Defendants admit the allegations of paragraph 86 that insofar as Megan Sapnar elected single coverage under the graduate assistants health insurance plan and Ingrid Ankerson

is not a “dependent” within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), Ingrid is not covered under Megan’s group health insurance and would not be covered even if Megan was permitted to elect family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 86.

87. Defendants admit the allegations of paragraph 87.

88. Defendants admit the allegations of paragraph 88.

89. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89.

90. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90.

91. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91.

92. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 92.

93. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93.

94. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 94.

95. Defendants admit the allegations of paragraph 95.

96. Defendants admit the allegations of paragraph 96.

97. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 97.

98. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 98.

99. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 99.

100. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 100.

101. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 101.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 102.

103. Defendants admit the allegation of paragraph 103 that Eloise McPike's most recent beneficiary designation, form ET 2320, filed with and accepted by the Department of Employee Trust Funds and applicable to both Wisconsin Retirement System death benefits and her group life insurance under the program administered by the Group Insurance Board and the Department of Employee Trust Funds, designates Janice Barnett as her primary beneficiary. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 103.

104. Defendants admit the allegations of paragraph 104.

105. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 105.

106. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 106.

107. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 107.

108. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 108.

109. Defendants admit the allegation of paragraph 109 that under Wis. Stat. § 103.10(3)(b)3. an employee is permitted to take family leave to care for the employee's child, spouse or parent, as those terms are defined by Wis. Stat. § 103.10(1)(a), (h) and (f), respectively, if the child, spouse or parent has a serious health condition, as defined by Wis. Stat. § 103.10(1)(g). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 109.

110. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 110.

111. Defendants admit the allegations of paragraph 111 that because Janice Barnett is not a "dependent" of Eloise McPike, within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), she cannot be covered under Eloise's group health insurance, even if Eloise was permitted to switch to family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 111.

112. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 112.

113. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 113.

114. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 114.

115. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 115.

116. Defendants admit the allegations of paragraph 116.

117. Defendants admit the allegations of paragraph 117.

118. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 118.

119. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 119.

120. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 120.

121. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 121.

122. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 122.

123. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 123.

124. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 124.

125. Defendants admit that Jayne Dunnun's most recent beneficiary designation, form ET 2320, filed with and accepted by the Department of Employee Trust Funds and applicable to both Wisconsin Retirement System death benefits and her coverage under the group life insurance program administered by the Group Insurance Board and the Department of Employee Trust Funds, designates Robin R. Timm as her beneficiary. Defendants admit that

Robin Timm's most recent beneficiary designation, form ET 2320, filed with and accepted by the Department of Employee Trust Funds and applicable to Wisconsin Retirement System death benefits, designates Jayne A. Dunnun as her beneficiary. Admit that Robin Timm has designated Jayne Dunnun as her primary beneficiary with respect to her deferred compensation account under Wis. Stat. § 40.80, et seq. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 125.

126. Defendants admit the allegations of paragraph 126.

127. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 127.

128. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 128.

129. Defendants admit that because Robin Timm is not a "dependent" of Jayne Dunnun, within the meaning of Wis. Admin. Code § ETF 10.01(2)(b), Robin cannot be covered under Jayne's group health insurance, even if Jayne was permitted to switch to family coverage. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 130.

130. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 130.

131. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 131.

132. Defendants admit the allegations of paragraph 132 to the extent that they allege that health insurance plans offered to state employees include prescription drug coverage with a

required co-payment. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 132.

133. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 133.

134. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 134.

135. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 135.

136. Defendants admit the allegations of paragraph 136.

137. Defendants admit the allegations of paragraph 137.

138. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 138.

139. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 139.

140. Defendants deny that there is an entity called “Department of Employee Trust Funds Board.” Defendants assume that plaintiffs are referring to the Employee Trust Funds Board. Based on that assumption, defendants admit the remaining allegations of paragraph 140.

141. Defendants admit the allegations of paragraph 141, except that there is no “DETFB.” Defendants assume the intended reference is to the Employee Trust Funds Board.

142. Defendants deny that any members of the Group Insurance Board are elected to membership on the Board and deny that the powers and duties of the Group Insurance Board are set out at Wis. Stat. § 40.93(6). There is no such statute. The Group Insurance Board consists of 10 persons: 5 appointed by the Governor and 5 *ex officio* members, or their designees. The

powers and duties of the Group Insurance Board are principally set forth in Wis. Stat. §§ 20.921(1)(a)3., 40.02(4) and (37), 40.03(6), 40.05(4g)(b)4., (6)(a) and (e), 40.08(11) and (12), 40.51, 40.52, 40.53, 40.55, 40.61, 40.62, 40.70 and 40.72. The remainder of the allegations of paragraph 142 are admitted.

143. Defendants deny that any members of the Board of Regents are elected to membership on that Board. The Board of Regents consists only of appointed and *ex officio* members. Defendants admit that Wis. Stat. § 36.09(1) sets out responsibilities of the Board of Regents, but deny this is the only statute establishing powers and duties of the Board of Regents. The remainder of the allegations of paragraph 143 are admitted.

144. Defendants admit the allegations of paragraph 144, except to deny any implication that Wis. Stat. § 15.05 is the sole statutory source of the powers and duties of the Secretary of the Department of Corrections.

145. Defendants admit the allegations of paragraph 145.

146. Defendants admit the allegations of paragraph 146, except to deny any implication that Wis. Stat. § 15.05 is the sole statutory source of the powers and duties of the Secretary of the Department of Corrections.

147. Defendants admit the allegations of paragraph 147.

148. Defendants deny the allegations of paragraph 148 and affirmatively allege that the Department of Employee Trust Funds is under the administrative control of the Secretary of the Department of Employee Trust Funds. *See* Wis. Stat. § 40.03(2)(a) and (b) in particular, and the entire subsection generally. All rules required for the administration of the group health insurance plans are promulgated by the Secretary of the Department of Employee Trust Funds,

with the approval of the Group Insurance Board, as expressly provided by Wis. Stat. § 40.03(2)(ig).

149. In response to the allegations of paragraph 149, defendants admit that plaintiffs have correctly quoted a portion of the cited statute.

150. Defendants admit that plaintiffs have correctly quoted a portion of the cited statute. Defendants admit the remaining allegations of paragraph 150.

151. Defendants admit that plaintiffs have correctly quoted a portion of the cited statute. Defendants admit the remaining allegations of paragraph 151.

152. In response to the allegations of paragraph 152, defendants admit that the cited administrative rule includes an employee's spouse under its definition of "dependent." Defendants admit that the referenced definition of dependent does not include an employee's domestic partner.

153. Defendants admit the allegations of paragraph 153.

154. Defendants admit the allegations of paragraph 154.

155. Defendants deny that the definition of "dependent" in Wis. Stat. § 40.02(20) applies to determine which dependents may be covered under family coverage of any group health insurance program of the Group Insurance Board. Defendants admit that the definition of "dependent" in Wis. Stat. § 40.02(20) forms part of the criteria for determining whether surviving insured dependents may have rights or interests to any remaining, unused accumulated sick leave conversion credits of a deceased employee or former employee.

156. Defendants admit the allegations of paragraph 156.

157. Defendants admit that plaintiffs have correctly quoted a portion of the cited statute. Defendants admit the remaining allegations of paragraph 157.

158. Defendants deny that Wis. Stat. § 130.10(2)(a) of the statutes exists. Defendants assume that this is a typographical error in plaintiffs' complaint, and that plaintiffs are referring to Wis. Stat. § 103.10(2)(a). Based on that assumption, defendants admit the allegations of paragraph 158.

159. Defendants deny that Wis. Stat. § 130.10(3) of the statutes exists. Defendants assume that this is a typographical error in plaintiffs' complaint, and that plaintiffs are referring to Wis. Stat. § 103.10(3). Based on that assumption, defendants admit the allegations of paragraph 159.

160. Defendants deny the allegations of paragraph 160 to the extent that the allegations constitute a legal conclusion. Defendants admit that family health insurance, sick leave carryover and family leave benefits are provided to state employees.

161. In response to the allegations of paragraph 161, defendants admit that state employees in same-sex relationships are not able to obtain health insurance for their partners, that their partners cannot benefit from sick leave carryover and that the employees cannot take family leave to care for their same-sex domestic partners.

162. Defendants admit the allegations of paragraph 162.

163. Defendants admit the allegations of paragraph 163.

164. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 164.

165. In response to the allegations of paragraph 165, defendants admit that lesbian and gay employees of the State of Wisconsin do not have access to health insurance benefits for their same-sex partners, and that they cannot use sick leave carryover and family leave for their same-sex partners. Defendants deny all remaining allegations of paragraph 165.

166. Defendants admit that the definitions of “dependent” in Wis. Stat. § 40.02(20) and Wis. Admin. Code § ETF 10.01(2)(a) and (b) for purposes of accumulated sick leave conversion credits, group life insurance and group health insurance apply to spouses and specified children. Defendants deny that there is a statutory definition of “dependent” with respect to family leave, although the definition of “spouse” in Wis. Stat. § 103.10(1)(h) is limited to an employee’s legal husband or wife. The remaining allegations of paragraph 166 are denied.

167. Defendants deny that they deny lesbians and gay men the right to marry. Defendants deny that Wis. Stat. § 765.02 defines marriage as “a legal relationship between 2 equal persons, a husband and wife” although those words are found in a statement of intent found in Wis. Stat. § 765.001(2) and nowhere else in the Wisconsin Statutes. Defendants admit that no employees, regardless of sexual orientation, may obtain “dependent” coverage for persons not meeting the applicable definitions of “dependent” under the laws of this State. Defendants deny any remaining allegations of paragraph 167.

168. Defendants deny the allegations of paragraph 168.

169. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 169.

170. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 170.

171. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 171.

172. As and for an answer to paragraph 172, defendants incorporate herein by reference their responses to paragraphs 1 to 171.

173. Defendants admit the allegations of paragraph 173.

174. Defendants admit that a state employee and his or her same-sex life partner who are in a committed, intimate relationship are not treated as spouses for purposes of group health insurance, accumulated sick leave conversion credits, and family leave benefits. Defendants admit that this is the result of the laws and administrative regulations governing the applicable employee benefits. Defendants deny that they have misinterpreted this aspect of the laws and regulations governing the benefits plans under their administration.

175. Defendants deny the allegations of paragraph 175 to the extent that they constitute a legal conclusion, and deny the allegations based on the court's reasoning in *Phillips v. Wisconsin Personnel Commission*, 167 Wis. 2d 205, 482 N.W.2d 121 (Ct. App. 1992).

176. Defendants admit the allegations of paragraph 176 to the extent that they compare employees with same-sex partners to employees with opposite-sex spouses. Defendants deny any remaining allegations of paragraph 176.

177. Defendants deny the allegations of paragraph 177, in that they are erroneous legal arguments to which no response is required here and about which relevant law is the best authority. In addition, any remaining allegations in plaintiffs' complaint to which defendants have not specifically responded are hereby denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred by the doctrine of sovereign immunity.
3. Plaintiffs have failed to exhaust their administrative remedies.

4. Certain defendants are not appropriate defendants in that they have no authority to grant the relief that the plaintiffs request and should be dismissed from this action.

WHEREFORE, defendants request that the Court dismiss plaintiffs' action and deny all requests for relief.

Dated this _____ day of _____ 2005.

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