

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN  
MADISON DIVISION

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ASSOCIATION OF FAITH-BASED ORGANIZATIONS, a Virginia Limited Liability Company, on Behalf of Its Members,	)	Civil Action No.: 06-_____
<i>Plaintiff,</i>	)	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF;
	)	EXHIBITS "A" – "F"
<i>vs.</i>	)	
STEPHEN E. BABLITCH, in his Official Capacity as Secretary of the Department of Administration; RACHEL MEEK, in her Official Capacity as Chair of the Eligibility Committee of The Wisconsin State Employees Combined Campaign; and GODWIN AMEGASHIE, STEPHANIE BEARDSLEY, PAUL BREEN, DEBBIE BOTHELL, JOEL CHAPIEWSKY, MICHAEL DALY, DAVID JALOSZYNSKI, GALE JOHNSON, MARCUS MILES, PETER OLSON, and DEBORAH GARRETT THOMAS, in their Official Capacities as Members of the Eligibility Committee of The Wisconsin State Employees Combined Campaign,	)	
<i>Defendants.</i>	)	

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

This case is about the right of non-profit religious organizations to be free from government discrimination imposed upon them by Defendants because they choose to avail themselves of rights of association in hiring and membership guaranteed them by the United States Constitution and federal statutes. Plaintiff Association of Faith-Based Organizations'

members include religious organizations that Defendants have excluded by practice or policy from the Wisconsin State Employees Combined Campaign because the organizations refuse to relinquish their federal constitutional and statutory rights to associate with, hire, and be led by persons who share the organizations' religious faith. Plaintiff seeks this Court's intervention to prevent Defendants from denying its members their constitutional rights of association, speech, free exercise of religion and equal protection of the law based upon such exercise of their constitutional and statutory rights.

The Plaintiff brings this Complaint through its undersigned counsel, Gregory S. Baylor, Steven H. Aden, Timothy J. Tracey, and M. Casey Mattox of the Center for Law & Religious Freedom, Springfield, Virginia; Michael D. Dean, Waukesha, Wisconsin; and Benjamin W. Bull and Gary S. McCaleb of the Alliance Defense Fund, Scottsdale, Arizona, against Defendants Stephen E. Bablitch and the individually named members of the Eligibility Committee of the Wisconsin State Employees Combined Campaign, each in their official capacities. In support thereof, Plaintiff alleges as follows:

#### JURISDICTION AND VENUE

1.1 Plaintiff brings this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 for deprivations of the rights of Plaintiff's members secured by the First and Fourteenth Amendments to the United States Constitution.

1.2 Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4), which provide for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. § 1983. Jurisdiction is also conferred on this Court by 28 U.S.C. § 1331 because the cause of action arises under the Constitution and laws of the United States. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202.

1.3 Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to these claims arose in this district and because, upon information and belief, Defendants reside in this district and may be found and served in the district.

#### THE PARTIES

2.1 Plaintiff Association of Faith-Based Organizations (herein “AFBO”) is an expressive membership association organized as a limited liability company under the laws of the Commonwealth of Virginia. AFBO brings this lawsuit on behalf of its members, non-profit religious charitable organizations.

2.2 Defendant Stephen E. Bablitch is sued in his official capacity as the Secretary of the Wisconsin Department of Administration (herein “DOA”). Defendant Bablitch is responsible for the formulation and implementation of the policies and regulations of the DOA and the implementation of Wisconsin statutes governing the DOA. Specifically, Defendant Bablitch is responsible for the implementation, interpretation and application of DOA regulations governing the Wisconsin State Employees Combined Campaign (herein “WISECC”), including decisions concerning the eligibility of an organization to participate in the WISECC. WIS. ADM. CODE § 30.07. Defendant Bablitch is also responsible for issuing and maintaining the list of charitable organizations to which employees may designate payroll deductions in the WISECC and may remove charities from the list if he determines they no longer comply with the eligibility requirements. WIS. ADM. CODE §§ 30.9, 30.11.

2.3 Defendants Rachel Meek, Chair; Godwin Amegashie, Stephanie Beardsley, Paul Breen, Debbie Bothell, Joel Chapiewsky, Michael Daly, David Jaloszynski, Gale Johnson, Marcus Miles, Peter Olson, and Deborah Garrett Thomas, (hereinafter “Chair and Members of

the Eligibility Committee”) are sued in their official capacities. Defendants Chair and Members of the Eligibility Committee were appointed by or under the authority of Defendant Bablitch. Concerning applications to participate in the WISECC, Defendants Chair and Members of the Eligibility Committee are responsible for reviewing an applicant’s status with the Wisconsin Department of Regulation and Licensing (Wis. ADM. CODE § 30.08(2)), investigating the applicant’s past fundraising and expenditures (§ 30.08(4)), determining whether the applicant meets all eligibility requirements, (§ 30.08(5)), making written recommendations to Defendant Bablitch concerning an applicant’s participation in the WISECC (§ 30.08(6)), and reviewing continued compliance and recommending discontinuance of participation by an applicant that no longer complies with the requirements of Wis. ADM. CODE § 30, *et. seq.* (§ 30.08(7)).

#### ASSOCIATION OF FAITH-BASED ORGANIZATIONS

3.1 AFBO is a Virginia limited liability company whose membership includes non-profit faith-based charitable organizations. Each of AFBO’s member charities is a non-profit religious charitable organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. Each of AFBO’s members is either registered as a charitable organization with the Wisconsin Department of Regulation and Licensing or is ready, willing and able to do so upon success in the instant litigation.

3.2 AFBO’s member organizations include the Christian Legal Society, Teen Challenge International Wisconsin, Pro-Life Wisconsin, and other non-profit organizations.

3.3 All of AFBO’s member organizations exercise their constitutional and statutory rights to require that certain or all of their employees, board members, volunteers and/or members (where applicable), agree with the religious beliefs of the organizations. Consistent with this policy, all of AFBO’s member organizations interpret their requisite religious beliefs to

incorporate religious doctrine concerning sexual morality, which regards participation in sexual activity outside the bounds of traditional marriage, including but not limited to homosexual activity, as contrary to said religious faith.

3.4. With the exception of WIS. ADM. CODE § 30.05(11) and the mandatory “Nondiscrimination Statement” included in the WISECC application, as interpreted and applied by Defendants as discussed below, each of AFBO’s members is otherwise eligible to participate in WISECC or is ready, willing and able to satisfy any other necessary prerequisites to become eligible to participate in WISECC.

3.5 AFBO was formed for the purpose of eliminating discrimination against member organizations because they exercise their constitutional and statutory rights to associate around the religious beliefs each organization was created to foster. AFBO has standing to sue on behalf of its members, which include the Christian Legal Society (“CLS”), which was excluded from participation in the 2005 WISECC by Defendants (*see infra*), and other Wisconsin and national non-profit charities which are excluded from participation in WISECC by operation of the policies, procedures and practices of Defendants complained of herein.

#### THE WISCONSIN STATE EMPLOYEES COMBINED CAMPAIGN (WISECC)

4.1 The Wisconsin State Employees Combined Campaign (WISECC) was created by WIS. ADM. CODE § 30, *et. seq*, under the authority of WIS. CODE § 20.921 (1)(a)(4). WISECC is a state operated program by which state employees may voluntarily authorize payroll deductions for charitable purposes approved by Defendant Secretary Bablitch and the Governor. WIS. ADM. CODE § 30.01.

4.2 Only charitable organizations that are approved by Secretary Bablitch or his designee(s) are eligible to participate in WISECC. The 2005 WISECC included more than four

hundred organizations, and over 10,000 Wisconsin State employees participated in the campaign, making donations totaling in excess of 2.8 million dollars. See “Lend Your Hand, and Join a Community of Givers,” at <http://secc.wi.gov/> (last visited 3/31/05).

4.3 Defendants’ approval of a charity to participate in WISECC does not constitute endorsement by Defendants or the State of Wisconsin of the charity or its policies and participating charities are forbidden by law from claiming or implying, directly or indirectly, any such endorsement. WIS. ADM. CODE § 30.12.

4.4 WIS. ADM. CODE § 30.05(11) states as a requirement of eligibility for participation in WISECC:

NONDISCRIMINATION. The charitable organization shall have a policy and procedure of nondiscrimination in regard to race, color, religion, national origin, handicap, age, or sex applicable to persons served by the charitable organization, applicable to charitable organization staff employment, and applicable to membership on the charitable organization’s governing board.

4.5 Despite the express language of WIS. ADM. CODE § 30.05(11), Defendants have required applicants to execute a certification form entitled “Nondiscrimination Statement,” which mandates commitments by the organization not required by WIS. ADM. CODE § 30.05(11). The “Nondiscrimination Statement” requires certification that the charity’s board of directors has adopted or affirmed the following:

It shall be the policy of this organization to provide equal *membership*, employment, *volunteer*, and services to all eligible persons without regard to race, religion, color, *creed*, ancestry, national origin, citizenship, age, sex, marital status, parental status, *sexual orientation*, veteran status, membership to any labor charity, political ideology, disability of an otherwise qualified individual, or any other legally protected basis, to the fullest extent provided by applicable federal, state, and local law.

See Exhibit “A” attached, Nondiscrimination Certification Form (emphasis added). Thus, contrary to the express language in the regulations governing WISECC, Defendants demand that

applicant charities certify their acceptance of a policy of “nondiscrimination” applicable to “membership” and “volunteer” positions. Further, despite the absence of supporting authority in Wis. ADM. CODE § 30.05(11), Defendants demand that applicant charities certify their acceptance of a policy of “nondiscrimination” on the basis of, *inter alia*, “creed” and “sexual orientation.”

4.6 Defendants have approved for participation in WISECC organizations which espouse a broad range of social, political and religious views. Many or all of these organizations remain free to restrict membership, board membership, employment and volunteer opportunities to persons who share the organization’s beliefs and mission. Thus, for example, while an organization committed to abortion rights may participate in WISECC while restricting membership, board membership, employment and volunteer opportunities to persons who share the organization’s views about reproductive rights, and an organization devoted to environmental causes may participate in WISECC while restricting membership, board membership, employment and volunteer opportunities to persons who share the organization’s environmental views, AFBO’s member religious organizations are forced to abandon their requirement that members, board members, employees and volunteers share the organization’s religious views as a condition of participation in WISECC.

4.7 On information and belief, Defendants have tacitly or explicitly exempted some participating charities from certification of non-discrimination on certain bases. For instance, Defendants have exempted the Boy Scouts of America from the requirement of nondiscrimination on the basis of “sexual orientation.” Defendants have long permitted the Boy Scouts to participate in WISECC despite Defendants’ knowledge that the Boy Scouts restrict leadership positions on the basis of sexual orientation. Citing the Supreme Court’s decision in

*Boy Scouts v. Dale*, 530 U.S. 640 (2000), Defendants announced that the Boy Scouts would continue to be eligible to participate in WISECC and that other organizations that sought to participate in WISECC with exemption from the purported sexual orientation nondiscrimination requirement would be reviewed by a panel of state employees. *See* Exhibit “B” attached, “Wisconsin Makes Payroll Deduction Compromise,” THE ADVOCATE, June 6, 2002. However, upon information and belief, no such panel has been appointed, nor have guidelines or standards been promulgated to direct such a review.

4.8 In announcing the accommodation for the Boy Scouts, then Secretary of Administration George Lightbourn acknowledged that “charitable organizations, including the Boy Scouts, retain First Amendment rights, as determined by the U.S. Supreme Court.” *See* Exhibit “C” attached, “Rule Change Should Accommodate Contributions to the Boy Scouts,” Department of Administration Press Release, June 4, 2002. Secretary Lightbourn further stated that the department would only apply the nondiscrimination requirement “to the extent permitted by pertinent court rulings.” *Id.*

#### DEFENDANTS’ REJECTIONS OF THE APPLICATIONS OF AFBO MEMBERS

5.1 In 2005, the Christian Legal Society, a member of AFBO, applied to participate in the 2005 WISECC through its umbrella organization, Neighbor to Nation. *See* Exhibit “D” attached, pertinent portions of the application and supporting materials submitted by CLS to Defendants on January 27, 2005.

5.2 In submitting its application, CLS did not certify its compliance with the “Nondiscrimination Statement” contained in WIS. ADM. CODE § 30.05(11) by initialing item number 7 on the WISECC certification form. *See* Exhibit D, at 1. Nor did it execute the broader “Nondiscrimination Statement” required by Defendants as Item 7 on the application. *See* Exhibit

D, at 3. CLS explained its non-certification of compliance with these nondiscrimination policies in a letter to Neighbor to Nation director Jack Garber, which was attached to its application and forwarded with its application to Defendants. *See* Exhibit D, at 4-5. This letter stated CLS' faith requirements for its members, employees, and board members and explained CLS' view that this policy is not unlawful "discrimination" because it is highly relevant to CLS' religious mission. *Id.* The letter further explained CLS' view that its associational policy was constitutionally protected. *Id.*

5.3 On March 15, 2005, at Defendants' request, CLS submitted to Defendants its "Board Approved Non-Discrimination Statement." This document bore the required signature of an authorized official of CLS and stated:

This charity's governing board held a meeting on March 15, 2005 at which, for purposes of this application, the governing board affirmed its policy of non-discrimination to be as follows:

Christian Legal Society has a policy and procedure of non-discrimination in regard to race, color, national origin, handicap, age, or sex applicable to persons served by it, applicable to its membership, staff employment, and its governing board.

Christian Legal Society has a policy and procedure of non-discrimination in regard to religion applicable to persons using its attorney referral service.

I certify that the practices of this charity conform to the policy of non-discrimination stated above.

*See* Exhibit "E" attached, CLS "Board Approved Nondiscrimination Policy."

5.4 By letter dated March 24, 2005, Stuart Morse, Chair of the 2005 SECC Eligibility Committee, informed Neighbor to Nation that the Eligibility Committee had recommended CLS for exclusion from WISECC. *See* Exhibit "F" attached. Morse attached to his letter a spreadsheet entitled "2005 Wisconsin State Employees Combined Campaign (SECC) *Final*

*Report.*” *Id.*, Attachment 1 (emphasis added). This spreadsheet included a comment that CLS “Didn’t initial #7 on cert[ification].” *Id.* Under the column “Committee Action,” the document states regarding CLS: “Exclude as did not certify its compliance with the non-discrimination requirement as it pertains to religion.” *Id.* Defendant Bablitch ultimately excluded CLS from participation in the 2005 WISECC. The only stated basis for this decision was CLS’s non-certification of compliance with the religion component of the nondiscrimination requirement. *Id.*

5.5 Defendants also excluded from participation in WISECC the Fellowship of Christian Athletes, a religious non-profit organization, at least in part because it “did not certify its compliance with the non-discrimination requirement as it pertains to religion.” Exhibit F, Attachment 1.

5.6 All acts of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction herein alleged, were done and are continuing to be done under the color of state law, including the statutes, regulations, customs, policies and usages of the State of Wisconsin, and pursuant to policies and/or customs established by the State of Wisconsin through Defendants.

## COUNT I

### FREEDOM OF EXPRESSIVE ASSOCIATION UNITED STATES CONST. AMEND. I

6.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 5.6 as if set forth verbatim herein.

6.2 By requiring that WISECC participating religious charitable organizations abandon faith-based membership, board membership, employment and volunteer practices, including those concerning religious beliefs about sexual conduct outside traditional marriage,

Defendants have violated and will continue to violate the right to freedom of expressive association guaranteed to AFBO's members by the First Amendment to the United States Constitution and made applicable to the States and their political subdivisions by the Fourteenth Amendment.

## COUNT II

### FREE SPEECH UNITED STATES CONST. AMEND. I

7.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 6.2 as if set forth verbatim herein.

7.2 By requiring that WISECC participating religious charitable organizations abandon faith-based membership, board membership, employment and volunteer practices, including those concerning religious beliefs about sexual conduct outside traditional marriage, and affirmatively adopt as their own policy a "Nondiscrimination Statement" crafted by Defendants, Defendants have violated and will continue to violate the right to free speech guaranteed to AFBO's members by the First Amendment to the United States Constitution and made applicable to the States and their political subdivisions by the Fourteenth Amendment.

## COUNT III

### FREE EXERCISE CLAUSE UNITED STATE CONST. AMEND. I

8.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 7.2 as if set forth verbatim herein.

8.2 By requiring that WISECC participating religious charitable organizations abandon faith-based membership, board membership, employment and volunteer practices, including those concerning religious beliefs about sexual conduct outside traditional marriage,

and affirmatively adopt a “Nondiscrimination Statement” crafted by Defendants, while permitting other WISECC participants to restrict membership, board membership, employment and volunteer practices to those who agree with the organizations’ beliefs and purposes, Defendants have violated and will continue to violate the right to free exercise of religion guaranteed to AFBO’s members by the First Amendment to the United States Constitution and made applicable to the States and their political subdivisions by the Fourteenth Amendment.

#### COUNT IV

##### EQUAL PROTECTION CLAUSE UNITED STATES CONST. AMEND. XIV

9.1 AFBO restates and realleges each allegation set forth in paragraphs 1.1 through 8.2 as if set forth verbatim herein.

9.2 By requiring that WISECC participating religious charitable organizations abandon faith-based membership, board membership, employment and volunteer practices, including those concerning religious beliefs about sexual conduct outside traditional marriage, while permitting other WISECC participants to restrict membership, board membership, employment and volunteer practices to those who agree with the organizations’ beliefs and purposes, Defendants have denied and will continue to deny the equal protection of the laws guaranteed to AFBO’s members by the Fourteenth Amendment to the United States Constitution.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff AFBO respectfully requests that this Court order the following relief:

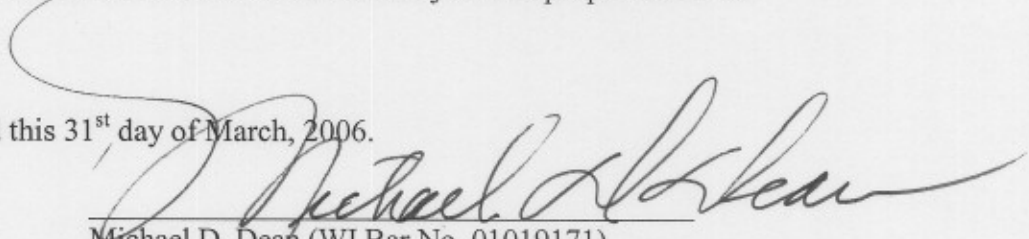
- (1) A declaration that Defendants’ enforcement of the requirement that WISECC participating religious charitable organizations abandon faith-

based membership, board membership, employment and volunteer practices, including such practices concerning religious beliefs about sexual conduct outside traditional marriage, as a condition of participation in WISECC, violates the First and Fourteenth Amendment to the United States Constitution;

- (2) A permanent injunction enjoining Defendants from requiring WISECC participating religious charitable organizations to abandon faith-based membership, board membership, employment and volunteer practices, including such practices concerning religious beliefs about sexual conduct outside traditional marriage, as a condition of participation in WISECC; and prohibiting Defendants, their employees, officers, employees and agents, and all persons acting by and through them, from withholding the rights, privileges, benefits, or incidents of participation in WISECC from Plaintiff's members and similarly situated organizations and from retaliating against Plaintiff's members directly or indirectly for exercising their constitutional rights;
- (3) An injunction requiring Defendants to accept and expeditiously process AFBO's members' applications for the WISECC outside of the normal timeframe for processing such applications such that they may participate in the 2006 WISECC;
- (4) An award of reasonable costs and attorneys' fees incurred by Plaintiff in prosecuting this action pursuant to 42 U.S.C. § 1988;

- (5) That this Court retain jurisdiction over this case for the purpose of enforcement of any order; and
- (6) Such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 31<sup>st</sup> day of March, 2006.



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