

WISCONSIN SUPREME COURT
TUESDAY, NOVEMBER 3, 2009
9:45 a.m.

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case originated in Dane County Circuit Court, Judge Richard G. Niess, presiding.

2008AP1868

[McConkey v. Van Hollen](#)

In this certification, the District IV Court of Appeals asks the Supreme Court to review issues arising from a state constitutional amendment passed by voters on Nov. 7, 2006. The ballot measure read, in part, “that only a marriage between one man and one woman shall be valid or recognized as a marriage in this state and that a legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state.”

Some background: William McConkey filed suit in Dane County Circuit Court, seeking to have the marriage amendment declared invalid on multiple substantive and procedural grounds, including an allegation that it violated the single-subject rule set forth in Art. XII, Section 1 of the Wisconsin Constitution.

McConkey asserts that the first part of the referendum question limiting marriage to only one man and one woman was a separate subject from the second part of the question addressing any similar legal status to marriage for unmarried individuals. McConkey argues that if the propositions had been put forth separately, a significant number of voters may have voted yes on one question and no on the other.

The circuit court held that the plaintiff lacked standing to challenge the substantive constitutionality of the marriage amendment, but further held that McConkey did have standing to challenge the amendment on the grounds it may violate the single-subject rule.

The circuit court ultimately held that the ballot question properly complied with the single-subject requirement because it “properly included two propositions that both related to the same subject matter and were designed to accomplish the same general purpose.”

McConkey appealed, contending the amendment should be null and void. Wisconsin Attorney General J.B. Van Hollen cross-appealed, arguing McConkey lacks standing because he personally did not suffer a real and direct, actual or threatened injury. McConkey has said he would have voted “no” on each question if they were listed separately.

A decision by the Supreme Court could clarify the proper formulation of the single-subject test and provide guidance on the purpose of a proposed amendment.

In certifying the case, the Supreme Court acquires jurisdiction of “the entire appeal, which includes all issues, not merely the issues certified or the issue for which the court accepts the certification.”