

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

CODY FLACK and
SARA ANN MAKENZIE,

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
HEALTH SERVICES and
LINDA SEEMEYER, in her official capacity
as Secretary of the Wisconsin Department of
Health Services,

Defendants.

Case No. 3:18-cv-00309-wmc
Judge William Conley

PLAINTIFFS' MOTION FOR LEAVE TO FILE REPLY BRIEF

Plaintiffs Cody Flack and Sara Ann Makenzie (“Plaintiffs”) respectfully move the Court for leave to file a reply brief in support of their Motion for Preliminary Injunction [Dkt. No. 18] (“PI Motion”), not to exceed seven pages and to be filed no later than three days after the anticipated response in opposition to the PI Motion by Defendants Wisconsin Department of Health Services and Linda Seemeyer (“Defendants”). In support of this Motion, Plaintiffs state the following:

1. The Court’s briefing and hearing schedule on the PI Motion set by text-only order on May 24, 2018, as amended on June 5, 2018 [Dkt. No. 40], does not currently provide Plaintiffs the opportunity to file a reply brief.

2. Plaintiffs believe a short reply brief may be helpful to address certain of Defendants’ arguments prior to the preliminary injunction hearing on July 19, 2018. In particular, Plaintiffs have reviewed the brief in support of the motion for summary judgment filed by defendants in *Boyden v. Conlin*, No. 17-cv-264-wmc (W.D. Wis.), a case challenging the

transgender health care exclusion in Wisconsin's state employee health benefits plan that, as here, raises claims under Section 1557 of the Patient Protection and Affordable Care Act and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Given the similar policies at issue in the two cases and the fact that state defendants in *Boyden* are represented by the same assistant attorneys general in the Wisconsin Department of Justice, Plaintiffs anticipate that Defendants will raise similar arguments and defenses in opposition to Plaintiffs' Section 1557 and Equal Protection Clause claims here. Plaintiffs request the opportunity to briefly respond to such arguments and defenses, if needed, prior to the scheduled hearing.

3. Defendants' opposition brief is currently due on Thursday, July 12, 2018.

Plaintiffs seek leave to file a reply brief of no more than seven pages by 5 p.m. CT on Monday, July 16, 2018.

4. Plaintiffs sought Defendants' consent to this Motion. Defendants oppose this Motion.

Based on the foregoing, Plaintiffs respectfully request that the Court grant them leave to file a reply brief of no more than seven pages by 5 p.m. CT on Monday, July 16, 2018.

Dated: June 14, 2018

Respectfully submitted,

/s/ Joseph J. Wardenski

Joseph J. Wardenski

Jennifer I. Klar

Orly May

RELMAN, DANE & COLFAX PLLC

1223 19th Street, NW, Suite 600

Washington, DC 20036

Telephone: (202) 728-1888

Facsimile: (202) 728-0848

jwardenski@relmanlaw.com

jklar@relmanlaw.com

omay@relmanlaw.com

Robert Theine Pledl
Mark A. Peterson
Daniel A. Peterson
MCNALLY PETERSON, S.C.
1233 North Mayfair Road, Suite 200
Milwaukee, WI 53226-3255
Telephone: (414) 257-3399
Facsimile: (414) 257-3223
rpled@mcpetelaw.com
mpeterson@mcpetelaw.com
dpeterson@mcpetelaw.com

Abigail Coursolle
Catherine McKee
NATIONAL HEALTH LAW PROGRAM
200 N. Greensboro Street, Suite D-13
Carrboro, NC 27510
Telephone: (919) 968-6308
Facsimile: (919) 968-8855
coursolle@healthlaw.org
mckee@healthlaw.org

Attorneys for Plaintiffs