

**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' RESPONSE TO DEFENDANTS' SUPPLEMENTAL BRIEF**

Plaintiffs Cody Flack and Sara Ann Makenzie (“Plaintiffs”) submit this response to Defendants’ Supplemental Brief Regarding Expanding the Preliminary Injunction to Apply to All Medicaid Beneficiaries [Dkt. No. 73] (“Supp. Br.”).

In their brief, Defendants argue, *inter alia*, that “this Court lacks authority to expand [the preliminary injunction] beyond the named plaintiffs . . . because this case is not a class action.” Supp. Br. at 2. Plaintiffs disagree with this argument and believe it is within the Court’s remedial powers under the current posture of the case to enjoin the Challenged Exclusion—which, on its face, deprives all transgender Wisconsin Medicaid beneficiaries of nondiscriminatory access to medically necessary care and exposes them to attendant stigma, health harms, and other injuries. However, Plaintiffs are prepared to proceed with this case as a class action to avoid any dispute over the Court’s authority to issue a broader injunction.

Accordingly, by separate motion filed concurrently with this response, Plaintiffs will seek this Court’s leave to file an amended complaint raising class action allegations within 30

days. Plaintiffs anticipate filing a motion for class certification and renewed motion for a broader preliminary injunction fully enjoining the Challenged Exclusion shortly thereafter. Plaintiffs therefore request that the Court withhold any decision on a broader injunction of the Challenged Exclusion until such motions are filed.

Dated: August 29, 2018

Respectfully submitted,

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