

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

ALINA BOYDEN and
SHANNON ANDREWS,

Plaintiffs,

v.

Case No. 17-CV-0264

STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE
TRUST FUNDS, et al.,

Defendants.

STATE DEFENDANTS' ANSWER AND DEFENSES

Defendants State of Wisconsin Department of Employee Trust Funds, State of Wisconsin Group Insurance Board, and Robert J. Conlin, Secretary of the Department of Employee Trust Funds (collectively, "Defendants") answer Plaintiffs' Amended Complaint (Dkt. 27) as follows:

NATURE OF THE ACTION

1. Defendants DENY the allegations in this paragraph.
2. Paragraph 2 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 2 misstate the law or constitute factual allegations, Defendants DENY the allegations.

3. Paragraph 3 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 3 misstate the law or constitute factual allegations, Defendants DENY the allegations.

4. Paragraph 4 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 4 misstate the law or constitute factual allegations, Defendants DENY the allegations.

5. Paragraph 5 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 5 misstate the law or constitute factual allegations, Defendants DENY the allegations.

6. Paragraph 6 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 6 misstate the law or constitute factual allegations, Defendants DENY the allegations.

7. Defendants ADMIT that both Plaintiffs are employed by the University of Wisconsin System, both receive health insurance through their employment and DENY they are employed by “the State.” Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 7.

8. Defendants ADMIT that the Uniform Benefits exclude coverage of “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment,” and that prior to 2016, the exclusion prohibited coverage of “[p]rocedures, services, and supplies related to sex

transformation surgery and sex hormones related to such treatments.” Defendants DENY the remaining allegations in both paragraph 8 and footnote 1.

9. Defendants lack knowledge or information sufficient to form a belief as to whether gender dysphoria is codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). Defendants DENY the remaining allegations.

10. Defendants ADMIT that Alina Boyden is employed as either a teaching assistant or a fellow at the University of Wisconsin-Madison; lack knowledge or information sufficient to form a belief as to the remaining allegations in the first sentence of paragraph 10. Defendants DENY the remaining allegations.

11. Defendants ADMIT that Shannon Andrews is employed at the University of Wisconsin-Madison and lack knowledge or information sufficient to form a belief as to the remaining allegations in the first sentence of paragraph 11. Defendants DENY the remaining allegations.

12. Defendants DENY the allegations in this paragraph.

JURISDICTION AND VENUE

13. Paragraph 13 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 13

misstate the law or constitute factual allegations, Defendants DENY the allegations.

14. Paragraph 14 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 14 misstate the law or constitute factual allegations, Defendants DENY the allegations.

15. Paragraph 15 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 15 misstate the law or constitute factual allegations, Defendants DENY the allegations.

16. Defendants ADMIT the allegations in this paragraph.

17. Defendants ADMIT that venue is appropriate in the Western District of Wisconsin. Defendants DENY that any unlawful employment practices occurred in this district. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations.

PARTIES

18. Defendants ADMIT that Boyden is employed at the University of Wisconsin-Madison by the Board of Regents. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations.

19. Defendants ADMIT that Andrews is employed at the University of Wisconsin School of Medicine and Public Health by the Board of Regents.

Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations.

20. Defendants ADMIT that ETF is a state agency that administers the State of Wisconsin Group Health Insurance for state employees. Defendants DENY the remaining allegations, and ALLEGE that ETF's office is located at the North Tower, 8th Floor, Hill Farms State Office Building, 4822 Madison Yards Way, Madison, WI 53705-9100.

21. Defendants ADMIT that six (6) of the eleven (11) GIB members are appointed by the Governor, and that the remaining positions are occupied by the other state officials or their designees, including the Governor, Attorney General, Secretary of the Department of Administration, and Commissioner of Insurance. Defendants FURTHER ADMIT that the GIB meets approximately four (4) times per year, has no physical location, and accepts correspondence at c/o Board Liaison, Department of Employee Trust Funds, Post Office Box 7931, Madison, WI 53707-7931. Defendants FURTHER ADMIT that GIB determines the benefits and exclusions in state employees' health insurance coverage. Defendants DENY the remaining allegations, and ALLEGE that the Administrator of the Division of Personnel Management in the Department of Administration, or their designee, also occupies a position on GIB.

22. Defendants ADMIT that Conlin is the Secretary of ETF and, in that capacity, exercises the administrative powers and duties of the

department. The remainder of paragraph 22 contains only legal conclusions to which no responsive pleading is required. To the extent the remaining allegations in paragraph 22 misstate the law or constitute factual allegations, Defendants DENY the allegations.

23. Defendants DENY and ALLEGE that pursuant to the court's Opinion and Order filed on May 11, 2018 (Dkt. 67), the Board of Regents has been dismissed from this action.

24. Defendants DENY and ALLEGE that pursuant to the court's Opinion and Order filed on May 11, 2018 (Dkt. 67), Raymond W. Cross has been dismissed from this action.

25. Defendants DENY and ALLEGE that pursuant to the court's Opinion and Order filed on May 11, 2018 (Dkt. 67), Rebecca M. Blank has been dismissed from this action.

26. Defendants DENY and ALLEGE that pursuant to the court's Opinion and Order filed on May 11, 2018 (Dkt. 67), the University of Wisconsin School of Medicine and Public Health has been dismissed from this action.

27. Defendants DENY and ALLEGE that pursuant to the court's Opinion and Order filed on May 11, 2018 (Dkt. 67), Robert N. Golden, M.D., has been dismissed from this action.

28. Defendants DENY and ALLEGE that pursuant to the court's Opinion and Order filed on November 20, 2017 (Dkt. 44), the Dean Health Plan has been dismissed from this action.

FACTUAL ALLEGATIONS

29. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

30. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

31. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

32. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

33. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

34. Defendants DENY the allegations in this paragraph.

35. Defendants DENY the allegations in this paragraph.

36. Defendants DENY the allegations in this paragraph.

37. Defendants DENY the allegations in this paragraph.

38. Defendants DENY the allegations in this paragraph.

39. Defendants ADMIT the allegations in this paragraph.

40. Defendants DENY that GIB “reinstated the ban.” Defendants ADMIT the remaining allegations in this paragraph.

41. Defendants ADMIT that GIB excluded coverage for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” Defendants DENY that ETF excluded such coverage. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

Alina Boyden

42. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

43. Defendants ADMIT that Boyden is employed at the University of Wisconsin-Madison by the Board of Regents as either a teaching assistant or a fellow on at least a one-third full-time basis and has been employed on that basis since August 2013, and that she is eligible for health insurance coverage through ETF. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

44. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

45. Defendants ADMIT that on March 21, 2016, ETF received a charge of discrimination filed with the EEOC by Alina Boyden regarding an alleged

denial of health care benefits on the basis of sex or gender identity. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

46. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

47. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

48. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

49. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

50. Defendants ADMIT that the Uniform Benefits exclude from coverage “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

51. Defendants ADMIT that on July 16, 2016, GIB voted to remove the exclusion for “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment” from the Uniform Benefits. Defendants DENY the remaining allegations contained in this paragraph.

52. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

53. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

54. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

55. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

56. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

57. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

58. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

Shannon Andrews

59. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

60. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

61. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

62. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

63. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

64. Defendants ADMIT that Andrews began her current position in March of 2014. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

65. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

66. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

67. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

68. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

69. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

70. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

71. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

72. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

73. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

74. Defendants ADMIT that the Uniform Benefits exclude from coverage “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

75. Defendants lack knowledge or information sufficient to form a belief as to the allegations in both paragraph 75 and footnote 2.

76. Defendants ADMIT that the Uniform Benefits exclude from coverage “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

77. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

78. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

79. Defendants ADMIT that on July 1, 2016, ETF received an e-mail communication from Shannon Andrews attaching an ETF Insurance Complaint document. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

80. Defendants ADMIT that on or around August 10, 2016, ETF received from the EEOC notice of a charge of discrimination by Shannon Andrews regarding an alleged violation of Title VII of the Civil Rights Act. Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

81. Defendants lack knowledge or information sufficient to form a belief as to the allegations in this paragraph.

**PLAINTIFF'S FIRST CAUSE OF ACTION
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION
U.S. CONST. AMEND. XIV & 42 U.S.C. § 1983 BASED ON SEX
*Against Defendants Conlin, Cross, Blank and Golden,
in their individual and official capacities***

Defendants DENY the allegations in the above heading and ALLEGE that pursuant to the court's Opinion and Order filed on May 11, 2018 (Dkt. 67), Cross, Blank and Golden have been dismissed from this action.

82. Defendants reassert and incorporate by reference their responses in all preceding paragraphs of this Answer as though fully set forth herein.

83. Paragraph 83 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 83 misstate the law or constitute factual allegations, Defendants DENY the allegations.

84. Paragraph 84 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 84 misstate the law or constitute factual allegations, Defendants DENY the allegations.

85. Defendants DENY the allegations in this paragraph.

86. Paragraph 86 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 86 misstate the law or constitute factual allegations, Defendants DENY the allegations.

87. Defendants DENY the allegations in this paragraph.

**PLAINTIFF'S SECOND CAUSE OF ACTION
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION
U.S. CONST. AMEND. XIV & 42 U.S.C. § 1983
BASED ON TRANSGENDER STATUS
*Against Defendants Conlin, Cross, Blank and Golden,
in their individual and official capacities***

Defendants DENY the allegations in the above heading and ALLEGE that pursuant to the court's Opinion and Order filed on May 11, 2018 (Dkt. 67), Cross, Blank and Golden have been dismissed from this action.

88. Defendants reassert and incorporate by reference their responses in all preceding paragraphs of this Answer as though fully set forth herein.

89. Paragraph 89 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 89 misstate the law or constitute factual allegations, Defendants DENY the allegations.

90. Defendants DENY the allegations in this paragraph.

91. Paragraph 91 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 91 misstate the law or constitute factual allegations, Defendants DENY the allegations.

92. Defendants DENY the allegations in this paragraph.

**PLAINTIFF'S THIRD CAUSE OF ACTION
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
42 U.S.C. § 2000e-2(a)(1)
*Against Defendants Board of Regents, School of Medicine,
ETF, GIB, and Dean***

Defendants DENY the allegations in the above heading and ALLEGE that pursuant to the court's Opinion and Orders filed on May 11, 2018 (Dkt. 67) and November 20, 2017 (Dkt. 44), the Board of Regents, School of Medicine, and Dean have been dismissed from this action.

93. Defendants reassert and incorporate by reference their responses in all preceding paragraphs of this Answer as though fully set forth herein.

94. Paragraph 94 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 94 misstate the law or constitute factual allegations, Defendants DENY the allegations.

95. Paragraph 95 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 95 misstate the law or constitute factual allegations, Defendants DENY.

96. Paragraph 96 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 96 misstate the law or constitute factual allegations, Defendants DENY.

97. Paragraph 97 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 97 misstate the law or constitute factual allegations, Defendants DENY.

98. Paragraph 98 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 98 misstate the law or constitute factual allegations, Defendants DENY.

99. Defendants ADMIT that the Uniform Benefits exclude from coverage “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” Defendants DENY the remaining allegations in this paragraph.

100. Defendants lack knowledge or information sufficient to form a belief as to the allegations that “the only individuals who require medically necessary care to treat gender dysphoria are transgender individuals.” Defendants DENY the remaining allegations in this paragraph.

101. Defendants DENY the allegations in this paragraph.

102. Defendants ADMIT that the Uniform Benefits exclude from coverage “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” Defendants DENY the remaining allegations in this paragraph.

PLAINTIFF’S FOURTH CAUSE OF ACTION
VIOLATION OF PATIENT PROTECTION AND AFFORDABLE CARE ACT
42 U.S.C. § 18116
Against ETF and GIB

Defendants DENY the allegations in the above heading and ALLEGE that pursuant to the court’s Opinion and Order filed on May 11, 2018 (Dkt. 67), GIB has been dismissed as a defendant on this claim.

103. Defendants reassert and incorporate by reference their responses in all preceding paragraphs of this Answer as though fully set forth herein.

104. Paragraph 104 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 104 misstate the law or constitute factual allegations, Defendants DENY the allegations.

105. Defendants DENY that the final regulations were issued on May 18, 2016, and ALLEGE that the regulations were issued on May 13, 2016, and published on May 18, 2016. Defendants ADMIT the remaining allegations in this paragraph.

106. Paragraph 106 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 106 misstate the law or constitute factual allegations, Defendants DENY the allegations.

107. Defendants ADMIT that ETF is a covered entity under the Affordable Care Act, 42 U.S.C. § 18116, 45 C.F.R. pt. 92, with respect to all health insurance plans offered to state employees, because it operates a health program or activity that receives Medicare Part D subsidies. Defendants DENY the remaining allegations in paragraph 107 and footnote 3.

108. Paragraph 108 contains only legal conclusions to which no responsive pleading is required. To the extent the allegations in paragraph 108 misstate the law or constitute factual allegations, Defendants DENY the allegations.

109. Defendants ADMIT that the Uniform Benefits exclude from coverage “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” Defendants DENY the remaining allegations in this paragraph.

RESPONSE TO PRAYER FOR RELIEF: Defendants DENY that Plaintiffs are entitled to the relief that they have requested in paragraphs A–G. Defendants further DENY the allegations demanding punitive damages under Title VII and ALLEGE that pursuant to the court’s Opinion and Order filed on May 11, 2018 (Dkt. 67) Plaintiffs’ claims for punitive damages have been dismissed.

FURTHER RESPONSE: Defendants DENY all factual allegations in the Amended Complaint not expressly admitted herein.

DEFENSES

1. This Court lacks jurisdiction over the subject matter of the Amended Complaint because Plaintiffs lack standing.

2. The Amended Complaint fails to state a claim upon which relief can be granted.

3. One or more of the Plaintiffs’ claims is barred by the Eleventh Amendment.

4. Defendant Conlin is entitled to qualified immunity regarding Plaintiffs’ individual capacity claims against him under 42 U.S.C. § 1983.

5. Defendant Conlin lacks the requisite personal involvement regarding Plaintiffs’ individual capacity claims against him under 42 U.S.C. § 1983.

6. All claims are barred in whole or in part because all decisions with respect to Plaintiffs' employment were made by Defendants for legitimate, non-discriminatory, non-pretextual reasons.

7. Defendants did not commit the acts or omissions as alleged for discriminatory motives, but assuming that they did, such acts or omissions would have been taken in any event for legitimate, nondiscriminatory, non-pretextual reasons.

8. Plaintiffs have failed to mitigate their damages, if any.

JURY DEMAND

Defendants demand a jury trial.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor dismissing this action with prejudice, denying all of the relief requested, and granting them such further relief as the Court deems appropriate.

Dated this 25th day of May, 2018.

Respectfully submitted,

BRAD D. SCHIMEL
Wisconsin Attorney General

s/ Steven C. Kilpatrick
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