

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

ALINA BOYDEN and SHANNON
ANDREWS,

Plaintiffs,

v.

ORDER

17-cv-264-wmc

ROBERT J. CONLIN, STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS, and
STATE OF WISCONSIN GROUP INSURANCE BOARD,

Defendants.

Plaintiffs move to file a second amended complaint, which seeks to add: (1) a new plaintiff Wren Logan, another transgender state employee; and (2) seven of the eleven members of the Government Investment Board (“GIB”) as defendants in their individual and official capacities, as well as the four additional members of the GIB in their official capacities only for purposes of plaintiffs’ equal protection claims under § 1983. (Pls.’ Mot. to Amend (dkt. #74); Proposed 2d Am. Compl. (dkt. #108-1).)¹ Defendants oppose the motion, largely on the basis that plaintiffs’ undue delay would unfairly prejudice their preparation of a defense to plaintiffs’ claims to date.

Generally, leave to amend should be “freely” given. Fed. R. Civ. P. 15(a)(2). Notwithstanding this “liberal attitude towards the amendment of pleadings, courts in their sound discretion may deny a proposed amendment if the moving party has unduly delayed

¹ In their motion and original proposed second amended complaint, plaintiffs also sought leave to add as defendants proposed plaintiff Wren Logan’s employers, the University of Wisconsin Hospitals and Clinics Authority, and its chief executive. In their reply brief, plaintiffs withdraw this request in light of defendants’ serving of a Rule 11 motion. In light of the court’s decision to deny plaintiffs’ leave to add a new plaintiff, any request to add her employers as defendants is moot.

in filing the motion, if the opposing party would suffer undue prejudice, or if the pleading is futile.” *Soltys v. Costello*, 520 F.3d 737, 743 (7th Cir. 2008) (internal quotation omitted).

Taking each proposed amendment in turn, the court agrees with defendants that adding a new plaintiff after the parties have already filed their motions for summary judgment is simply too late. Nothing about this decision precludes the proposed plaintiff Wren Logan from filing her own lawsuit, and a decision by this court on the merits in favor of Boyden and Andrews’ claims will likely be dispositive of Logan’s claims as well.² But it is unfair to defendants to introduce a third plaintiff in this case given the current procedural posture. Indeed, at minimum, the addition of Logan would require a range of discovery as to her specific circumstances and potentially new issues as to both parties’ motions for summary judgment. Accordingly, that portion of the motion is denied.

The addition of the seven GIB individual defendants in their individual capacity, however, presents a different set of considerations.³ Here, the court credits plaintiffs’ explanation for seeking leave to add these defendants until after the court ruled on defendants’ challenges to standing. (*See* Pls.’ Reply (dkt. #107) 8-9.) While recognizing that the summary judgment motion deadline has passed, defendants have not articulated what additional discovery, claims, or other grounds for summary judgment would be

² The reverse is not necessarily so, because: (1) Logan will not be bound by an adverse ruling against plaintiffs; and (2) even if this court would be inclined to rule similarly in a subsequent suit, Logan would be able to assert new claims under different theories.

³ Defendants focus their opposition on the assertion of individual capacity claims against the four GIB members who did *not* vote for the exclusion, which plaintiffs do not oppose in reply. However, at least as to the futility issue, defendants do not appear to oppose plaintiffs’ request to add claims for injunctive relief against all members in their official capacities.

unique to these new defendants, even as to the remaining seven sued in their individual capacity. Instead, it seems likely that these defendants could simply join in the motion for summary judgment previously filed, and specifically, in defendant Conlin's motion for qualified immunity.⁴

Accordingly, IT IS ORDERED that:

- 1) Plaintiffs' motion for leave to file a second amended complaint (dkt. #74) is GRANTED IN PART AND DENIED IN PART as described above.
- 2) The clerk's office is directed to amend the caption to add GIB members Michael S. Farrell, Stacey Rolston, Charles Grapentine, Waylon Hurburt, Theodore Neitzke, J.P. Wieske and Bob Ziegelbauer as defendants in their individual and official capacities, and add GIB members Jennifer Stegall, Francis Sullivan, Herschel Day and Nancy Thompson as defendants in their official capacities. Defendants' counsel may have seven (7) days to accept service on behalf of these new defendants. Otherwise, plaintiffs should proceed to effect formal service.
- 3) Plaintiffs' proposed second amended complaint (dkt. #108-1) is accepted as the operative pleading, except the court strikes as parties plaintiff Wren Logan and defendants University of Wisconsin Hospitals and Clinics Authority and Alan S. Kaplan. No additional, answer, motion or response is required by any defendant, except as they may choose to assert it.

Entered this 25th day of June, 2018.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

⁴ Regardless, to the extent that these newly-added defendants want to advance unique grounds for summary judgment, defendants may so move no later than August 1, 2018.