

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

ALINA BOYDEN and
SHANNON ANDREWS,

Plaintiffs,

Case No. 17-cv-264

v.

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

Defendants.

PLAINTIFFS' AMENDED PROPOSED VOIR DIRE

Plaintiffs, Alina Boyden and Shannon Andrews (collectively "Plaintiffs"), through their undersigned attorneys, respectfully submit the following Amended Proposed Voir Dire.

Proposed Question 8(a)

Question 8(a) inquires whether any member of the venire is transgender or is close to someone who is transgender. For the reasons provided in Plaintiffs' Response and Objections to Defendants' Proposed Voir Dire Questions (Dkt. # 194), as well as for the reasons stated at the September 25, 2018 Pretrial Hearing, Plaintiffs propose the elimination of Question 8(a). Even allowing the venire to respond at side bar would impermissibly single out and target a group of people that has historically

faced discrimination in the United States.¹ Being transgender or being close to someone who is transgender is not a permissible basis by which to assume partiality. Just as it would be impermissible to inquire whether a member of the venire belongs to a racial minority or has minority family and friends when selecting a jury for a case involving racial discrimination, or is lesbian, gay or bisexual or has lesbian, gay, or bisexual family and friends when selecting a jury for a case involving discrimination based on sexual orientation, so too is inquiring about being transgender or having transgender friends and family.

Moreover, Question 8(a) is not necessary because Question 8(b) seeks to elicit substantially similar information without raising the concerns set forth above.

Proposed Question 8(e)

For the reasons provided in Plaintiffs' Response and Objections to Defendants' Proposed Voir Dire Questions (Dkt. # 194), Plaintiffs similarly propose the elimination of Question 8(e), which inquires into membership or association.

However, to the extent the Court decides to inquire into membership or association, Plaintiffs propose the following question, which incorporates the language used in Question 6(b)(8):

¹ Additionally, the question about a juror's relationship with a transgender person, whether in the presence of other jurors or at a side bar, may put a person at risk who is not present to voice their concerns for their safety. For example, a prospective juror may identify a transgender person with whom they have a close relationship without realizing the extent of potential harm placed on that person by having their name disclosed in open court.

Are you a member of, or otherwise affiliated with, any community, advocacy or civic groups or organizations and, if so, have you ever served in a leadership position? Will your membership in or affiliation with any of these community, advocacy or civic groups or organizations cause you to be more or less sympathetic to the plaintiffs in this case or more or less sympathetic to the defendants in this case?

Plaintiffs do not believe that it is possible to identify the types of organizations with which potential jury members could be affiliated that would make it more or less likely that the juror would be biased either for or against the Plaintiffs or Defendants. As such, Plaintiffs support asking generally about group membership and allowing both parties, along with the Court, to determine on a case-by-case basis whether a member of the venire has potential to be biased.

Nevertheless, should the Court require more specific language describing the types of organizations that could have potential to indicate bias, Plaintiffs propose the following language:

If you or someone close to you has ever been employed by, been a member of, or volunteered for any organization whose mission includes the protection of constitutional or civil rights, will that affiliation cause you to be more or less sympathetic to the plaintiffs in this case, or to be more or less sympathetic to the defendants in this case?

Similarly, if you or someone close to you has ever been employed by, been a member of, or volunteered for any organization whose mission includes the strict or narrow construction of constitutional or civil rights, will that affiliation cause you to be more or less sympathetic to the plaintiffs in this case, or to be more or less sympathetic to the defendants in this case?

Dated this 28th day of September, 2018

HAWKS QUINDEL, S.C.

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