

No. 18-2861

**In the United States Court of Appeals
FOR THE SEVENTH CIRCUIT**

CODY FLACK AND SARA A. MAKENZIE,
PLAINTIFFS-APPELLEES,

v.

WISCONSIN DEPARTMENT OF HEALTH SERVICES AND LINDA SEEMEYER, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE WISCONSIN DEPARTMENT OF HEALTH SERVICES,
DEFENDANTS-APPELLANTS.

On Appeal From The United States District Court
For The Western District Of Wisconsin, Case No. 3:18-cv-309,
The Honorable William M. Conley, Presiding

JOINT MOTION FOR ORDER EXTENDING THE BRIEFING SCHEDULE

Defendants-Appellants Wisconsin Department of Health Services and Linda Seemeyer, and Plaintiffs-Appellees Cody Flack and Sara A. Makenzie, hereby jointly move this Court under Circuit Rule 26 for an order extending the briefing schedule as follows:

1. Defendants-Appellants shall file their opening brief on November 12, 2018. (The current deadline for this brief is October 3, 2018.)
2. Plaintiffs-Appellants shall file their response brief on December 12, 2018. (The current deadline for this brief is November 2, 2018.)
3. Defendants-Appellants shall file their reply brief (if any) on December 26, 2018. (The current deadline for this brief is November 16, 2018.)

This motion is supported by the accompanying Declaration of Ryan J. Walsh.

Dated: September 18, 2018

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General of Wisconsin

/s/ Ryan J. Walsh

RYAN J. WALSH
Chief Deputy Solicitor General
Counsel of Record

LUKE N. BERG
Deputy Solicitor General

Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, Wisconsin 53707-7857
(608) 267-1332
(608) 261-7206 (Fax)
walshrj@doj.state.wi.us

Attorneys for Defendants-Appellants

/s/ Joseph J. Wardenski

JOSEPH J. WARDENSKI
Relman, Dane & Colfax, PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036-2456
(202) 730-0345
(202) 728-0848 (Fax)
jwardenski@relmanlaw.com

Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: September 18, 2018

/s/ Ryan J. Walsh

RYAN J. WALSH

No. 18-2861

**In the United States Court of Appeals
FOR THE SEVENTH CIRCUIT**

CODY FLACK AND SARA A. MAKENZIE,
PLAINTIFFS-APPELLEES,

v.

WISCONSIN DEPARTMENT OF HEALTH SERVICES AND LINDA SEEMEYER, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE WISCONSIN DEPARTMENT OF HEALTH SERVICES,
DEFENDANTS-APPELLANTS

On Appeal From The United States District Court
For The Western District Of Wisconsin, Case No. 3:18-cv-309,
The Honorable William M. Conley, Presiding

**DECLARATION OF RYAN J. WALSH IN SUPPORT OF MOTION TO
EXTEND TIME TO FILE APPELLANTS' BRIEF**

1. I am the Chief Deputy Solicitor General for the Wisconsin Department of Justice, and counsel of record for Defendants-Appellants Wisconsin Department of Health Services and Linda Seemeyer, in the above-captioned matter.

2. Under the current briefing schedule, the Defendants-Appellants' opening brief is due October 3, 2018. Accordingly, Plaintiffs-Appellees' response brief will be due on November 2, 2018 and Defendants-Appellants' reply brief (if any) will be due on November 16, 2018.

3. This motion is being made more than seven days before the Defendants-Appellants' Brief is due, as required by Circuit Rule 26.

4. Defendants-Appellants will be unable to file their opening brief in this Court by October 3, 2018.

5. This case was recently transferred within the Wisconsin Department of Justice from the Special Litigation Unit, which has handled this case since January 2018, to the Office of the Solicitor General. Defendants-Appellants therefore seek additional time so that the newly-assigned attorneys may familiarize themselves with the history of the case and research the legal arguments in order to provide this Court with a thorough and responsive brief.

6. Counsel assigned to this case, including myself, are also assigned to other matters with briefing deadlines scheduled over the next several weeks, including the State's Petition for Rehearing en Banc in *International Association of Machinists v. Allen*, No. 17-1178, due October 4, 2018, in this Court; the State's response brief in *State of Wisconsin v. Schwind*, No. 17AP141, due October 24, 2018, in the Wisconsin Supreme Court; and the State's response brief in *State of Wisconsin v. Fugere*, No. 16AP2258, due October 24, 2018, in the Wisconsin Supreme Court.

7. It is not feasible to transfer any of these responsibilities to another Deputy Solicitor General as other counsel in this Office have similarly full caseloads over the same period of time.

8. I do not request this extension of time for purposes of delay, but rather so that I may meet my professional responsibilities, properly represent my clients in each case to which I am assigned, and provide this Court with a thorough brief in this appeal.

9. I conferred with Joseph J. Wardenski, counsel for Plaintiffs-Appellees, regarding this motion. Mr. Wardenski agreed to the requested extension of time for Defendants-Appellants.

I certify under penalty of perjury that the foregoing is true and correct.

Executed: September 18, 2018

/s/ Ryan J. Walsh

RYAN J. WALSH

Chief Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: September 18, 2018

/s/ Ryan J. Walsh

RYAN J. WALSH

Chief Deputy Solicitor General