

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
FURTHER 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 further extending the briefing schedule as follows:

Defendants-Appellants shall file their opening brief on December 20, 2018. (The current deadline for this brief is November 13, 2018.)

Under the default schedule set forth in Federal Rule of Appellate Procedure 31(a), Plaintiffs-Appellees' response brief would be due on January 21, 2019, although the Parties agree that Plaintiffs-Appellees may seek an extension of time to file their response brief. (The current deadline for this brief is December 13, 2018.)

Under the default schedule, Defendants-Appellants' reply brief (if any) would be due on February 4, 2019 or fourteen days after service of Plaintiffs-Appellees' brief if the response brief deadline is extended. (The current deadline for this brief is December 27, 2018.)

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

Dated: November 6, 2018

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General of Wisconsin

/s/ Ryan J. Walsh

RYAN J. WALSH
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Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 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: November 6, 2018

/s/ Ryan J. Walsh

RYAN J. WALSH

No. 18-2861

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On Appeal From The United States District Court
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**DECLARATION OF RYAN J. WALSH IN SUPPORT OF MOTION FOR
ORDER FURTHER EXTENDING THE BRIEFING SCHEDULE**

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, Defendants-Appellants' opening brief is due November 13, 2018.

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

4. Plaintiffs-Appellees filed suit in the United States District Court for the Western District of Wisconsin challenging Wis. Admin. Code §§ DHS 107.03(23) and (24), which exclude from Medicaid coverage "[t]ranssexual surgery" and "[d]rugs, including hormone therapy, associated with transsexual surgery or medically

unnecessary alteration of sexual anatomy or characteristics.” R. 1. Plaintiffs-Appellees also filed a motion for a preliminary injunction. R. 18.

5. On July 24, 2018, the district court granted a preliminary injunction as-applied to Plaintiffs-Appellees, and ordered the parties to file supplemental briefs about whether the district court should expand the preliminary injunction statewide. R. 70.

6. On August 24, 2018, Defendants-Appellants filed this appeal of the district court’s as-applied preliminary injunction. R.75.

7. Plaintiffs-Appellees subsequently amended their complaint as a class action and moved for class certification. R. 85, 89.

8. On October 25, 2018, Plaintiffs-Appellees filed a new motion to modify the existing preliminary injunction to “fully enjoin” Defendants-Appellants “from enforcing 107.03(23)–(24)[] . . . against any Wisconsin Medicaid beneficiary during the pendency of this lawsuit.” R. 107.

9. Per the district court’s order, briefing on the Plaintiffs-Appellees’ motion to modify the preliminary injunction will be completed on November 28, 2018. R. 113.

10. In the event that the district court grants Plaintiffs-Appellees’ motion to expand the existing preliminary injunction, Defendants-Appellants intend to file an immediate appeal and then move to consolidate that appeal with this one.

11. Defendants-Appellants and Plaintiffs-Appellees agree that a 37-day extension of the briefing schedule in this appeal is warranted to prevent the submission of two rounds of duplicative briefing, with the possibility of the first round

of briefs being rendered moot by the entry of an expanded injunction. If granted, Defendants-Appellants' opening brief would be due December 20, 2018, Plaintiffs-Appellees' response brief would be due January 21, 2019 (although the Parties agree Plaintiffs-Appellees may seek an extension of that deadline), and Defendants-Appellants' reply brief (if any) would be due February 4, 2019, or fourteen days after service of Plaintiffs-Appellees' brief if the response brief deadline is extended.

12. If the district court does not render a decision before December 13, 2018, Defendants-Appellants and Plaintiffs-Appellees will confer and may seek an additional extension of the briefing schedule in this appeal.

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

Executed: November 6, 2018

/s/ Ryan J. Walsh

RYAN J. WALSH

Chief Deputy Solicitor General
of Wisconsin

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 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: November 6, 2018

/s/ Ryan J. Walsh

RYAN J. WALSH