

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

CODY FLACK,
SARA ANN MAKENZIE,
MARIE KELLY, and
COURTNEY SHERWIN,
*individually and on behalf of all others
similarly situated,*

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
HEALTH SERVICES, *et al.*,

Defendants.

Case No. 3:18-cv-00309-wmc
Judge William Conley

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR EXTENSION OF TIME

Plaintiffs respectfully oppose in part and consent in part to Defendants' Motion for Extension of Time to File Response to Plaintiffs' Motion for Summary Judgment [ECF No. 177] ("Motion for Extension"), filed on May 9, 2019. In their Motion for Extension, Defendants ask the Court to extend their May 14, 2019 deadline to respond to Plaintiffs' motion for summary judgment until seven days following the Court's resolution of Defendants' separately filed Motion to Stay Proceedings [ECF No. 175] ("Motion to Stay"). Plaintiffs consent to a one-week extension for Defendants to file their Response to Plaintiffs' Motion for Summary Judgment, from May 14, 2019 to May 21, 2019. However, Plaintiffs oppose Defendants' motion to the extent it asks this Court to indefinitely extend their time to respond rather than seeking for an extension to a date certain.

Plaintiffs will shortly file an opposition to Defendants' Motion to Stay, explaining that even if DHS is ultimately successful in promulgating a new rule to replace the Challenged

Exclusion over the next six months—indeed, a big *if*, as a proposed rule could be blocked by the state legislature, among other potential roadblocks—the Court will nevertheless need to adjudicate the Class-wide questions of liability and individual damages questions at some point. Even if the Challenged Exclusion is removed voluntarily during the pendency of this case, Plaintiffs would still be entitled to a declaratory judgment that the exclusion violated their rights under federal law and to appropriate Class-wide injunctive and equitable relief to ensure that Defendants do not backslide once this litigation ends. A stay would simply postpone, not moot, the Court’s need to rule on summary judgment and, if Plaintiffs prevail on their liability claims on summary judgment, to hold a trial on the named Plaintiffs’ individual damages claims. Because Defendants have provided no basis for staying this case, there is no reason to grant them an indefinite extension of their time to respond to the Motion for Summary Judgment.

To the extent Defendants need a short extension of time to respond to the Motion for Summary Judgment, Plaintiffs do not object to an extension of seven days from the current deadline (from May 14, 2019 to May 21, 2019), provided that Plaintiffs’ reply brief deadline is similarly extended and the scheduled trial date of September 16, 2019 remains in place.

Dated: May 9, 2019

Respectfully submitted,

/s/ Joseph J. Wardenski

Joseph J. Wardenski

Jennifer I. Klar

Orly T. May

Alexa Milton

RELMAN, DANE & COLFAX PLLC

1223 19th Street, NW, Suite 600

Washington, DC 20036

Telephone: (202) 728-1888

Facsimile: (202) 728-0848

jwardenski@relmanlaw.com

jkclar@relmanlaw.com

omay@relmanlaw.com

amilton@relmanlaw.com

Robert Theine Pledl
DAVIS & PLEDL, S.C.
1433 N. Water Street, Suite 400
Milwaukee, WI 53202
(414) 488-1354
rockpled@gmail.com

Abigail Coursolle
Catherine McKee
NATIONAL HEALTH LAW PROGRAM
200 N. Greensboro Street, Suite D-13
Carrboro, NC 27510
Telephone: (919) 968-6308
Facsimile: (919) 968-8855
coursolle@healthlaw.org
mckee@healthlaw.org

Attorneys for Plaintiffs