

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CHRISTINE MILLS, et al.,**

**Plaintiffs,**

**v.**

**JAMES H. BILLINGTON,**

**Defendant.**

**Civil Action 04-02205 (HHK)**

**ORDER**

Before the Court is plaintiffs' motion for an injunction requiring defendant Library of Congress to compile and publish equal employment opportunity plans and related documents as required by 42 U.S.C. § 2000e-16(b) [#137]. Pursuant to Local Rule 72.3(a), the Court referred this motion to United States Magistrate Judge Alan Kay for a report and recommendation, which he issued on February 17, 2010. Judge Kay recommended that the motion be denied on two grounds. First, he concluded that the Court lacked jurisdiction to grant the relief sought by plaintiffs because plaintiffs' claim did not fit within any waiver of sovereign immunity and because plaintiffs lacked standing to enforce section 2000e-16(b). Report & Recommendation of U.S. Magistrate Judge Kay, Feb. 17, 2010 ("Report & Recommendation") [#162] at 4–12. Second, he concluded that, notwithstanding any jurisdictional defects, plaintiffs' motion must be denied because plaintiffs had raised their section 2000e-16(b) for the first time in the motion, and had not amended their complaint to include it. *Id.* at 12–14. For the latter reason, the Court agrees that the motion must be denied.

As Judge Kay noted, “[t]he traditional practice of this Court has been to disregard ‘claim[s] asserted for the first time in a memorandum of law’ because those claims ‘[were] not made in the [plaintiff’s] original complaint or advanced in a motion to amend.’” *Tunica-Biloxi Tribe of La. v. United States*, 577 F. Supp. 2d 382, 411 (D.D.C. 2008) (quoting *Hamilton v. Paulson*, 542 F. Supp. 2d 37, 61 (D.D.C. 2008)) (alterations in original); *see also Kilpatrick v. Paige*, 193 F. Supp. 2d 145, 158 (D.D.C. 2002) (holding a claim to be “invalid because it was not made in the original complaint or advanced in a motion to amend.”). Dismissal of such claims is, so long as the plaintiff is subsequently accorded the opportunity to seek leave to amend the complaint to add them, proper. *Tunica-Biloxi Tribe*, 577 F. Supp. 2d at 411–12.

In fact, plaintiffs do not contest Judge Kay’s conclusion that their claim cannot be resolved before it is added to their complaint, arguing only that, if the Court decides not to grant their motion, it “should simply reject the unnecessary Recommendations with regard to standing and sovereign [sic] immunity and should deny the motion without prejudice to seek an amendment to the complaint or to file a new action.” Pls.’ Objections to the Report & Recommendation of Feb. 17, 2010 at 17. Because it would be premature to address the Court’s jurisdiction over a claim that plaintiffs have not yet properly presented, the Court will do precisely that.

Accordingly, it is this 28<sup>th</sup> day of February 2011 hereby

**ORDERED** that plaintiffs’ motion for an injunction [#137] is **DENIED** without prejudice.

Henry H. Kennedy, Jr.  
United States District Judge