

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

LYNN E., by her guardian, Barry Ellsworth;)
KENNETH R., by his guardian, Tri-County CAP,)
Inc./GS; SHARON B., by her guardian, Office of)
Public Guardian, Inc.; AMANDA D., by her guardian,)
Louise Dube; AMANDA E., by her guardian, Office of)
Public Guardian, Inc.; and JEFFREY D., on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

v.)

JOHN H. LYNCH, Governor of the State of New)
Hampshire; NICHOLAS A. TOUMPAS, Commissioner)
New Hampshire Department of Health and Human)
Services; NANCY L. ROLLINS, Associate)
Commissioner, New Hampshire Department of Health)
and Human Services, Community Based Care Services;)
MARY ANN COONEY, Deputy Commissioner, New)
Hampshire Department of Health and Human Services,)
Direct Programs/Operations; ERIK G. RIERA,)
Administrator, New Hampshire Bureau of)
Behavioral Health,)

Defendants.)

1:12-CV-53-LM

THE UNITED STATES OF AMERICA,)

Plaintiff-Intervenor,)

v.)

THE STATE OF NEW HAMPSHIRE,)

Defendant.)

**UNITED STATES’
ASSENTED-TO
MOTION TO INTERVENE**

ASSENTED-TO MOTION TO INTERVENE
BY THE UNITED STATES OF AMERICA

The United States respectfully requests that this Court grant its intervention as a plaintiff in this action as a matter of right, pursuant to Federal Rule of Civil Procedure 24(a)(2), or, alternatively, through permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). The existing parties have assented to the United States' intervention in this case. As further grounds in support thereof, the United States states as follows:

1. The United States' motion to intervene is timely because the litigation is in its early stages. The Plaintiffs just filed their complaint several weeks ago, on February 9, 2012, and the Defendants have yet to file an answer. As a result, the United States' intervention will not create any delay and it will not prejudice the existing parties.
2. The United States satisfies the requirements for intervention as of right under Fed. R. Civ. P. 24(a)(2). The United States has substantial legal interest in the subject matter of the action because it involves claims asserted under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 794. The United States Department of Justice is the federal agency with primary regulatory and enforcement responsibilities under Title II of the ADA, and, as such, plays a unique role in enforcing and interpreting the statute and its implementing regulations on behalf of the broad public interest. It also has significant interest in enforcing the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), where the Supreme Court held that the unnecessary institutionalization of individuals with disabilities is unlawful discrimination and violates Title II of the ADA and its integration mandate, 28 C.F.R. § 35.130(d).

3. Disposition of this action without the United States' participation may impede its enforcement and regulatory interests. Because there are not many cases interpreting *Olmstead*, the outcome of this case implicates *stare decisis* concerns that warrant the United States' intervention.
4. The United States' interests are not adequately protected by the existing parties to the litigation. Because the United States represents the public interest on a national scale, its interests differ from those represented by private Plaintiffs.
5. The United States satisfies the requirements for permissive intervention because the United States' claims against the State of New Hampshire share common questions of law and fact with the claims of the private Plaintiffs and because this action involves the interpretation of statutes that the Attorney General is entrusted by Congress to administer. *See Fed. R. Civ. P. 24(b)(2)*.
6. Pursuant to civil Local Rule 7.1(c), counsel for the United States conferred in good faith with counsel for the parties to see if there was concurrence with regard to the United States intervening in the instant action. Counsel for the Plaintiffs and counsel for the Defendants assented to the United States' request/motion to intervene.
7. As further support for its motion, the United States respectfully directs the Court to its accompanying memorandum in support, which is attached hereto and incorporated herein by reference.

Dated: March 27, 2012

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District of New Hampshire

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Respectfully submitted,

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/s/ Richard J. Farano

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Counsel for Plaintiff-Intervenor,
United States of America

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2012, I electronically filed the United States' Assented-To Motion to Intervene, a Memorandum in Support, and the United States' proposed Complaint-in-Intervention, with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record; I also certify that on March 27, 2012, I sent these documents by FedEx and email to counsel for Defendants, Michael Brown, Esq., Senior Assistant Attorney General for the State of New Hampshire, 33 Capitol Street, Concord, NH 03301.

/s/ Richard J. Farano

RICHARD J. FARANO, Senior Trial Attorney

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