

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Nancy Hargrave, on behalf :
of herself, and others :
similarly situated, :
Plaintiff, :

and :

Vermont Protection and :
Advocacy, Inc., :
Plaintiff-Intervenor :

v. : File No. 2:99-CV-128

State of Vermont; the :
Vermont Department of :
Mental Health Services; :
and Rodney Copeland, in his :
capacity as Commissioner :
of the Vermont Department :
of Developmental and :
Mental Health Services, :
Defendants. :

OPINION AND ORDER

The Court entered an Opinion and Order in this matter on October 11, 2001. That Opinion and Order disposed of the cross motions for summary judgment and partial summary judgment filed by Plaintiff and Plaintiff-Intervenor and Defendants. Defendants subsequently filed a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e). The Court accordingly amends its prior Opinion and Order in

this case by including the following provisions:

For the reasons set forth in the Opinion and Order entered on October 11, 2001, the Court has concluded that certain portions of 18 V.S.A. § 7624 *et seq.* ("Act 114"), including but not limited to 18 V.S.A. §§ 7626(b)-(c) and 7627(i)(j), deprive Plaintiff Nancy Hargrave and other class members, including clients of Plaintiff-Intervenor Vermont Vermont Protection and Advocacy, Inc., of a public benefit in the form of the ability to establish prior directives regarding their medical care in the form of a durable power of attorney ("DPOA") in the event of later incapacity, as provided for by Vermont law. The applicable provisions of Act 114 are facially discriminatory against mentally disabled individuals to the extent to which the provisions allow their lawfully executed DPOAs to be abrogated in non-emergency situations when they have been determined to be "in need of treatment" - in other words, when they have been found to be incompetent to make their own health care decisions.

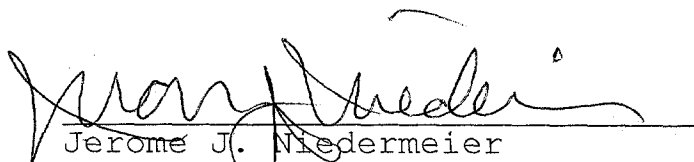
The Court has further concluded that Act 114's discriminatory treatment of Plaintiff Hargrave and

others similarly situated is based on their disabilities, and that said discrimination violates and therefore is pre-empted by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 ("ADA") and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("§ 504").

Accordingly, the Court permanently enjoins Defendants from implementing or enforcing those sections of Act 114, including but not limited to 18 V.S.A. §§ 7626(b)-(c) and 7627(i)-(j) to the extent §§ 7627(i)-(j) apply to individuals with duly executed DPOAs, which discriminate against Plaintiff Hargrave and other class members in violation of the ADA and § 504 by authorizing, in non-emergency situations, the restriction or overriding of their treatment preferences as expressed in duly executed DPOAs for health care.

SO ORDERED.

Dated at Burlington, in the District of Vermont,
this 21 day of December, 2001.


Jerome J. Niedermeier
United States Magistrate Judge