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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____	:	HONORABLE ANNE E. THOMPSON
NEW JERSEY PROTECTION AND	:	
ADVOCACY, INC.	:	Civil Action No. 08-1858
	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JENNIFER VELEZ, in her	:	
official capacity as	:	
Commissioner of the New	:	
Jersey Department of	:	
Human Services	:	
	:	
Defendant.	:	
_____	:	

**UNITED STATES' NOTICE OF INTERVENTION
PURSUANT TO 28 U.S.C. 2403(a)**

The United States respectfully exercises its right to intervene in this matter pursuant to 28 U.S.C. 2403(a) to defend the constitutionality of (1) the federal statute removing States' Eleventh Amendment immunity for private claims under Title II of the Americans with Disabilities Act of 1990 (ADA), as applied to cases implicating integration claims, and (2) the statutory provisions that condition a State's receipt of federal financial

assistance on its agreement to waive its Eleventh Amendment immunity to private damages suits alleging violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. The United States proposes to file a brief as intervenor and requests that it be permitted to file the brief in 40 days, on June 29, 2009.¹

In support of intervention, the United States provides the following information:

1. Section 2403(a) of Title 28 provides that “[i]n any action, suit or proceeding in a court of the United States to which the United States * * * is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court * * * shall permit the United States to intervene * * * for argument on the question of constitutionality.” 28 U.S.C. 2403(a) (emphasis added). The United States has thus intervened in numerous cases to defend statutory provisions providing for the abrogation or the waiver of States’ Eleventh Amendment immunity. See, e.g., A.W. v. Jersey City Pub. Sch., 341 F.3d 234 (3d Cir. 2003); Koslow v. Commonwealth of Pa., 302 F.3d 161 (3d Cir. 2002), cert. denied, 537 U.S. 1232 (2003); Constantine v. Rectors and Visitors of George Mason Univ., 411 F.3d 474 (4th Cir. 2005); Shepard v. Irving, 2003 WL 21977963 (4th Cir. Aug 20, 2003) (unpublished),

¹ Because the final day of the 40-day period falls on Saturday, June 27, 2009, the due date would be Monday, June 29, 2009. See Fed. R. Civ. P. 6(a).

cert. denied, 542 U.S. 959 (2004); Litman v. George Mason Univ., 186 F.3d 544 (4th Cir. 1999), cert. denied, 528 U.S. 1181 (2000); see also Chase v. Baskerville, 508 F. Supp. 2d 492 (E.D. Va. 2007), aff'd, 305 F. App'x 135 (4th Cir. 2008) (unpublished).

2. On December 31, 2008, defendant filed a motion to dismiss based in part on Eleventh Amendment immunity. The United States respectfully exercises its right pursuant to 28 U.S.C. 2403(a) to intervene in this case in order to defend the constitutionality of federal statutes.

Wherefore, the United States respectfully intervenes in this matter and seeks to file a brief on or before June 29, 2009, in response to defendant's motion to dismiss.

Respectfully submitted,

RALPH J. MARRA, JR.
Acting United States Attorney

/S J. Andrew Ruymann
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