

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

-----X		
FRANKLIN BENJAMIN, <u>et al.</u> , on behalf of	:	
themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	No. 09-cv-01182
-against- :	:	(Jones, U.S.D.J.)
	:	
DEPARTMENT OF PUBLIC WELFARE OF	:	(Am. Compl.
THE COMMONWEALTH OF :	:	Filed 7/14/09)
PENNSYLVANIA, <u>et al.</u> ,	:	
	:	
Defendants,	:	
-and-	:	
	:	
CRAIG SPRINGSTEAD, by and through his	:	
father and guardian, BERTIN SPRINGSTEAD, <u>et al.</u> ,	:	
	:	
Proposed	:	Intervenors.
-----X		

**PROPOSED INTERVENORS' MOTION FOR
INTERVENTION PURSUANT TO FED. R. CIV. P. 24**

Proposed Intervenors, Craig Springstead, by and through his father and guardian, Bertin Springstead, Maria Meo, by and through her mother and guardian, Grace Meo, Daniel Bastek, by and through his father and guardian, John Bastek, Michael Storm, by and through his guardian, Polly Spare, Beth Ann Lambo, by and through her father and guardian, Joseph Lambo, Richard Clarke, by and through his father and guardian, Leonard Clarke, Richard Kohler, by and through his sister and guardian, Sara Fuller, Maria Kashatus, by and through her father and

guardian, Thomas Kashatus, and Wilson Sheppard, by and through his brother and next friend, Alfred Sheppard (collectively, the “Springstead Intervenors”), respectfully move this Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for an Order allowing the Springstead Intervenors to intervene in the above-captioned matter.

In support of this Motion, the Springstead Intervenors aver as follows:

1. By their Amended Complaint, dated July 14, 2009, Plaintiffs commenced this putative class action against Defendant Department of Public Welfare of the Commonwealth of Pennsylvania, “the Commonwealth agency that is responsible to provide services to Pennsylvanians with mental retardation.”

(Am. Compl. ¶ 13.)

2. Plaintiffs’ allegations concern “Defendants’ continuing failure to offer and provide them with the opportunity to receive services in integrated, community settings that are the most appropriate settings to meet their needs.” (Am. Compl. ¶ 1.) Plaintiffs seek “appropriate declaratory relief and injunctive relief” (id. ¶ 4), pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(3) (id. ¶¶ 82-87), and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 and 28 C.F.R. § 41.51(d) (id. ¶¶ 88-93).

3. Plaintiffs seek this relief on behalf of a class that, as certified, includes:

All persons who: (1) currently or in the future will reside in on[e] of Pennsylvania's state-operated intermediate care facilities for persons with mental retardation; (2) could reside in the community with appropriate services and supports; and (3) do not or would not oppose community placement.

(Order, Sept. 2, 2009, § III.)

4. The Springstead Intervenors are *de facto* members of the class certified by this court on September 2, 2009. Notwithstanding Plaintiffs' claims that appropriate care can only be provided by community-based programs, the Springstead Intervenors believe that persons with developmental disabilities should receive the care and support they require in a setting appropriate to each individual's unique needs, be it a community-based facility or an Intermediate Care Facility for the Mentally Retarded ("ICF/MR"). Intervenors do not oppose the named Plaintiffs' right to community care for themselves, but object to this action being prosecuted on behalf of a class – including the Intervenors – who do not seek this relief.

5. The Springstead Intervenors respectfully submit that this request for intervention is timely.

6. The Springstead Intervenors have a concrete, legally protectable interest in their own care (more broadly, the availability of institutional care), that is implicated in this litigation. Specifically, they are all residents of ICFs/MR who do not wish to be forced into community care.

7. Plaintiffs' claims, if allowed to proceed on a class action basis, will impair the Springstead Intervenors' rights to choose ICF/MR care because the Springstead Intervenors will, as a practical matter, be bound by any potential judgment or settlement in this case.

8. Because Plaintiffs seek to force all class members to "choose" community-based care, whereas the Springstead Intervenors wish to protect their rights to choose appropriate treatment in an institutional setting, Plaintiffs do not adequately represent the Springstead Intervenors' interests.

9. Further, Defendants, who appear to acquiesce in Plaintiffs' assertion that community placement is appropriate for all persons residing in the state-operated ICFs/MR, do not adequately represent the Springstead Intervenors' interests.

10. In the alternative, should the Court deny this motion for intervention as of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, the Springstead Intervenors move this Court for an Order, pursuant to Rule 24(b), allowing them to permissively intervene.

In support of this Motion, the Springstead Intervenors submit the accompanying Memorandum of Law, Proposed Order, Response to the Complaint, and Certificate Regarding Concurrence.

WHEREFORE, the Springstead Intervenors respectfully request that this Court enter an Order allowing them to intervene in the above-captioned action.

Respectfully submitted,

Dated: Philadelphia, Pennsylvania
November 10, 2009

VAIRA & RILEY, P.C.

John

1600
Philadelphia,
(215)
(215)

By: /s/ John E. Riley

E. Riley
PA ID# 22504
William J. Murray, Jr.
PA ID# 73917
Market Street, Suite 2650
Pennsylvania 19103
789-9405
751-9420 (fax)

Of Counsel:

Michael Rato
Sarah M. Goldstein
David F. Bacon IV
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300
(212) 839-5599 (fax)

Attorneys for Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November 2009, I caused the foregoing **Proposed Intervenor’s Motion for Intervention Pursuant to Fed. R. Civ. P. 24** and **Proposed Intervenor’s Memorandum of Law In Support of Motion for Intervention** to be served upon the attorneys listed below via U.S.

First-Class Mail:

Mark J. Murphy Robert W. Meek Disability Rights Network of PA 1315 Walnut Street Suite 400 Philadelphia , PA 19107- 4798	Stephen F. Gold Stephen F. Gold 125 S. Ninth Street Suite 700 Philadelphia , PA 19107	Allen C. Warshaw Howard Ulan Office of General Counsel Health & Welfare Bldg. 3rd Floor West 7th & Forster Streets Harrisburg , PA 17120
---	---	--

s/ Michael Rato
Michael Rato

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

-----X		
FRANKLIN BENJAMIN, <u>et al.</u> , on behalf of	:	
themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	No. 09-cv-01182
-against-	:	(Jones, U.S.D.J.)
	:	
DEPARTMENT OF PUBLIC WELFARE OF	:	(Am. Compl.
THE COMMONWEALTH OF	:	Filed 7/14/09)
PENNSYLVANIA, <u>et al.</u> ,	:	
	:	
Defendants,	:	
-and-	:	
	:	
CRAIG SPRINGSTEAD, by and through his	:	
father and guardian, BERTIN SPRINGSTEAD, <u>et al.</u> ,	:	
	:	
Proposed	:	Intervenors.
-----X		

**CERTIFICATE REGARDING CONCURRENCE
PURSUANT TO LOCAL RULE 7.1**

Defendants concur in this motion. Plaintiffs do not concur in this motion.

Dated: Philadelphia, Pennsylvania
November 10, 2009

John

Respectfully submitted,

VAIRA & RILEY, P.C.

By: /s/ John E. Riley

E. Riley

PA ID# 22504

William J. Murray, Jr.

PA ID# 73917

Philadelphia,
(215)
(215)

1600 Market Street, Suite 2650
Pennsylvania 19103
789-9405
751-9420 (fax)

Of Counsel:

Michael Rato
Sarah M. Goldstein
David F. Bacon IV
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300
(212) 839-5599 (fax)

Attorneys for Proposed Intervenors