

Hon. Orlando Garcia

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ERIC STEWARD, et al.,

Plaintiffs,

RICK PERRY, et al.,

Defendants.

v.

Case No. 5:10-cv-1025-OG

**SUPPLEMENTAL STATEMENT OF INTEREST OF THE UNITED STATES OF
AMERICA**

The United States files this Statement of Interest, pursuant to 28 U.S.C. § 517¹, because this litigation implicates the proper interpretation and application of title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”). In particular, this case involves title II’s integration mandate. *See Olmstead v. L.C.*, 527 U.S. 581, 607 (1999). The Department of Justice has authority to enforce title II, and to issue regulations implementing the statute. 42 U.S.C. §§ 12133-34. The United States has a strong interest in the resolution of this matter; accordingly, it respectfully submits this Supplemental Statement of Interest in opposition to Defendants’ Partial Motion to Dismiss Plaintiffs’ Amended Complaint.

The initial Complaint was filed on December 20, 2010 and on March 8, 2011, Defendants filed a partial Motion to Dismiss. (Defs.’ Mot. to Dismiss Pls.’ Compl., ECF No. 30.) On May 18, 2011, the United States filed a Statement of Interest and addressed three issues raised in Defendants’ Motion to Dismiss. (Statement of Interest of the United States of America (“US

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

SOI I”), ECF No. 43.) The United States contended: 1) Plaintiffs’ claims were timely filed and not time-barred by any statute of limitation; 2) Governor Rick Perry is a proper party to the action; and 3) enforcement of the Medicaid Act is not limited to the Secretary of the Department of Health and Human Services’ authority to withhold federal financial assistance. (*Id.* at 7-20.)

With the Motion to Dismiss still pending, Plaintiffs filed an Amended Complaint, (ECF No. 63, Oct. 4, 2011), to which Defendants responded with another fully-briefed Partial Motion to Dismiss. (Defs.’ Partial Mot. to Dismiss Pls.’ Amend. Compl., ECF No. 67, Nov. 4, 2011.)

The United States now submits this Supplemental Statement of Interest, incorporating by reference the second and third arguments in its initial filing²: 1) Governor Perry is a proper party to the litigation; and 2) enforcement of the Medicaid Act is not limited to the Secretary of the Department of Health and Human Services’ authority to withhold federal financial assistance. (US SOI I at 10-20.)

CONCLUSION

For the reasons stated in its first Statement of Interest, and incorporated herein by reference, the United States respectfully requests that this Court deny Defendants’ Partial Motion to Dismiss Plaintiffs’ Amended Complaint.

² In earlier filings, Defendants withdrew the statute of limitations argument and they have not raised it in their present Motion to Dismiss. (*See* Defs.’ Reply to Pls.’ Response to Defs.’ Mot. to Dismiss Pls.’ Compl. at 3, ECF No. 51, June 1, 2011.)

DATED: November 30, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Regan Rush
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