

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JANE DOE,

Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
CORRECTION, *et al.*,

Defendants.

No. 1:17-cv-12255-RGS

**UNITED STATES OF AMERICA’S ACKNOWLEDGEMENT OF CONSTITUTIONAL
QUESTION AND MOTION FOR EXTENSION OF TIME TO INTERVENE**

Pursuant to Federal Rules of Civil Procedure 5.1 and 6(b), the United States, which is not a party to this case, respectfully requests that the Court extend by sixty days the United States’ time to intervene under Rule 5.1, until June 29, 2018. Good cause exists for the requested extension, as discussed below.

On February 2, 2018, Plaintiff Jane Doe filed a Notice of Constitutional Question pursuant to Federal Rule of Civil Procedure 5.1(a). *See* ECF No. 36. In that Notice, Plaintiff stated that she had argued, in opposition to Defendants’ motion to dismiss, that “[t]o the extent 42 U.S.C. § 12211(b)(1) of the [Americans with Disabilities Act] ADA is read to exclude Gender Dysphoria, Plaintiff challenges the constitutionality of that provision . . . because it discriminates on the basis of gender identity, sex, and/or disability in violation of the Fourteenth Amendment.” *Id.* at 2. As required by Rule 5.1(b) and 28 U.S.C. § 2403, this Court certified the constitutional question on February 28, 2018. *See* ECF No. 57 (Certification Order). The Court subsequently reserved judgment on Defendants’ motion to dismiss pending the United States’ determination whether to intervene in this action, and noted, “[t]he court, agreeing with the parties that the constitutional

question is substantial, on February 28, 2018, certified the question to the Attorney General . . . [T]he Attorney General has 60 days to decide whether he wishes to intervene.” *See* ECF No. 59 (Order of March 5, 2018), at 3.

The United States is authorized to intervene in any federal court action in which the constitutionality of an Act of Congress is drawn into question. *See* 28 U.S.C. § 2403(a). However, the Court may choose to set a later deadline for intervention. *See* Fed. R. Civ. P. 5.1(c) (providing default sixty-day minimum time period for the United States to intervene, but permitting court to set different deadline). Here, additional time is needed to permit a decision on intervention. Undersigned counsel was only recently assigned to this matter. In addition, the United States has been waiting for a transcript of the Court’s previous hearing on Defendants’ motion to dismiss, which may inform the Government’s decision on intervention. Most importantly, consistent with its usual approach, the United States must now engage in the process of deciding whether to intervene in this action pursuant to Section 2403(a). That established process requires internal deliberations, recommendations, and ultimately, a decision by the Solicitor General, which takes some time. *See* 28 C.F.R. § 0.21 (“The Solicitor General may in consultation with each agency or official concerned, authorize intervention by the Government in cases involving the constitutionality of acts of Congress.”). Consequently, there is ample good cause for the sixty-day extension sought here.

The United States has not previously sought an extension in this matter. Pursuant to Local Rule 7.1(a)(2), undersigned counsel has conferred with counsel for both Plaintiff and Defendants and advises the Court that Defendants consent to this request but Plaintiff does not. Counsel for Plaintiff represented that Plaintiff plans to file an opposition to this motion.

A proposed order is filed concurrently herewith.

Respectfully submitted this 11th day of April, 2018,

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/s/ Anjali Motgi _____

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2018, a copy of the foregoing pleading was filed electronically via the Court's ECF system, which sent notification of such filing to counsel of record for all parties.

/s/ Anjali Motgi

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**[PROPOSED] ORDER GRANTING UNITED STATES OF AMERICA'S
MOTION FOR EXTENSION OF TIME**

Upon consideration of the United States of America's motion for extension of time, and for good cause shown, it is hereby ORDERED that the United States' deadline to intervene in the above-captioned matter is extended to and including June 29, 2018.

It is SO ORDERED.

Dated: _____

The Honorable Richard G. Stearns
UNITED STATES DISTRICT JUDGE